

## ACADEMIC COUNCIL REPORT

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**SESSION:**

Public

**ACTION REQUESTED:**

Decision   
 Discussion/Direction   
 Information

Financial Impact  Yes  No

Included in Budget  Yes  No

**TO:** Academic Council (AC)

**DATE:** January 26, 2021

**SLT LEAD:** Cheryl Foy, University Secretary and General Counsel

**SUBJECT:** Accommodation Policy Report

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**ACADEMIC COUNCIL MANDATE:**

- Under the University’s Act, section 9 (1), the Board of Governors has the power: “to establish academic, research, service and institutional policies and plans and to control the manner in which they are implemented”. The university’s Policy Framework is a key institutional policy that delegates the Board’s power, establishing categories of policy instruments with distinct approval pathways.
- Under the Policy Framework, Policy Owners must consult with Academic Council before presenting draft policy instruments to the approval authority for approval.
- We are seeking Academic Council’s feedback on the draft document before it is presented to the Board of Governors for approval.

**BACKGROUND/CONTEXT & RATIONALE:**

The Accommodation Policy was created to fill a policy gap – while the University has procedures for disability-related accommodation requests and processes, applicable human rights legislation requires accommodation on multiple other grounds (“Protected Grounds”). While the university has received and responded to requests on several of these Protected Grounds, there are currently no policy instruments to assist university members seeking to be accommodated on these Protected Grounds or to assist those involved in responding to such requests.

**CONSULTATION:**

- Policy Advisory Committee (Consultation - November 2020)
- Online Consultation (Consultation - December 2020 – February 2021)
- Academic Council (Consultation - January 26, 2021)

- Governance, Nomination and Human Resources Committee (Consultation - January 28, 2021)
- Administrative Leadership Team (February 2021)
- Governance, Nominations and Human Resources Committee (Recommendation – March 30, 2021)
- Board of Governors (Approval – April 22, 2021)

## **Consultation Comments and Response To Date**

### Accommodation Policy

- We received feedback from individuals questioning the definitions of specific Protected Grounds that are included in the definitions section (e.g. disability, sex, creed, etc.). Specifically, the questions tended to focus on where the definitions came from and whether the level of detail provided is necessary.
- **Response:** We have clarified in the Policy instrument which of the definitions come directly from the Ontario Human Rights Code. Where the definition is not included in the Code, we have defined the terms in a manner consistent with the [approach/guidance of the?] Ontario Human Rights Commission or by referring to how the terms have been interpreted in jurisprudence. Our goal is to provide sufficient detail so that University Members can understand how the Protected Grounds may result in instances where accommodation may be needed.
- We received feedback that the Definitions section of the Policy was too extensive, that the definitions were confusing and too lengthy. There was a suggestion that some of the detail should be included in separate guidelines.
- **Response:** Revisions have been made in attempts to address the feedback related to the Definitions section of the Policy; specifically, attempts were made to make the section more concise where possible and appropriate. However, it should also be noted that the policy instruments will not be standalone. Web-based tools, and training will follow. As this is a new policy, we erred on the side of including more rather than less. We have aimed for a clear and succinct document that nonetheless provides the necessary information to ensure University Members know their rights, responsibilities and obligations – this is particularly important since the University has never had a stand-alone accommodation policy previously. Once the Human Rights Policy framework is established, the Human Rights Office will begin to focus on additional informational supports and resources for the Campus community and as we roll those out we will revisit the content of the policy instrument during regularly scheduled reviews.
- A member states that the definition of “Disability” is ableist in tone. For example, it was suggested that the term “deafness” should be capitalized.
- **Response:** We have clarified in the policy instrument that the definition of “Disability” comes directly from the Code. Regardless we have capitalized “Deafness” as requested by the member. Although we will retain the legal definition of disability from the Code, the Human Rights Office is dedicated to the use of more inclusive language in the development of its website content and informational resources.

### **NEXT STEPS:**

- Comments from pending consultations including those from Academic Council will be considered and a revised draft brought forward for deliberation to the Governance, Nominations and Human Resources Committee (March 30) and for approval to the Board of Governors (April 22).



Classification Number	<i>To be completed by the Policy Office</i>
Framework Category	Legal, Compliance and Governance
Approving Authority	Board of Governors
Policy Owner	University Secretary and General Counsel
Approval Date	DRAFT FOR CONSULTATION
Review Date	
Supersedes	

## ACCOMMODATION POLICY

### PURPOSE

- The purpose of this Policy is to:
  - Establish the University's commitment to working towards a barrier-free and inclusive campus environment; and,
  - Demonstrate compliance with the obligations and responsibilities, required of the University under its Respectful Campus Policy and by the *Ontario Human Rights Code* ("the Code"), the *Accessibility for Ontarians with Disabilities Act* (AODA), and the *Workplace Safety and Insurance Act*.

### DEFINITIONS

**"Accommodation Measures"** are adaptations or adjustments that may be required to enable ~~an employee to perform his or her essential job responsibilities effectively and/or a service recipient to participate fully in their academic pursuits~~ full participation.

Accommodation Measures may include, but are not limited to:

- Human support services such as sign language interpreters, readers, etc.
- Technical aids and assistive devices
- ~~Modification of testing/exam requirements~~
- Workstation and/or office modifications
- Flexible or alternative work/assignment schedules
- Temporary re-assignments

**"Barriers"** include attitudes (stereotypes or prejudices), designs, policies, practices and rules that prevent full participation of individuals or groups on the basis of a protected Ground. ~~when applied in the same way to everyone without accommodation~~

**"Creed"** is not defined in the Code, but courts and tribunals often refer to creed as religious beliefs and/or practices. As creed is not clearly defined, the following characteristics have been relied on when considering whether a belief system is a creed under the Code:

- It is sincerely, freely, and deeply held
- Is integrally linked to a person's identity, self-definition, and fulfilment
- Is a particular and comprehensive, overarching system of belief that governs one's conduct and practices

- Addresses ultimate questions of human existence, including ideas about life, purpose, death, and the existence or non-existence of a creator and/or a higher or different order of existence
- Has some nexus/connection to an organization or community that professes a shared system of belief.

~~Not every belief, opinion, expression, practice, or matter of conscience is a creed under the Code. Further, practices/observances which are hateful, incite hatred or violence against other individuals/groups, or contravene criminal laws are not protected by the Code.~~

**“Disability”** is defined in the Code as means:

- any degree of physical disability, infirmity, malformation or disfigurement that is caused by bodily injury, birth defect or illness and includes diabetes mellitus, epilepsy, a brain injury, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, Ddeafness or hearing impediment, muteness or speech impediment, or physical reliance on a guide dog or other animal or on a wheelchair or other remedial appliance or device;
- a condition of mental impairment or a development disability;
- a learning disability, or dysfunction in one or more of the processes involved in understanding or using symbols or spoken language;
- a mental disorder; or
- an injury or disability for which benefits were claimed or received under the insurance plan established under the *Workplace Safety and Insurance Act*.

**“Duty to Accommodate”** refers to the obligation to eliminate the disadvantage, to the point of undue hardship, caused by barriers that exclude individuals or groups protected under the Code from participating in all aspects of their employment, academic endeavors, or use of facilities and housing or their receipt of services from the University on campus. Failure to meet the Duty to Accommodate is a form of discrimination. ~~There is a procedural obligation to explore all accommodation options, and a substantive obligation to implement an accommodation that is reasonable. Every accommodation request must be fully considered, and may be refused only if no Code-related need is substantiated or if undue hardship can be demonstrated.~~

**“Family Status”** is defined in the Code as the status of being in a parent and -child relationship. It, and includes any relationship that is equivalent to the care, responsibilities and commitment of a parent to a child. ~~“Parent” includes any person acting in the position of parent to a child, including biological, adoptive, foster, step-parents, legal guardians, or even a friend or family member who has taken responsibility for the care of a child whose parent(s) is not able to raise the child.~~ An adult child who is responsible for the care of a parent (e.g., providing elder care) is also in a relationship that is included in the definition of family status. In order to trigger a Family Status accommodation, the child/parent must be under the supervision or control of the University Member, there must be an essential need or legal obligation that flows from the relationship and the impact must create real disadvantages to the parental-child relationship and the responsibilities that flow from it (i.e. it is not trivial, insubstantial or merely a negative impact).

~~An assessment of whether a Family Status request triggers the University’s Duty to Accommodate:~~

- ~~Includes whether the child/parent is under the care and/or supervision of the individual~~
- ~~Includes whether the need is based on an essential or legal obligation which flows from the parent-child relationship~~
- ~~Includes whether the rule/requirement creates real disadvantage to the parent-child relationship and the responsibilities that flow from it (i.e. it is not trivial, insubstantial, or merely a negative impact)~~
- ~~May include a consideration of whether the individual made reasonable efforts to meet their child/parent obligations through alternative solutions that are reasonably accessible~~

“Functional Limitations” refer to the specific effects an individual’s code related needs/obligations impact their ability to access employment, academic services or facilities and housing on campus. For example, an employee is unable to lift objects greater than 10 pounds due to a disability, or a student will be late for class because they are a single parent and need to drop off their child to daycare at a specific time.

**“Gender Identity & Gender Expression”** are not defined in the Code. Gender Identity is the gender that people identify with or how they perceive themselves, which may be different from their birth-assigned sex. Gender identity is linked to a sense of self, the sense of being woman, man, both, neither or anywhere along the gender spectrum (non-binary). Gender Expression is the way people communicate or express their gender identity publicly; often through behaviour and physical appearance, e.g., dressing, the length and style of hair, or by emphasizing, de-emphasizing or changing physical characteristics. Chosen names and preferred pronouns are also ways in which people express gender. Gender Identity and Gender Expression are completely separate from sexual orientation.

~~All employees, job applicants and service recipients have a right to be treated with respect and dignity, dress in accordance with and be identified by and referred to as their self-identified or expressed gender.~~ Accommodations on the ground of gender identity or gender expression may be sought relating to:

- Pronouns
- Name and Gender title changes
- Transitioning
- Gender affirming surgery
- Washroom Access
- Locker Room/Change Facilities

“Interim Accommodations” are temporary Accommodation Measures that are implemented on a good-faith basis while an accommodation request is under review and are typically reserved for complex cases that may require more time or specialist input to determine whether Accommodation is required and to identify/choose appropriate long-term Accommodation Measures.

**"Person(s) of Authority"** includes any person who has charge of a workplace, authority over another Employee or authority in the administration of education. Anyone who

supervises an Employee at Ontario Tech University is a Person of Authority. For the purposes of this policy, Faculty members, and ~~Teaching Assistants and~~ Faculty Leadership (e.g. Deans, Associates Deans, etc.) are also considered Persons of Authority vis-à-vis their relationship to students.

**"Protected Ground(s)"** are the grounds contained in the Ontario Human Rights Code under which individuals are protected against discrimination and harassment. All University Members are protected under the following Grounds: "race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, Record of Offences, marital status, family status or disability." Employees are additionally protected under the ground "record of offences."

~~Protected Grounds for Students include "race, ancestry, place of origin, colour, ethnic origin, citizenship, creed, sex, sexual orientation, gender identity, gender expression, age, Record of Offences, marital status, family status or disability," and any additional protected grounds that are added to the Ontario Human Rights Code by way of statutory amendment. Protected Grounds for Employees are the same, but include the additional ground of "record of offences."~~

**"Sex (Including Pregnancy and Breastfeeding)"** ~~is not specifically defined in the Code, the ground of "sex,"~~ but it is considered to be related to a person's biological sex, male or female. The Code makes it against the law to discriminate against someone or to harass them because of sex, including pregnancy and breastfeeding. ~~Pregnancy includes the process from conception up to the period following childbirth.~~ Special needs and circumstances that may be experienced as a result of pregnancy are also included within the definition of pregnancy. Special needs can relate to circumstances arising from:

- miscarriage or stillbirth
- abortion
- conditions which result directly or indirectly from an abortion/miscarriage or stillbirth
- fertility treatments/ other interventions to get pregnant
- medical complications resulting from pregnancy
- recovery from childbirth
- breastfeeding
- postpartum depression

**"Undue Hardship"** as defined in the Code prescribes three considerations in assessing whether an accommodation could cause undue hardship: Cost; Outside Sources of Funding; and Health and Safety Considerations. Additional information is available on the Ontario Human Rights Commission website (URL: [www.ohrc.on.ca](http://www.ohrc.on.ca)).

**"University Member"** means any individual who:

- is employed by the University or holds an appointment with the University, including paid, unpaid and/or honorific appointments (**"Employee"**);
- is registered as a student, in accordance with the academic regulations of the University (**"Student"**); and/or,

- Is otherwise subject to University policies by virtue of the requirements of a specific policy (e.g. Booking and Use of University Space) and/or the terms of an agreement or contract.

## SCOPE AND AUTHORITY

- ~~2. The University Secretary and General Counsel is the Policy Owner. The Policy Owner is responsible for overseeing the implementation, administration, interpretation and application of this Policy.~~
- ~~3. This Policy applies to all University Members in all aspects of their engagement with the University.~~
- ~~2. This Policy applies to all University Members, including Employees (i.e. full-time, part-time, temporary, seasonal, contract workers), volunteers and job applicants, as well as individuals who receive services from the University, e.g. all Students, and/or those that are permitted to use University facilities.~~
- ~~3. The University Secretary and General Counsel is the Policy Owner and is responsible for the interpretation and administrative direction of this policy and its associated policies and procedures to ensure their compliance with regulatory requirements.~~
4. This Policy does not override or diminish the rights provided to Employees under applicable Collective Agreements. Collective Agreements will supersede this Policy to the extent there is a conflict.

## POLICY

- ~~5. Ontario Tech University is committed to promoting an environment where everyone has an equal opportunity to contribute to their fullest potential and where all are treated with sensitivity, fairness and respect. The university recognizes its duty to accommodate to the point of undue hardship and commits itself to an accommodation process that reflects the principles of dignity, and privacy, inclusion and individualization.~~
- ~~6. Ontario Tech University is We are committed to fully exploring all reasonable requests for accommodation in good faith, and to providing reasonable accommodation up to the point of Undue Hardship, where evidence supports the need for accommodation unless the accommodation would alter a bona fide occupational or academic requirement and/or undue hardship can be demonstrated.~~
- ~~7. Ontario Tech University will consider on a case-by-case basis whether Interim Accommodations can be implemented while the formal review of accommodation requests is in progress.~~
- ~~9. Where there are multiple ways to provide accommodation without incurring Undue Hardship, the University reserves the right to accommodate in the manner most consistent with the University's operational and academic requirements.~~

### **6.10. The Duty to Accommodate: General Principles**

In order to meet the needs of individuals affected, the University's approach to providing accommodations will be based on the following principles:



a) **Individualization:** designing accommodation to meet the specific circumstances of each Employee, job applicant and Student. Accommodation is assessed and delivered on an individual basis for persons who make their needs known. Each request must be considered individually in order to assess appropriate accommodation. ~~Requests for accommodation must be dealt with in a timely manner so individuals can fully participate in all aspects of employment, use of facilities and receipt of services, except where evidence does not support the need for accommodation or where undue hardship can be demonstrated.~~

b) **Dignity:-** Requests for accommodation must be dealt with in a respectful and timely manner so individuals can fully participate in all aspects of employment, academic endeavors and in the use of facilities and housing and receipt of services, ~~except where evidence does not support the need for accommodation or where undue hardship can be demonstrated. and~~

c) **Privacy:** individuals must be accommodated in ways that respect their ~~dignity~~ and right to privacy. Information relating to specific requests for accommodation will be treated as confidential and will only be used for the purpose of assessing and implementing accommodation options and solutions.

~~e) **Partnership and Consultation:-**~~ The consideration of accommodation requests and the search for reasonable accommodation measures will involve the person requiring the accommodation and a Person of Authority. Consultations with third parties with specialized expertise in the development of the accommodation plan may also be required (e.g. the Human Rights Office, Student Accessibility Services and Human Resources~~medical practitioners~~).

~~ed) **Inclusion:**~~ intentional design helps ensure programs, policies, practices, facilities, services, communications and systems are designed and administered to foster the full integration of diverse individuals and groups protected under the Code. The proactive review of existing policies, rules, practices and procedures to identify and eliminate barriers to access and inclusion can also promote a more inclusive campus. Intentional design and systemic assessments minimize the need for individual assessments/accommodations.

~~e) **Respect** for confidentiality and dignity and the unique circumstances of each University Member. See comment above re: Dignity and Privacy.~~

~~f) **Written accommodation plans:** in cases involving disability accommodation, written accommodation plans will be developed in accordance with the requirements of the Accessibility for Ontarians with Disabilities Act.~~

## 7.11. Making a Request for Accommodation

Although accommodation requests are most commonly made on the grounds of Disability, Family Status, Creed, Sex (more specifically related to pregnancy and breast-feeding) and Gender Identity & Gender Expression, requests for accommodation can be made based upon any Protected Ground.

It is typically the responsibility of the University Member to make their Protected Ground~~Code~~-related needs known. Reach out to a relevant Person of Authority for information and assistance and/or to commence the accommodation process. [Note: The University has specialized procedures for Students and Employees related to



making disability-related accommodation requests.] ~~For accommodation requests related to all other Protected Grounds, speak to a Person of Authority (e.g. your manager, your Professor, a Dean, etc.)~~

A detailed, written account of your Code-related needs will assist the person of authority to understand your situation and will likely expedite the accommodation process. If appropriate and available, provide supporting documentation that verifies the need for accommodation (e.g. a medical form, a child's daycare schedule or a custody agreement). Those requesting accommodation should focus on the Functional Limitations that are impacting their ability to work, access academic services, facilities or housing, and should avoid at this early stage requests for specific Accommodation Measures.

Any University Member may book a consultation meeting with The Human Rights Office for additional information related to this policy instrument or for advice related to their specific circumstances.

### **8.12. Receiving a Request for Accommodation**

~~Accommodation requests on the basis of a Disability must be handled in a manner consistent with obligations detailed in the relevant procedures for Students or Employees. Student Accessibility Services manages Disability-related accommodation requests from Students and Human Resources manages similar requests from Employees.~~

~~For all other accommodation requests, Except in relation to disability-related requests, Persons of Authority will determine whether appropriate functional limitations have been identified in consultation with experts as necessary, and if not, will ask the requester to identify appropriate functional limitations. Persons of Authority are tasked with receiving and responding to requests for accommodation. When in receipt of a request for accommodation, Once the functional limitations are identified, the Person of Authority will determine whether the need for accommodation has been verified.~~

~~If there is evidence to support the need for accommodation, the Person of Authority will identify and select appropriate accommodation measures in consultation with the individual seeking accommodation. If, on the other hand, the assessment concludes that accommodation is not required, the Person of Authority will advise the individual in writing.~~

Persons of Authority are encouraged to consult with the Human Rights Office for advice and assistance. In any event, if the Person of Authority concludes that accommodation is not required, they must consult with the Human Rights Office prior to informing the individual.

### **9.13. Dispute Resolution**

The University has Dispute Resolution procedures to handle allegations of discrimination. University Members who have concerns about the manner in which their request for accommodation has been handled should consult the Respectful Campus Policy and related procedures.

## **ROLES AND RESPONSIBILITIES**

### **10-14. All University Members**

- ~~1.~~ 1. ~~Are responsible for familiarizing themselves with this Policy~~
- ~~4-2.~~ 2. Will build and maintain positive and productive relationships and demonstrate Respect in their interactions; and,
- ~~2-3.~~ 3. Will engage the accommodation process in good-faith and in a cooperative manner, which includes making their needs known in a timely fashion, providing additional information about their individualized needs when requested and being open to all reasonable Accommodation Measures.

### **11-15. Persons of Authority**

1. Are responsible for ~~familiarizing themselves with this Policy and will ensure~~ University Members under their authority are aware of this Policy and its associated procedures;
2. Will respond to requests for Accommodation in good faith, in accordance with related Ontario Tech University policies and procedures, and in consultation with relevant stakeholders;
3. Will handle requests for accommodation on the ground of “Disability” consistent with applicable procedures for Students and Employees;
4. Will process requests for accommodation related to all other Protected Grounds pursuant to requirements under this policy, ensuring the University meets its Duty to Accommodate up to the point of undue hardship; and,
5. Will cooperate with relevant stakeholders in the process of identifying and implementing reasonable Accommodation Measures.

### **12-16. Human Rights Office**

1. Is responsible for the interpretation and administrative direction of this policy and its associated policies and procedures to ensure their compliance with regulatory requirements;
2. Will assist University Members to understand their rights and obligations under this policy and provide advice and direction; and,
3. Will assist Persons of Authority to assess requests for accommodation and explore reasonable Accommodation Measures.

### **13-17. Human Resources**

1. Is responsible for administering the “Procedures for Accommodating Employees and Job Applicants with Disabilities;” and,

2. Will assist Persons of Authority to implement Accommodation Measures in the workplace.

#### **14.18. Student Life**

1. Is responsible for administering the “Procedures for Academic Accommodation for Students with Disabilities;” and,
2. Will assist Persons of Authority to implement Accommodation Measures for students.

#### **MONITORING AND REVIEW**

**15.19.** This Policy will be reviewed as necessary and at least every three years. The University Secretary and General Counsel, or successor thereof, is responsible to monitor and review this Policy.

#### **RELEVANT LEGISLATION**

**16.20.** Human Rights Code, R.S.O. 1990, c. H.19

Accessibility for Ontarians with Disabilities Act, 2005, S.O. 2005  
Workplace Safety and Insurance Act

#### **RELATED POLICIES, PROCEDURES & DOCUMENTS**

**17.21.** Accessibility Policy

Procedures for Accommodating Employees and Job Applicants with Disabilities  
Procedures for Academic Accommodation for Students with Disabilities  
Respectful Campus Policy