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ACCOMMODATION OF EMPLOYEES WITH DISABILITIES		

1 GOALS

- 1.1 Confederation College is committed to providing, short of undue hardship, accommodation in employment, services, and access to facilities to employees with disabilities. All College Leaders are accountable in terms of ensuring that access and accommodation are available.
- 1.2 All employees have a responsibility to address barriers to full participation – whether physical, structural, systemic or attitudinal. Persons in positions of authority have a particular responsibility to ensure the principles of integration through barrier analysis and prevention, as well as inclusive design of buildings, systems and policies, are met.

2 DEFINITIONS

- 2.1 For the purpose of this procedure, the definition of “disability” is adopted from the *Ontario Human Rights Code*, as follows:

Section 10 (1) of the Code defines "handicap" as follows:

"because of handicap" means for the reason that the person has or has had, or is believed to have or have had,

- (a) any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness, and without limiting the generality of the foregoing, including diabetes mellitus, epilepsy, any degree of paralysis, amputation, lack of physical co-ordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or on a wheelchair or other remedial appliance or device,
- (b) a condition of mental retardation or impairment,
- (c) a learning disability, or a dysfunction in one or more of the processes involved in understanding or using symbols or spoken language,
- (d) a mental disorder, or
- (e) an injury or disability for which benefits were claimed or received under the insurance plan established under the Workplace Safety and Insurance Act, 1997.

- 2.2 “Disability” should be interpreted in broad terms. It includes both present and past conditions, as well as a subjective component – that is, perception of disability. Although sections 10(1)(a) to (e) of the *Code* set out various types of conditions, they are illustrative and not

exhaustive. Even minor illnesses or infirmities can be “disabilities” if a person can show that they were treated unfairly because of the perception of a disability.

2.3 “Essential Duties” are tasks that are a basic, necessary and integral part of the job. Distinctions between essential vs. non-essential duties include:

1. Duties required to be performed on a regular basis - if the duties are rarely performed, they may not be essential.
2. Specialized duties - the need for special expertise may be an indication of an essential duty.

3 ACCOMMODATION

3.1 Accommodation will vary based on a person's unique needs, which must be considered, assessed, and accommodated individually.

3.2 The following are examples of accommodation measures and services:

1. the use of technical aids (assistive devices and equipment);
2. alternatives to print materials (e.g., taped text);
3. interpreting services (e.g., American Sign Language);
4. Braille;
5. changes to physical plant (e.g., ramps);
6. alternative work arrangements; and
7. measures or services that are customized for particular circumstances.

3.3 The purpose of accommodation is not to satisfy the personal preferences of employees, but rather to assist in meeting legitimate needs related to disability.

3.4 Where applicable, an individualized workplace emergency response plan will be developed for the employee, taking into account their specific needs.

3.5 All accommodation measures will be documented in Human Resources Services (HRS).

4 ESSENTIAL DUTIES

4.1 The *Ontario Human Rights Code* guarantees equal treatment to all persons capable of performing the essential duties or requirements of the job. No one can be judged incapable of performing those duties until efforts have been made to accommodate the individual, up to the point of undue hardship.

4.2 An objective determination of an employee's ability to perform the essential duties of the job will be undertaken prior to placement or return to work.

4.3 The duty to accommodate may require modification of performance standards. If a standard is essential, the employer is nevertheless required to accommodate the employee under section 17(2) of the *Code* short of undue hardship. This does not preclude an employer from enforcing performance standards that are unrelated to the disability.

4.4 Where necessary, non-essential duties can be reassigned.

5 CONFIDENTIALITY

Employees with disabilities are not necessarily required to disclose private or confidential information; however the employer has the right and the employee has the obligation to disclose information to the accommodation provider as it pertains to the need for accommodation, including any restrictions or limitations.

6 REQUESTS FOR ACCOMMODATION

- 6.1** The most appropriate accommodation is one that most respects the dignity of the individual with a disability, meets individual needs, meets the employer's needs, best promotes integration and full participation, and ensures confidentiality.
- 6.2** The accommodation process is a shared responsibility between the College and the employee.
- 6.3** An employee who wishes to request accommodation has a responsibility to communicate their needs in sufficient detail, and to cooperate in consultations to enable the College to respond to the request. Some forms of accommodation may require advance notice (e.g., Braille, taped texts). Failure to provide sufficient notice may negatively affect the College's ability to promptly respond to accommodation needs without a resulting delay.
- 6.4** An employee who requires accommodation must make their needs known by communicating with their supervisor. The employee and/or supervisor may consult with the Manager, HRS to discuss the process and options for accommodation, and the employee may consult with their union representative.
- 6.5** The employee has a responsibility to answer questions and provide information regarding relevant restrictions or limitations, including information from health care professionals, where appropriate, and as needed. The employee is expected to participate in discussions regarding possible accommodation solutions; co-operate with any experts whose assistance is required; and work with the accommodation provider on an on-going basis to manage the accommodation process. The employee is expected to discuss their disability only with persons who need to know.
- 6.6** Once accommodation is provided, the employee is expected to meet agreed-upon performance and job standards.
- 6.7** The supervisor will take an active role in ensuring that possible accommodation solutions are investigated. In some circumstances, it may be necessary to involve other resource people in order to explore options (for example, internal or external "experts" on accommodation, legal or financial advisors, etc.), in which case the employee's identity will be protected to the greatest extent possible.
- 6.8** The cost of any required medical information or documentation with respect to the employee and/or accommodation, and to the extent possible, costs of accommodation, if any, will be borne by the College.
- 6.9** Accommodation requests will be granted in a timely manner, to the point of undue hardship.
- 6.10** Union representatives are partners in the accommodation process in terms of sharing joint responsibility with the employer to facilitate accommodation and to support accommodation measures irrespective of collective agreements unless to do so would create undue hardship.
- 6.11** When an accommodation request results in an accommodation plan, it will be documented by the Manager, HRS and placed on file in HRS, separate from the employee's personnel file. The employee and the supervisor will sign the document and maintain copies for reference.

The plan will include such details as: the request for accommodation, additional information or expert opinion received, alternative solutions explored, costs, type and duration of accommodation, information on alternative work or work modification, an emergency response plan (if applicable) and the date accommodation was implemented.

6.12 The accommodation plan will also include a plan for review/evaluation.

7 COMPLAINT PROCEDURE

- 7.1 All complaints handled through this procedure are confidential. Records with respect to employee complaints are retained in Human Resources Services.
- 7.2 Where an employee feels that they have not been adequately accommodated, they should submit a written request to review the decision to the Director, Human Resources Services.
- 7.3 The Director, Human Resources Services will review the request and respond within 14 days.
- 7.4 If the employee is not satisfied with the decision of the Director, Human Resources Services, they should appeal in writing to the applicable Vice President.
- 7.5 The Vice President, or designate, will determine if the appeal has merit and will either decide the appeal or remit the matter back to Human Resources Services.
- 7.6 The employee will be informed in writing of the appeal outcome by the Vice President, or designate, within 20 working days of receiving the request.
- 7.7 The appeal decision is final and will be implemented by the College.

8 UNDUE HARDSHIP

The *Ontario Human Rights Code* specifies three factors in assessing whether an accommodation would cause undue hardship. These are:

- 8.1 Cost will amount to undue hardship if it is quantifiable, shown to be related to the accommodation, and so substantial that it would alter the essential nature of the enterprise or so significant that it would substantially affect its viability.
- 8.2 [Lack of] Outside sources of funding include funds available to the individual through government programs, funds that would assist employers and service providers to defray the cost, and funding programs to improve accessibility for persons with disabilities.
- 8.3 Health and safety requirements which create a barrier for an employee with a disability must be assessed to determine whether the requirement can be waived or modified. Any risk created by modifying or waiving a health and safety requirement is to be weighed against the right to equality of the employee with a disability. Where a risk is so significant as to outweigh the benefits of equality, it will be considered to create undue hardship. Where possible, an employee with a disability should be allowed to assume risk with dignity, subject to undue hardship. At the same time, the organization has an obligation under health and safety legislation not to place individuals in a situation of direct threat of harm. No assumption of risk by the person with a disability may place another individual at risk.