Report of the *ad hoc* Committee of Senate Executive to Examine Accommodation of Students with Disabilities and Governance Procedures Related to Academic Requirements

List of Contents

Executive Summary

Preamble

Observations
1. Role of Senate
2. Understanding and Use of Terms Related to Accommodation
   a. Accommodation
   b. Reasonable Accommodation
   c. Modification
   d. Substitution
   e. Waiver
   f. Degree Notwithstanding a Deficiency
3. Duty to Accommodate
   a. Impact of Duty to Accommodate Students with Disabilities on Academic Standards
   b. Role of Academic Staff
      i. Rights
      ii. Responsibilities
4. Academic Standards
   a. Nature of Academic Standards
   b. *Bona Fide* Academic Requirements
   c. Establishing *Bona Fide* Academic Requirements
   d. Privacy Concerns
   e. Delegation of Authority and Recommended Procedures
5. Accommodation Decisions
   a. Decisions at the First Instance
      i. Modifications
      ii. Substitutions
      iii. Waivers
      iv. Degree Notwithstanding a Deficiency
   b. Faculty/School-Level Review Mechanisms
   c. Authority and Responsibility of Deans
   d. University-Level Review Mechanism
   e. Programs External to the University
6. Students with Disabilities
7. Student Accessibility Services (SAS)
   a. Staffing
   b. Services Provided and Accommodations Offered
   c. SAS Caseload
   d. Current Practice and Suggested Modifications
      i. Registering a Disability
      ii. Accommodation Process
         Accessibility Advisor and Consultation Process
         Accommodation Teams
      iii. SAS and ‘Reasonable Accommodation’
      iv. Delayed Registration of a Disability
      v. Privacy and Protection of Personal Health Information

Recommendations

Reference Material

Appendices
   Appendix A – Terms of Reference of the Committee
   Appendix B - Individuals who Provided Input to the Committee
      1. Special Presentations
      2. Consultation Meeting
      3. Responses to an Invitation for Submissions from Members of the University Community
   Appendix C – Definitions in the University of Manitoba Accessibility Policy for Students with Disabilities
   Appendix D – Important Links for Legal Context in the Accommodation of Students
   Appendix E – Policies Reviewed from Other Canadian Universities
   Appendix F – Links to Online Sources

Comments of the Senate Executive Committee:
The Senate Executive Committee endorses the report to Senate.
Executive Summary

The committee affirms and emphasizes that the Senate of The University of Manitoba is the only body with the authority to establish academic programs, and that it has ultimate authority to determine academic requirements, appoint examiners, determine the conditions and results of examinations, and approve degrees for students who have met the requirements.

The University of Manitoba also has a legal and moral obligation to provide reasonable accommodations to those who need them. These accommodations must not, however, undermine the *bona fide* academic requirements of the corresponding academic program.

The Committee recognizes certain rights and responsibilities for academics in the process of establishing reasonable accommodations for students with disabilities, including the right to have input into individual decisions, the right to receive general information on the practice and results of accessibility policies, and, within important and defined constraints, the right for those with a substantive interest to appeal accommodation decisions. The Committee also believes that the academic community has both the right and responsibility to be informed of University policies and procedures, and their impact.

The combined imperatives of providing reasonable accommodations and of satisfying all *bona fide* academic requirements lead, inevitably, to the need for academic units and Senate to define and justify, in advance, the *bona fide* academic requirements of each program. Once these requirements are approved by Senate, they cannot be changed without the approval of Senate. If the only accommodation that can be found undermines a *bona fide* academic requirement, then no accommodation should be made. The Committee advises that the absence of defined *bona fide* requirements renders a program vulnerable to the granting of an accommodation that could undermine its integrity.

It is impossible for Senate to fulfill all of its oversight duties directly, and practicality dictates that it delegate portions of its authority to Faculties/Schools, Departments, Deans, Directors and others. The processes and responsibilities must be structured so that the combined requirements of satisfying all *bona fide* academic requirements, treating our students fairly and consistently, and adhering to all legal and human rights obligations, are met. This Committee believes that clarity in this delegation is necessary in order to establish the rights and responsibilities of all decision makers in matters related to the accommodation of students with disabilities. The report recommends a structure and process for this, including stipulation of the roles and responsibilities of Deans and Directors.

The Committee’s report provides considerable detail on current and recommended practices, and numerous recommendations. It includes recommendations that each Faculty/School create an Accessibility Advisory Committee, whose role includes providing advice to decision makers, and reporting annually on the types, numbers, and impacts of accommodations within the Faculty/School. It further recommends that Senate create a Senate Academic Accommodation Appeals Committee, whose role it is to hear appeals related to accommodations from students.
and, within carefully prescribed limits, from members of faculty.
Report of the ad hoc Committee of Senate Executive to Examine Accommodation of Students with Disabilities and Governance Procedures Related to Academic Requirements

Preamble

1. The report of the Senate Committee on Rules and Procedures regarding a reference from the Senate Executive Committee to consider a request of the Department of Mathematics for a ruling on the jurisdiction of the Dean of Graduate Studies with respect to providing accommodations for students with disabilities was considered by Senate on November 3, 2010. At that meeting concern was raised about the power and authority of Deans to deal with academic matters relative to the powers of Senate as set out in The University of Manitoba Act. After extensive discussion, Senate referred the matter to the Senate Executive Committee for further review.

2. At the meeting of January 19, 2011, the Senate Executive Committee established an ad hoc committee to review the matter and approved terms of reference for the committee (Appendix A). Professor Emeritus J. Cooper would chair the committee and the membership would come forward to Senate Executive for information. Subsequently, the membership of the committee was reported to Senate Executive on February 15, 2011. At its first meeting the ad hoc committee chose to increase membership to include Chancellor Harvey Secter.

3. The Committee met eighteen times between February 25, 2011 and February 3, 2012. It conducted an extensive review of the University’s relevant documents on accommodation, consulted with University experts on accommodation, studied legal issues surrounding accommodation, reviewed relevant documents on accommodation from other Canadian universities and sought input from all members of The University of Manitoba community. At the meetings, the members of the ad hoc committee sought to understand the issues and gathered a significant amount of documentation relating to their discussions (Appendices B-F)

4. The ad hoc committee provided an interim report to the Senate Executive Committee in June 2011.

5. Because of the complexity of the issues, the need for consultation and subsequent discussion, the Committee requested an extension to its reporting deadline; Senate Executive granted an extension to the end of January, 2012.

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1 The University of Manitoba Act, C.C.S.M., c.U.60.
Observations

1. Role of Senate

The Committee affirms and emphasizes that the Senate of The University of Manitoba is the only body with the authority to establish or modify academic program requirements, and approves degrees for students who have met those requirements. In particular, under The University of Manitoba Act\(^2\) our Senate is granted the following authority:

34(1) The senate has general charge of all matters of an academic character; and, without restricting the generality of the foregoing, the senate shall

(b) determine the degrees, including honorary degrees, diplomas and certificates of proficiency, to be granted by the university, and the persons to whom they shall be granted;

(c) determine the conditions of matriculation and entrance, the standing to be allowed students entering the university, and all matters relating thereto;

(d) establish faculty councils, school councils, and other bodies within the university, prescribe how they shall be constituted, and, confer upon them such powers, and assign to them such duties as the senate may deem expedient;

(e) receive, consider and determine on any proposal or recommendation of any faculty council or school council or other body established by the senate as to courses of study and matters relating thereto;

(f) of its own motion and without any recommendation, but subject to subsection (2), consider and determine all courses of study and all matters relating thereto;

(g) regulate instruction and determine the methods and limits of instruction;

(h) determine the conditions on which candidates shall be received for examinations, appoint examiners, and determine the conduct and results of all examinations;

(i) provide for courses of study in any place or places in the province and encourage and develop extension activities and correspondence courses;

(j) have power to recognize courses of study that are given in any college or institution in the province not affiliated with the university and admit students who have taken such courses of study to examinations of the university;

As a large body, it is obviously impossible for Senate to fulfill all these duties itself, and practicality dictates that it must delegate portions of its authority. Oversight of individual academic programs may be delegated by Senate to Faculties, Schools or Departments and their Deans, Directors or Heads, respectively, as deemed appropriate. Deans and Directors are responsible for administering programs established by Senate, while still adhering to the policies and procedures approved by the Board of Governors.

2. Understanding and Use of Terms Related to Accommodation

The term ‘accommodation’ is generally used to describe an adjustment to an academic requirement. Academic accommodations are not limited to students with disabilities, although the terms ‘accommodation’ and ‘reasonable accommodation’ are regularly used when referring to accessibility for students with disabilities.

\(^2\) The University of Manitoba Act, C.C.S.M., c.U.60, s.34(1).
In addition to cases of documented disabilities, some of the circumstances in which academic accommodation may be requested include:

- Difficulties with course availability and or sequencing
- The need for a student to repeat a course
- Errors in student advising
- Compassionate reasons related to a student’s life circumstances.

The terms ‘reasonable accommodation’, ‘modification’, ‘substitution’, ‘waiver’ and ‘degree notwithstanding a deficiency’ are used in the context of accommodation as well as for other academic, logistical, and administrative reasons. However, neither the understanding and use of these terms, nor the decision-making related to them, are uniform across the University. This lack of consistency unfairly places those in the role of having to make important academic decisions without a clear framework to do so.

In order to ensure the University community uses terms consistently, the Committee proposes the following definitions, noting that all of these terms are sub-sets of and can refer to, a type of ‘accommodation’:

a. **Accommodation:**
   An accommodation is an attempt to remove barriers to the equitable participation of students in learning and evaluation. Accommodations are made both to assist students with disabilities, as well as for compassionate reasons. Where a *bona fide* academic requirement is a barrier to equitable participation, an accommodation must allow the student an opportunity to acquire and demonstrate the knowledge and skills (or achieve other learning outcomes) required to complete a course or program of study through an alternative mode of instruction or assessment. The accommodation must not erode the academic integrity and standards of the program in question.

b. **Reasonable Accommodation:**
   A reasonable accommodation is one that would address an inequality toward a person with a disability without offering that individual an unfair advantage over other students. A reasonable accommodation must not result in an undue hardship on the University, and must not result in the compromise of a *bona fide* academic requirement. Students must still acquire and demonstrate mastery of essential skills or other *bona fide* academic requirements of a student’s program of study, although this may be done in an alternative or non-traditional way. A reasonable accommodation must not lower the *bona fide* academic requirements of the program, or violate the accreditation needs of a professional program. The goal of reasonable accommodation is not to ‘lower the bar’, but rather to provide a different and equitable approach that permits students with disabilities to access learning and assessment opportunities. The term ‘reasonable accommodation’ is generally used only in the context of the accommodation of a disability. The University is under no
obligation to offer a reasonable accommodation (or any accommodation for that matter) on compassionate or other grounds.

c. **Modification:** A modification is an accommodation involving a relatively minor change made to an academic requirement. Modifications usually entail a revision to the way a student must demonstrate required skills and knowledge, or sometimes additional assistance for a student which does not detract from the skills and knowledge the student must acquire. Modifications typically include things such as:

1. providing additional time and quiet space to write examinations;
2. alternate exam formats;
3. alternate modes of course delivery or evaluation;
4. provision of a note taker or interpreter;
5. special equipment in classrooms; and
6. adaptive technology.

d. **Substitution:** A substitution is the replacement of a certain admission criterion, prerequisite course, course/program requirement or University requirement by another that is deemed comparable. Substitutions are commonly used to effect accommodations. Senate approves required program content including courses and other elements such as breadth, depth, math and written (M & W) requirements; Faculties and Schools administer these programs. In administering a program, it may become impossible, impractical, or unfeasible for a student to complete all program requirements exactly as approved by Senate.

e. **Waiver:** A waiver is the removal of a criterion for admission, progression or graduation from a program of study. A waiver is an accommodation, but should never be offered in regard to a *bona fide* academic requirement. A waiver does not include a case where a requirement is replaced by another requirement (this is a substitution), but rather is the complete elimination of a non-essential academic requirement.

f. **Degree Notwithstanding a Deficiency:** A degree notwithstanding a deficiency is one that is conferred upon a student who has not met all the Senate-approved requirements of his or her program of study and for whom no other accommodation has been approved in regard to the missing requirements. A degree notwithstanding a deficiency, when approved by Senate, is the only way in which a student may effectively obtain a waiver of what would otherwise be considered a *bona fide* academic requirement.

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3. **Duty to Accommodate**

The University is subject to Manitoba’s *Human Rights Code*³, and as such has a duty to attempt to accommodate students with demonstrated disabilities. This duty applies

³ The Human Rights Code, C.C.S.M., c.175.
whether or not the disability is pre-existing or is acquired during the course of the student’s academic experience. The duty to accommodate may obligate the University to offer a modification, substitution, or waiver. Such accommodations are consistent with the obligation to administer the University’s academic programs as approved by Senate so long as:

- The accommodation is reasonable;
- The accommodation does not create an undue hardship for the University; and
- The accommodation does not compromise a defined *bona fide* academic requirement of the particular program.

In each case, the University must consider these three criteria in determining if an accommodation is available, and if so, what accommodation should be made. The Committee reviewed the law related to these criteria and determined that the third is often the most important in the context of educational institutions.

With respect to the first criterion, the University’s obligation is only to offer a “reasonable accommodation”, not necessarily one preferred by the student. A student who refuses an offer of a reasonable accommodation may miss the opportunity to receive any accommodation at all.

Relating to the second criterion, Universities have sometimes attempted to avoid offering particular accommodations on the basis that the accommodation would create an undue hardship for the institution. In many cases, this argument has been based on the cost of such accommodation. The Committee reviewed the law in this area, and concluded that universities have been extremely unsuccessful in this type of defence. Moreover, arguments that implementing an accommodation would be difficult, disruptive, or time-consuming have a similar poor record of success.

The third criterion upon which the University may reject an accommodation, often the most critical, is if there is a *bona fide* reason for an academic standard and the accommodation can be shown to undermine that standard. A *bona fide* reason does not relieve the University of the obligation to attempt to find a reasonable accommodation, if one is available or can be developed. However, it is on the basis of this third consideration that educational institutions are in the strongest position to defend their academic standards.

**a. Impact of Duty to Accommodate Students with Disabilities on Academic Standards:**

As noted earlier, the University is under a legal obligation to provide reasonable accommodation to students who have established that they have a disability. In determining whether a particular accommodation is reasonable, does not create undue hardship, and does not compromise the *bona fide* academic requirements of a particular program as approved by Senate, the integrity of the University’s academic programs is the paramount concern and is a legitimate reason for the denial of certain requested accommodations. Consequently, an academic requirement will not be
waived if it meets the definition of a ‘bona fide academic requirement’, and is essential to the particular program in question. Furthermore, a modification will not be granted if it is not a reasonable way of assessing the student’s skills and knowledge as envisioned in the Senate-approved requirements that are at issue in a particular case. Finally, a substitution will not be granted if it is not reasonably comparable to the bona fide academic requirement it is intended to replace, and will jeopardize the academic integrity of the program.

Where a requested accommodation may impact an academic requirement, consideration must be given to how essential the requirement is to the particular program. The requirement must only be treated as a bona fide academic requirement where the determination of such can be shown to be based upon strong objective evidence and be defensible, perhaps even in the face of legal challenge.

b. Role of Academic Staff: The University’s academic staff have a particular interest in ensuring that the high standards of our institution are upheld. Academic staff have a critical role to play in helping the University determine whether proposed accommodations are appropriate and can be offered. In this regard, the University’s academic staff can be viewed as having both rights and responsibilities.

i. **Rights:** The process of arriving at a reasonable accommodation must allow for considering the views of academic staff, especially their thoughts on the impact of a proposed accommodation on the academic integrity of the particular program as approved by Senate. The academic staff members concerned may not be unanimous in their opinions on a particular accommodation, yet the accommodation process must allow for a timely final decision to be made, which gives certainty to the student seeking accommodation, allowing continuation of studies without undue delay or fear of post hoc reprisal.

ii. **Responsibilities:** The University’s programs are typically initiated at the Department level through a collegial process in which academic staff members are the chief participants. Academic staff members who participate in program development or revision have an obligation to consider (in advance of any particular request for an accommodation) the reasons for academic requirements imposed upon students. The onus is on those who propose requirements for a particular program to be able to justify a claim that a particular requirement is essential to the assessment of student achievement in a particular program. The lack of such documented justification could significantly impair a unit’s ability to defend its academic standards.
4. Academic Standards
   a. Nature of Academic Standards: The academic programs of the University are established through a process of careful collegial consideration of their structure and requirements; this process typically begins at the level of Departments and concludes with approval by Senate. The academic requirements of a program represent an attempt to reflect the highest academic standards appropriate to a particular academic field with respect to the degree in question. Those responsible for the academic programs of the University, from central administrators and Deans to classroom instructors, are responsible for delivering the program as approved by Senate. In short, once approved, the University’s programs are Senate’s programs, and their requirements cannot be altered by Departments, Faculties, Schools, or individual academic staff members and administrators without express authority delegated from Senate. This means that a policy containing a clear delegation of authority to make decisions regarding accommodation is essential to achieving the joint goal of meeting the University’s legal obligations, while preserving the integrity of its academic programs.

   b. Bona Fide Academic Requirements: A *bona fide* academic requirement is a component of an academic program which is determined to be an essential course, skill, experience, item of knowledge or outcome for the program, i.e., those components of a program that, in the reasonable view of the unit, cannot be waived without fatal consequences for the academic integrity of the program. By implication, it may be that not all academic requirements are essential for the academic integrity of a given program, and would not be among the sub-set of “*bona fide*” requirements.

   c. Establishing Bona Fide Academic Requirements: There are many different ways to establish which academic requirements should be treated as essential and “*bona fide*”. Many professional Faculties and Schools (Medicine, Nursing, Medical Rehabilitation, Dentistry) have developed ‘Essential Skills and Abilities’ documents that set out the requirements necessary for a student to be successful in his/her program and be eligible for licensing or registration, thus providing a *bona fide* explanation for an academic standard. Not only do skills and abilities documents lend themselves to clinical applications required of the practitioner, they are indispensable in teaching/learning and assessment in laboratory and clinical environments. Nevertheless, even these professional Faculties and Schools should consider further refinements of their work, ensuring that all *bona fide* requirements are included and making the explanations for requirements more specific to particular programs, thereby making the requirements more defensible.

Non-professional programs do not have the imperative of licensing requirements or accreditation standards to assist in determining what is or is not a *bona fide* academic requirement. Although this creates challenges, programs must still be able to identify and justify their essential requirements with reference to well-documented measures, such as regular program reviews, comparisons to other institutions, and other
methods of establishing what is generally accepted as essential for a program of the particular type at a reputable university. The University of Windsor has published expectations for both undergraduate and graduate degree programs;\(^4\) such a template could be used by units at The University of Manitoba to help them determine the \textit{bona fide} academic requirements for their programs.

In order to comply with the responsibilities of academic staff, the Committee recommends that each unit develop written rationales for the \textit{bona fide} academic requirements of its existing programs and for any newly developed programs. Having written rationales is essential for the protection of the integrity of the University’s academic programs as approved by Senate. Such rationales will govern the work of University administrators and of Student Accessibility Services, and will provide grounds for the University’s position should a dispute be taken to the Human Rights Commission or the Courts.

d. Privacy Concerns

The University’s academic community is accustomed to discussing academic standards in an open and collegial way. This practice is central to the establishment of academic standards at the University. At the same time, in matters relating to individual accommodation decisions, the University is bound by various pieces of privacy legislation, including \textit{The Freedom of Information and Protection of Privacy Act}\(^5\), and \textit{The Personal Health Information Act}\(^6\). Decisions around individual cases of accommodation necessitate the exchange of “personal information” and “personal health information”, as those terms are defined in the legislation. The key concept in all privacy legislation is that such information should only be shared on a “need to know” basis. As a result, the University is obligated to adopt a decision-making process that both provides the maximum protection for student privacy while yet permitting sufficient collegial input to protect academic standards.

e. Delegation of Authority and Recommended Procedures

Because all academic requirements, whether essential or not, have their basis in the authority of Senate, any change to such requirements also requires a clear delegation of authority from Senate. The Committee recommends that this delegation of authority be set out in a new or revised policy adopted by Senate.

In developing policy and procedures, the Committee recommends that certain rights be emphasized and kept in mind during the drafting process:


\(^6\) \textit{The Personal Health Information Act}, C.C.S.M., c.P33.5.
• The right of students to expect reasonable attempts to accommodate disabilities.
• The right of students to expect a fair, timely, respectful, and confidential process to reach accommodation decisions.
• The right of the University to uphold high academic standards.

5. Accommodation Decisions
   a. Decisions at the First Instance
      The Committee recommends that the delegation of authority to make initial decisions about accommodation be based upon the type of accommodation sought. This recommendation is premised on the principle that the decision be grounded in the individuals with the expertise most appropriate to the case in question. In the following recommendations for delegation related to accommodation for students with disabilities, it is assumed that there will always be consultation (or opportunity for consultation) between Student Accessibility Services and the relevant academic authority, and that all parties will act in accordance with the University’s requirements for confidentiality and privacy.7

   i. Modifications - the initial authority to grant a modification should be delegated to Student Accessibility Services. SAS would only exercise this authority after reasonable consultation (or opportunity for consultation) with the appropriate academic authority(ies), taking into account both academic concerns and legal obligations.

   ii. Substitutions - the authority to grant substitutions for the following types of requirements should rest with:
      • Admission Requirements – Unit Council level.
      • Prerequisites – Departmental/Unit Council level.
      • Course Requirements – Course instructor.
      • Program Requirements – Departmental/Unit Council level.
      • University Requirements – Senate.

      Because Departments are generally the subject experts, and the best judge of academic requirements, it is recommended that they assume an essential role in the process.

      In each case, the recipient of authority should be given express permission to sub-delegate, so long as the sub-delegation is well documented. For example, a Departmental/Unit Council may choose to sub-delegate to the Department Head

7 Section 2.3 of the UM Accessibility Policy for Students with Disabilities states that the institution is responsible for ‘…maintaining the confidentiality of disability related information under The Freedom of Information and Protection of Privacy Act (Manitoba) and The Personal Health Information Act (Manitoba), including limiting the distribution of that information to only those parties that require the information to determine appropriate accommodation.’ http://umanitoba.ca/admin/governance/governing_documents/students/281.html
(or an Associate Dean in a Faculty without Departments). Such sub-delegation is strongly recommended by the Committee to ensure timely and consistent decision making and fairness to the student as well as protection of the student’s privacy and the confidentiality of the information.

iii. Waivers - waivers should be treated in the same manner as substitutions, recognizing that waivers cannot be made of *bona fide* academic requirements.

iv. Degree Notwithstanding a Deficiency – the authority to grant a degree notwithstanding a deficiency should not be delegated and should rest solely with Senate. This provision should be used rarely because it normally involves a waiver of what would otherwise be considered an essential *bona fide* academic requirement. Overly generous use of this type of accommodation would result in an erosion of academic integrity. Grounds for a request for a degree to be granted notwithstanding a deficiency would normally be compassionate ones, such as a degree granted posthumously or the correction of historical wrongs beyond the control of the student (for example, the internment of Japanese-Canadian students in World War II). Normally Senate would exercise this authority upon a recommendation from a Faculty or School.

b. Faculty/School-Level Review Mechanisms - Although the initial decision-making regarding accommodation will be made pursuant to the delegation framework described above, the Committee recognizes the difficulty inherent in making good decisions which balance academic integrity with legal obligations. In cases where there is disagreement about the appropriateness of an accommodation, there must be mechanisms in place for timely appeal and resolution.

The Committee, therefore, recommends that Senate delegate authority to the Dean/Director of each Faculty/School to resolve conflicts regarding accommodations within the Faculty/School. The Dean/Director would be permitted to sub-delegate decision making authority, only so far as the Associate Dean level. The authority of Deans/Directors is discussed in more detail below.

The authority of Deans/Directors in this area should be made subject to strict and specified obligations to consult with appropriate individuals and with a Faculty/School-level Accessibility Advisory Committee. The Committee recommends that each Faculty/School be required by Senate to establish an Accessibility Advisory Committee which would serve as an advisory body to the Dean/Director on all matters related to accommodation of students with disabilities

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8 A model for such a body is the Accommodations Team established in the Faculty of Nursing, and some functions of the Faculty of Medicine’s Accommodation Committee. See Faculty of Nursing Disability Policy, [http://umanitoba.ca/faculties/nursing/students/523.html](http://umanitoba.ca/faculties/nursing/students/523.html) Faculty of Medicine Accommodation for Undergraduate Medical Students with Disabilities [http://umanitoba.ca/faculties/medicine/media/Accommodations_Policy.pdf](http://umanitoba.ca/faculties/medicine/media/Accommodations_Policy.pdf)
(normally an Associate Dean). Generally, the Accessibility Advisory Committee would have the following powers and responsibilities:

- Advising the Dean/Director on all matters related to accommodation of students with disabilities, including the resolution of conflicts with respect to specific cases;
- Making recommendations on how *bona fide* requirements could best be identified, supported, and documented;
- Receiving an annual report from Student Accessibility Services on the number and types of accommodations that have been provided to students of the Faculty/School;
- Reviewing and analyzing such data, then providing advice to the Faculty/School (and its Departments) by way of a report to Faculty/School Council regarding the impact of such accommodations on academic standards; and
- Disseminating information regarding the Faculty/School back to Student Accessibility Services, so that SAS can effectively analyze institution-wide trends for its annual report to Senate.

Deans/Directors would generally receive requests from students (or their SAS advisors or Student Advocate) who are dissatisfied with the decision of a course instructor, Department Head, or other individual or committee with delegated responsibility. In some cases, a Dean/Director would receive a request from a Department Head, course instructor or other academic staff member with a direct connection to the case, who was dissatisfied with a modification implemented by SAS.  

Deans/Directors would have the discretion to hear requests from others who can demonstrate a “viable, direct and substantial connection” to the issue. In Faculties/Schools without Departments, the Dean/Director may have made the decision at first instance; in such a case, the Dean/Director would be required to convene the Accessibility Advisory Committee and consider its advice before affirming his/her decision, or reconsidering his/her position. A Dean/Director may also refer a matter to the Accessibility Advisory Committee on his/her own initiative, should he/she become aware of a matter of concern.

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9 One example of an accommodation appeal process that allows for both formal and informal appeals is that of the Paul Menton Centre at Carleton University. [http://www1.carleton.ca/pmc/policies-and-regulations/accommodation-appeal-process/](http://www1.carleton.ca/pmc/policies-and-regulations/accommodation-appeal-process/)

10 *The University of Manitoba Act*, C.C.S.M., c.U60, s.34(1)(v) indicates that Senate should consider making available an opportunity to “others” to have academic concerns addressed. This legislative provision has only been interpreted by the Courts on one occasion, in the case of *Lukács v. Doering et al.*, 2011 MBQB 203 (CanLII). In this case, Madam Justice McCauley cautioned against an interpretation of the word “others” which would open a “floodgates” of potential claims and complaints. She indicated that the University, however, should generally consider appeals from individuals with a “viable, direct and substantial connection” to a particular academic matter. The Committee recommends using the language from this decision as the criteria to assess whether an individual should be given “standing” to participate in the processes set out herein.
c. Authority and Responsibility of Deans

Since the Committee recommends that the Faculty-based Accessibility Advisory Committee be advisory to and chaired by the Dean or Dean’s delegate, the question of the authority and responsibility of the Dean inevitably arises.

The office or position of a Dean is a creation of the University’s Board of Governors. The Board of Governors Bylaw entitled “Deans of Faculties” identifies each Dean as the ‘Senior Academic and Administrative Officer’ of the Faculty, and sets out a number of responsibilities under section 2.3 Powers and Duties. Two clauses are of particular relevance to the matter at hand.

2.3.1 The Dean of a Faculty shall:

(a) exercise general supervision and direction over the Faculty, including its staff and the students registered in the Faculty.

(h) be responsible for the supervision, subject to the regulations and rulings of the Faculty Council and the Senate, of the program of studies for every student registered in the Faculty.

The Dean’s exercise of his or her general responsibilities under (a) are subject to the requirements of (h), namely that decisions ensure conformity with the regulations and rulings of the relevant Faculty Council and Senate. This provision explicitly ensures that the Board of Governors’ delegation of duties to Deans cannot override the authority of Senate on academic matters. This authority is defined in Section 34(1) of the University of Manitoba Act, provided in Section 1 of this Report. Clauses (f), (g) and (h) are of direct relevance to the matter of accommodations and waivers: Senate has the authority to

(f) of its own motion and without any recommendation, but subject to subsection (2), consider and determine all courses of study and all matters relating thereto;

(g) regulate instruction and determine the methods and limits of instruction;

(h) determine the conditions on which candidates shall be received for examinations, appoint examiners, and determine the conduct and results of all examinations;

Some decanal exercise of Senate’s jurisdiction may have developed informally through practice over time. This report makes no attempt to address those practices; but the committee recommends that where there is confusion, lack of clarity, or debate over decanal academic power, Senate should define the Dean’s role in more detail. In these

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11 While this section refers specifically to Deans, parallel bylaws exist for Directors of Schools of the University http://umanitoba.ca/admin/governance/governing_documents/officers/221.html and Directors of Schools of a Faculty http://umanitoba.ca/admin/governance/governing_documents/officers/222.html
cases, it would be preferable for the Senate to make clear and unambiguous statements on what academic authority it wishes to vest in Deans, and the limits on such authority. In section 4f above we have, therefore, recommended that Senate make such a clarification with respect to the accommodation of students with disabilities.

In many ways, Deans are extremely appropriate individuals to be making decisions around the accommodation of disabilities. The whole issue of accommodation crosses the lines of jurisdiction between the Board of Governors and the Senate. It is equally a matter of academic concern (i.e., upholding academic standards), and an issue of risk management and statutory compliance. Deans have their “feet” in both worlds: the academic and the administrative sides of the institution. They are experienced academics themselves, and generally feel a strong commitment to the academic integrity of their Faculty. However, they are also responsible for managing the risks (not to mention the budgets) taken by their Faculty, and have strong connections to the central administration for an institution-wide perspective.

Nevertheless, the committee anticipates that Deans will normally become involved only in the “hard cases”, for example when novel or atypical accommodation is being considered, and will have strong obligations to consult before exercising their discretion. In the vast majority of cases, which involve standard, widely-accepted modification of practices rather than substitutions for, or waivers of, academic requirements, accommodations will be approved in a routine way and reported to the faculty’s Accessibility Advisory Committee as information. In cases where the bona fide essential academic requirements of a program are potentially affected by an accommodation, the Dean must receive the advice of the faculty’s Accessibility Advisory Committee before approving any accommodation. The Accessibility Advisory Committee must consult the academic department involved before rendering its advice to the Dean. In the event that the Dean does not accept the advice of the Accessibility Advisory Committee, he or she shall provide written reasons for the decision to the student, the department head, the Accessibility Advisory Committee and Student Accessibility Services. The Chair of the Accessibility Advisory Committee will provide a summary of such cases to Faculty Council in an in camera session, provided that confidentiality can be assured.

In the case of graduate programs, implementation of an accommodation involves at least two units – the Faculty of Graduate Studies and the Faculty/Unit in which the department offering the academic program in question resides. The Dean of the Faculty of Graduate Studies is responsible for the academic standards and content of the program as approved by Senate; the Dean of the Faculty/Unit in which the program resides (the ‘budget’ Dean) is responsible for the academic staff delivering the program and their interests, as well as for providing the financial resources to run the program. He or she may also be called upon to resolve conflicts that arise. Because of this dual responsibility, the Committee recommends that Senate require a joint decision by both the Dean of Graduate Studies and the ‘budget Dean’. After taking the advice of their respective Accessibility Advisory Committees, they must agree on the resolution of a
conflict over the implementation of an accommodation. We recommend the same process where any program is a joint initiative of two or more faculties: the two (or more) Deans must jointly decide on cases after consulting with their respective Accessibility Advisory Committees. In any of these cases, the Vice-President (Academic) and Provost would be empowered to resolve a disagreement between the Deans. The Provost should inform him/herself regarding the opinions of the Faculty-level Accommodation Advisory Committees before making a decision.

The final decision regarding any accommodation must uphold the *bona fide* essential academic requirements of the program as approved by Senate, and ensure that the University’s legal obligations are fulfilled. Where it is not possible to provide an accommodation consistent with a *bona fide* academic requirement of the program in question, no accommodation shall be provided.

d. University-Level Review Mechanisms

Normally, conflicts over the provision of reasonable accommodation should be resolved at the initial level of delegated authority, or failing that, by a decision of the Dean in consultation with the Faculty-level Accessibility Advisory Committee. Since this will not, however, always be possible, there must be a mechanism for review of Faculty/School-level decisions.

We recommend that the formal appeal procedures be vested in a Senate Academic Accommodation Appeal Committee (AAAC), a standing committee of Senate. Academic staff members should constitute the majority of the members of this committee; the membership should be sufficiently broad and flexible to ensure that appeals are completed in a timely way. It would operate pursuant to terms of reference approved by Senate which emphasize a fair, efficient, respectful and confidential process. Appeals relating to accommodation would, therefore, be removed from their historic place in the academic appeal process, and placed into this new system. In order to ensure that timely final decisions are reached, only this one formal level of appeal would be available and there could be no further appeals to Senate or the Board of Governors.

In the case of a formal appeal, only individuals who have a “viable, direct and substantial” connection to the case in question may participate. Normally, this would be the student (sometimes assisted by a SAS advisor or Student Advocate) appealing the decision of a Dean/Director. Establishing clear rules around the standing of academic staff to initiate or participate in an appeal is necessary to ensure that the committee addresses specific cases of students in a timely and confidential manner and is not caught in the middle of policy differences between academic staff members. On the academic side, an appeal should only be initiated by an appropriate academic authority.

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12 See footnote 8 for discussion on criteria. *Lukacs v. Doering et al.*, 2011 MBQB 203 (CanLII)
Most frequently, this would be a course instructor or Department Head who had been overruled by a Dean/Director during the Faculty/School-level process. The AAAC would have the discretion to allow appeals to be initiated by others it judged to have a “viable, direct and substantial” connection. The appeal process should include detailed instructions about timeframes for submissions of appeals and the decisions arising from the appeals to ensure that a student’s academic progress is not compromised.

In the case of a degree notwithstanding, no appeal would be available as the decision is made at the highest possible level, i.e. Senate.

e. Programs External to the University

The Committee is aware that the University has a growing number of programs which are dependent on relationships with external parties. For example, there are programs for which the University and external partners share responsibility for delivering components or content, and there are a growing number of joint programs with other educational institutions. As well, there are many programs which require practical, fieldwork or clinical experience in settings that the University does not control. Initial decision makers, Deans, and others will be expected to engage in the important consultations that are necessary to set up and administer programs with external partners. In new or renegotiated agreements with external partners, the committee strongly recommends that there be provisions respecting the accommodation of students with disabilities that conform to the principles and procedures recommended in this report. In negotiations to establish such programs, the University must do its utmost to assure that both the right of students with disabilities to reasonable accommodation and the right of the University to maintain the academic integrity of its programs be as fully protected as if the programs were offered by the University of Manitoba alone.

6. Students with Disabilities

Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. The definition of what constitutes a disability is constantly evolving, but disability is a recognized human rights issue covered by the relevant legislation and jurisprudence. The terms ‘disability’ and ‘mental disabilities’ are not defined in the Manitoba Human Rights Code; tribunals have taken a broad and flexible interpretation of these terms and the focus is on whether or not full participation in society is impaired, rather than of the actual condition or state.

Not all disabilities are visible or pre-existing; a disability may be invisible, for example depression or a learning disability, or may be acquired, for example a brain injury or multiple

sclerosis. Disability may have a negative impact on students’ academic performance by limiting their activities and participation in student life, or by restricting their modes of learning. Some students will not enter the university with a diagnosed disability but may develop a disability while in a program. Disabilities may first surface in university, as the age of onset for certain mental and degenerative illnesses is typically in young adulthood. As well, undiagnosed disabilities such as a learning disability may first become evident in the university setting.

The University is legally bound to offer reasonable accommodation to students who have established that they have a disability. From this perspective, the establishment of appropriate policies, procedures and practices relating to accommodation is an important risk management issue for the University. The University is also morally bound to provide opportunities for all students to reach their full potential with respect to learning and fulfilling program requirements.

The Committee noted that the policy and processes currently in place at the University related to offering reasonable accommodation to students with disabilities generally work very well; students with disabilities attain their academic goals, academic standards are maintained, and students’ right to privacy is respected. However, the Committee observes that there is a general lack of awareness across the University about the various types of disabilities, accommodation for disabilities, and of the duty to accommodate those with documented disabilities. Therefore, we recommend that broad education be provided to the university community on a regular basis about disability, accommodation for students with disabilities, and the processes in place to effect reasonable accommodation.

7. **Student Accessibility Services (SAS)**

Student Accessibility Services (known as Disability Services until September 2011) is the centralized service for the University of Manitoba community. On behalf of the University, SAS provides a central, confidential service to ensure adherence to the Accessibility Policy and Procedures. SAS provides and/or arranges for the provision of accommodation to students with documented disabilities. SAS provides a focus for activity and expertise regarding disability-related accommodations within the University, and for liaison with outside organizations regarding accessibility issues, and programs and services for students with disabilities at the University of Manitoba.

a. **Staffing** – SAS is overseen by a Coordinator with support from four full time Accessibility Advisors who each have expertise within specific areas of disability and accommodation:
   - Carolyn Christie (B.A. P.B.D.E.), Medical/Chronic and multiple disabilities;
   - Jamie Penner, (B. A.), Learning Disabilities, Asperger Syndrome, visual disabilities;

Arlana Vadnais, (M.A. B.A.), Mental health and Acquired Brain Injury; 
Cindy Koskie, (B. A.), Deaf and Hard of Hearing; and 
Lisa Banash, (B. A.) Attention Deficit Disorders.

The Test Centre is overseen by two full time staff, Charity Pascual, B.HEc. and Jeff Buhse, B.A., who coordinate test services for the Fort Garry and Bannatyne campuses. Ms. Pascual also works with students who have a temporary disability.

SAS also employs a cadre of professional and dedicated part time and term staff including American Sign Language/English Interpreters, Computerized Note-takers, Invigilators, Academic Attendants, and Professional and Volunteer Note-takers.

b. Services Provided and Accommodations Offered - SAS coordinates the provision of reasonable accommodation; the accommodation recommended by SAS is based on information provided by an accredited health professional, expertise of SAS staff, and standards for accommodations for similar disability types. SAS has the responsibility of consulting with the appropriate academic authority to ensure that the University’s academic standards are not compromised by the accommodation. The following accommodations are currently provided at the University of Manitoba: American Sign Language Interpretation, Computerized Note-taking Interpretation, Textbooks in Alternate Form, On-Campus Transportation, Lift Keys (for access to elevators), Classroom Accommodations (Special equipment in the classroom, Volunteer Note-Takers), and Test and Exam Accommodations (additional time, and use of Readers and Scribes). Other accommodations provided by SAS but not specifically referred to in the procedures are: Attendants, Adaptive Technology, Coaching, Alternative Scheduling of Exams, Professional Note-Taking, Recorded Lectures, and Reserved Seating.

The University of Manitoba Accessibility for Students with Disabilities Policy and Procedures notes that the University cannot guarantee accommodation and may be required to alter the level and/or type of services and accommodations it provides without breaching its legal obligation under this policy.

The provision of services and supports in postsecondary education to students with disabilities is a dynamic and challenging field due to a number of factors including:

- Increased number of students with disabilities
- Different types of disabilities are being presented (‘hidden’, more complex disabilities)
- Different approaches to teaching and accommodation are being developed
- Continuing discussion about what constitutes reasonable accommodation
- ‘Best practices’ are being revisited and revised
- Ill-defined academic standards in some areas
- Development of essential skills documents in professional

http://umanitoba.ca/admin/governance/governing_documents/students/906.html
Faculties/Schools

- Role of technology.

The Committee learned that providing access and services to students with disabilities is a challenge across the country. Many providers of postsecondary education and, indeed, other public bodies, are being challenged to become truly accessible.

c. **SAS Caseload** - Table 1 presents the range of disabilities and numbers of students registered in SAS for the past two academic years.

<table>
<thead>
<tr>
<th>Category of Disabilities</th>
<th>2010-2011</th>
<th></th>
<th>2009-2010</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Number of students</td>
<td>%</td>
<td>Number of students</td>
<td>%</td>
</tr>
<tr>
<td>ADHD</td>
<td>198</td>
<td>16.9%</td>
<td>157</td>
<td>16.0%</td>
</tr>
<tr>
<td>Asperger's Syndrome</td>
<td>24</td>
<td>2.0%</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>Blind/Visual</td>
<td>40</td>
<td>3.4%</td>
<td>27</td>
<td>2.8%</td>
</tr>
<tr>
<td>Brain Injury</td>
<td>24</td>
<td>2.0%</td>
<td>17</td>
<td>1.7%</td>
</tr>
<tr>
<td>Medical/Chronic Illness</td>
<td>197</td>
<td>16.8%</td>
<td>160</td>
<td>16.3%</td>
</tr>
<tr>
<td>Deaf/Hard of Hearing</td>
<td>42</td>
<td>3.6%</td>
<td>40</td>
<td>4.0%</td>
</tr>
<tr>
<td>Exam Anxiety</td>
<td>108</td>
<td>9.2%</td>
<td>141</td>
<td>14.4%</td>
</tr>
<tr>
<td>Learning Disability</td>
<td>126</td>
<td>10.7%</td>
<td>107</td>
<td>10.9%</td>
</tr>
<tr>
<td>Mental Health</td>
<td>264</td>
<td>22.5%</td>
<td>157</td>
<td>16.0%</td>
</tr>
<tr>
<td>Mobility</td>
<td>51</td>
<td>4.3%</td>
<td>77</td>
<td>7.9%</td>
</tr>
<tr>
<td>Temporary</td>
<td>88</td>
<td>7.5%</td>
<td>82</td>
<td>8.4%</td>
</tr>
<tr>
<td>Other</td>
<td>12</td>
<td>1.0%</td>
<td>13</td>
<td>1.3%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>1,174</td>
<td>100%</td>
<td>978</td>
<td>100%</td>
</tr>
</tbody>
</table>

Over the past 15 years, there has been a steady increase in the number of students registered with SAS; in the past two years a disproportionate number of students have had invisible disabilities (62% in 2009/10, 72% in 2010-11). This is a nation-wide trend that is influenced by more students declaring or being diagnosed with a disability and increased university access for students with mental health issues. In Canada, half of all mental disorders begin by age 14, and 75% begin by age 24.16

Although the Committee concerned itself with many different types of accommodation issues, certain topics were identified as particularly challenging. How to address mental health disabilities appropriately is among the most perplexing issues facing academic staff members and administrators, and the Committee noted that the number of persons diagnosed with a mental health disability is increasing. Within this category, anxiety and stress disorders form a significant and growing subset. The Committee heard evidence that nearly one third of cases before the Manitoba Human Rights Commission now involve

allegations of failure to accommodate mental health disabilities. Because such disabilities are ‘hidden’ or ‘invisible’, the existence of a mental health disability is not always uniformly accepted, and the consideration of a reasonable accommodation can frequently be controversial (See Appendix D).

Among the invisible disabilities reported, one that has increased over time is exam anxiety. Exam anxiety is a manifestation of an anxiety or stress disorder; the Committee reviewed recent court and tribunal cases relating to such issues, and was left with little doubt that these disorders can result in legitimate disability for which the University is obligated to consider reasonable accommodation. This is clearly a worrisome concept for some academic staff members, who are involved in the pursuit of teaching and evaluation and who strive to ensure academic standards are maintained. Nevertheless, the Committee was satisfied that students presenting with ‘exam anxiety’ are being regularly required, as per the University’s Policy and Procedures, to present documentation (evidence) before such a diagnosis is accepted. The Committee heard from the Director of Counselling Services (CS) who indicated that a large number of students present at CS offices with complaints relating to the stress of exams, assignments, and other evaluation methods. The vast majority of such students receive counselling and are referred to other resources to learn coping skills; only a small portion (although statistics are not kept, perhaps as few as 10%) are diagnosed with a form of exam anxiety so extreme that it would be considered a mental disability. Those students are referred to Student Accessibility Services (SAS) for consideration of appropriate accommodations.

We recommend that SAS increase its communication to the university community about its activities. For example, similar to Student Advocacy, SAS should provide an annual report to Senate on the accommodation of and services provided for each of the main categories of disabilities. SAS could also create information such as ‘Best Practices Information Reports’ which could be posted on their website; such information would provide education and a more transparent account about accommodations.17

d. Current Practice and Suggested Modifications

The preceding section on Academic Standards addressed some of the current practices at this institution in accordance with the University of Manitoba Accessibility Policy and Procedures for Students with Disabilities. An overview of the current practices employed by SAS is presented below:

   i. Registering a disability - A disability must be diagnosed by a qualified professional and accepted by SAS. The student must provide information about his/her disability as specified in the procedures. The Committee recommends that the term ‘accredited health professional’ be clarified in the policy and procedures documents to include information and requirements about those eligible to provide diagnoses.

We further recommend that SAS review the documentation requirements to establish a disability and that a web-based printable form be provided for use by the professional submitting a diagnosis on behalf of a student with a disability. The University of California - Berkeley Campus Plan for Accommodating the Academic Needs of Students with Disabilities should be used to inform this review.  

**ii. Accommodation process** - The process for accommodating students with disabilities is a shared responsibility of the SAS office, the student, and the instructor. A student must register with the SAS office in a timely manner. Many students declare a disability prior to first registration and it is not unusual for students to meet with SAS staff as they plan the transition from high school to university. Early identification assists both the student and SAS to prepare for an accommodation plan.

**Accessibility Advisor and Consultation Process**
A student is assigned an Accessibility Advisor upon declaration of a disability and registration with SAS. The Accessibility Advisor and the Coordinator of SAS have the expertise to evaluate the professional documentation, review the student’s history, and suggest to the instructor initial accommodations that do not jeopardize academic standards. In matters involving graduate students, consultation with the chair of the graduate program/committee and the student’s advisor may be necessary. In complex cases or where the provision of accommodation is novel, others such as academic staff members and administrators are consulted.

**Accommodation Teams**
In Faculties/Schools that have approved an ‘Essential Skills’ document and have an Accommodation Team, the Team is consulted. The work of Accommodation Teams is guided by the technical requirements of the programs and/or essential skills documents that are tightly integrated with professional practice standards and criteria. Typically the Accessibility Advisor is a member of the Accommodation Team and can provide input about how well certain accommodations are working or are in need of adjustment. Several Faculties have an Accommodation Liaison person rather than an Accommodation Team; this individual works with the student and the Accessibility Advisor.

**iii. SAS and ‘Reasonable Accommodation’**
The process of agreeing upon a reasonable accommodation is important and should be characterized by flexibility, individualization, helpfulness, respect, dignity and timeliness. As noted previously, the University’s obligation is to provide *reasonable* accommodation; this does not have to be a ‘perfect’ accommodation. Students are

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18 *University of California - Berkeley Campus Plan for Accomodating the Academic Needs of Students with Disabilities, University of California at Berkeley. [http://dsp.berkeley.edu/policies.html](http://dsp.berkeley.edu/policies.html)*
obligated to accept a reasonable accommodation. What is ‘reasonable’ is fact-
specific and contextual. The determination of when the limit of reasonable
accommodation is reached is dependent upon the condition diagnosed, whether
the condition constitutes a disability for the student, and what accommodation is
possible given the availability of resources and the *bona fide* academic
requirements of the student’s program.

As presented previously under Academic Standards, the academic standard and
requirements of a course or program must be defensible and accompanied by
strong objective evidence. A body of expertise has been developed by disability
service providers regarding types of disabilities and the range of accommodations
for them that are accepted as reasonable.

iv. **Delayed Registration of a Disability**

If a student does not declare a disability at the beginning of his/her university
experience and later a disability becomes evident, or if the student acquires a
disability during the program of study, the practice is that the student registers with
SAS, an interim assessment is completed by University of Manitoba staff and an
interim accommodation may be put into place until professional documentation is
available. In cases such as this, the lowest level of accommodation is provided to
the student initially; this type of interim accommodation is closely monitored by the
Accessibility Advisor who consults with academic staff members or the
accommodation team. The Committee recommends that the Accessibility Policy and
Procedures be revised to include information about how *ex post facto* requests for
accommodation will be managed.

v. **Privacy and Protection of Personal Health Information**

To safeguard a student’s privacy, a minimum number of people should be involved
in the decision-making process about reasonable accommodations. The guidelines
for sharing information about a student’s disability are: the student is consulted;
the ‘need to know’ principle is applied along with ‘when to know’ and ‘how much
information is required to be known’. When a request for accommodation is
atypical or novel, it is recognized that there may be a need for more individuals to
be involved in the deliberations of arriving at the appropriate accommodation. This
can, and in most cases should, be done through a collegial process involving
consideration of the accommodation proposed and the *bona fide* academic
requirements of the program, and need not involve information related to the
student’s disability.

Individuals involved in the accommodation process should be aware of and comply
with the requirements of FIPPA and PHIA. Reasonable security measures should be
in place to protect privacy of documents and files. The University must follow
practices and policies which are consistent with legislation, including human rights
requirements.
We also recommend that a web-based handbook on accommodating students with disabilities be developed for instructors. The handbook would contain comprehensive information about accommodation of students with disabilities, including the processes outlined in Observation 7d. The handbook developed by Queen’s University could serve as an example of what might be done.\(^\text{19}\)

**Recommendations**

- **a.** that the university adopt a standard set of definitions for terms related to accommodation. *(Observation 2)*

- **b.** that where academic programs are subject to external accreditation or approval, a document outlining essential skills and abilities be developed and submitted for approval by Senate; the content of this document should be congruent with the requirements outlined by the respective registering college or approval body (e.g., College of Registered Nurses of Manitoba; College of Physicians and Surgeons of Manitoba). *(Observation 4c)*

- **c.** that Senate require each unit to identify and submit to Senate for approval written rationales for the *bona fide* academic requirements of its existing programs and of any newly developed programs. *(Observation 4c)*

- **d.** that Senate adopt a new or revised policy regarding accommodation that:
  1. reflects the right of students with disabilities to accommodation and to a fair, timely, respectful, and confidential process to reach accommodation decisions as well as the right of the University to uphold high academic standards. *(Observation 4e)*
  2. includes provision for delegation of authority, reflecting the following points:
     - delegation of authority should be based upon the type of accommodation sought *(Observation 5a)*
     - decisions are grounded in individuals with the expertise most appropriate to the case in question *(Observation 5a)*
     - Departments (or the Unit, in the case of Faculties without Departments) have an essential role in the accommodation process *(Observation 5a)*
     - The recipient of authority to deal with accommodations be given express permission to sub-delegate (so long as the sub-delegation is well documented) to ensure timely and consistent decision making and fairness to the student as well as protection of the student’s privacy and the confidentiality of the information. *(Observation 5a)*

\(^{19}\) [http://library.queensu.ca/websrs/faculty_guide-Index.html](http://library.queensu.ca/websrs/faculty_guide-Index.html)
iii. requires each Faculty/School to establish an Accessibility Advisory Committee to serve as an advisory body to the Dean/Director on all matters related to accommodation of students with disabilities including resolution of conflicts within the Faculty/School. The Accessibility Advisory Committee is obligated to consult the academic Department/Unit before giving advice. (Observation 5b)

iv. sets out review mechanisms to resolve conflicts regarding accommodations within a Faculty/School. These mechanisms should:

- explicitly address the authority delegated by Senate to the Dean/Director with respect to accommodation and the obligation for the Dean/Director to consult with appropriate individuals and the Faculty/School-level Accessibility Advisory Committee before rendering a decision about accommodation. (Observation 5c)
- define the process to be followed when the conflict involves accommodation in inter-Faculty programs such as graduate or joint programs. (Observation 5c)

e. that Senate establish an Academic Accommodation Appeal Committee, a standing committee of Senate, whose role it is to hear and decide upon appeals related to accommodation. (Observation 5d)

f. that broad education be provided on a regular basis to the university community on the University’s duty to provide reasonable accommodation to students with disabilities, and on the procedures to be followed when accommodation is requested, including: guidelines on how to deal appropriately and in a confidential manner with matters involving personal issues, in particular, personal health information. The education should be delivered by Student Accessibility Services in collaboration with the Office of Fair Practices and Legal Affairs. (Observation 6)

Process: Individuals and or Groups that should be involved in development of the education program: UTS, Student Accessibility Services, Student Services, Office of Fair Practices and Legal Affairs, academic staff members, student unions.

g. that SAS develop a web-based handbook for instructors on accommodating students with disabilities (Observation 7dv)

h. that SAS provide information to the university community through an annual report to Senate (similar to the Student Advocacy Annual Report) on the accommodation of and services provided for each of the main categories of disabilities. SAS could also create information such as ‘Best Practices Information Reports’ which could be posted on the SAS website and would provide education and a more transparent account about accommodations. (Observation 7c)

i. that the University of Manitoba Accessibility Policy and Procedures be revised to:
i. clarify the lead role taken by SAS to verify the existence of a disability and propose accommodations and the professional documentation that students must provide to SAS (e.g., University of California - Berkeley Campus Plan for Accommodating the Academic Needs of Students with Disabilities).  *(Observation 7di)*

ii. use the term ‘accredited health professional’ by which is meant “professionals conducting assessments and rendering diagnoses must be regulated and qualified to do so” 13 In the case of students with mental health issues, a list of qualified diagnosticians would include, but not be limited to, licensed psychologists, psychiatrists, and neurologists, or other professionals with training and expertise in the diagnosis of mental disorders. *(Observation 7di)*

iii. establish a web-based printable form for use by the professional submitting a diagnosis on behalf of a student with a disability. *(Observation 7di)*

iv. include information about how ex post facto requests for accommodation will be managed. *(Observation 7d iv)*

v. specify how communications will flow to those with a ‘need to know’ and ‘when to know’, taking into account both the University’s obligation to protect the student’s confidentiality and the need for collegial academic decision making. *(Observation 7d v)*

vi. specify the roles, rights and responsibilities of the following parties in development and implementation of the accommodation plan: Student; Accessibility Advisor; Coordinator, Student Accessibility Services; Course Instructor; Department Head; Dean/Director; Graduate Chair; Graduate Advisor; Graduate Committee; Accessibility Advisory Committee/ Accommodation Team. *(Observation 7d)*

**Process:** Individuals and or Groups that should be involved in revisions: Coordinator of Student Accessibility Services, Director of Student Advocacy and Accessibility, representatives from the Faculties of Arts and Science, representative(s) from professional Faculties (academic staff members, student advisors).

Respectfully submitted,

Prof. J. Cooper, Chair

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**Committee Members:**
Dean D. Crooks  
Prof. M. Gabbert  
Ms. L. Leclair  
Chancellor H. Secter  
Prof. A. Shalaby  
Dean M. Whitmore

**Resource Members:**
Mr. G. Juliano  
Dr. L. Smith  
Mr. J. Leclerc  
Ms. M. Brolley (until Sep. 23, 2011)  
Dr. S. Coyston (from Oct. 11, 2011)
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APPENDIX A:

TERMS OF REFERENCE OF THE AD HOC COMMITTEE OF SENATE EXECUTIVE

The objective of the Ad Hoc Committee is to understand the University’s current practices and to examine and propose ways by which the University can improve its policies, procedures and practices. The Committee will not review any specific situations, but rather examine university policies, procedures and practices generally.

The Committee shall:

1. Discuss, consider, and make recommendations on issues related to the accommodation of students with disabilities, including a review of:
   a. How to balance the University’s legal obligation to offer reasonable accommodations to students with disabilities while protecting academic standards;
   b. What types of accommodations may be offered, without compromising academic standards;
   c. Who should decide on whether accommodations should be offered, and if so, what type;
   d. What types of evidence of disability should the decision maker require;
   e. With whom is the decision-maker expected to consult;
   f. How to determine timely decisions on accommodations are made, so that a student’s academic progress is not compromised; and,
   g. How to protect the privacy of students while assessing a case and implementing accommodations.

As a part of this consideration, the Committee shall invite written and oral submissions from experts on the University’s Policy on Accommodations for Students with Disabilities, as well as the legal issues surrounding reasonable accommodations and the University’s obligations under The Human Rights Code, The Charter of Rights and Freedoms, The Freedom of Information and Protection of Privacy Act and The Personal Health Information Act.

2. Discuss, consider, and make recommendations on issues surrounding Degrees Notwithstanding a deficiency, including:
   a. What constitutes a degree notwithstanding a deficiency;
   b. What constitutes a deficiency; and
   c. How cases of a degree notwithstanding a deficiency should be brought forward for approval, being mindful of privacy legislation and appropriate academic oversight.

3. Discuss, consider, and make recommendations with regard to better defining the authority of deans, department heads, and faculty members as it relates to:
   a. Substituting academic requirements;
   b. Waiving course pre-requisites;
   c. Waiving faculty requirements; and,
   d. Waiving degree program requirements.

Conduct a review of the practices at other Canadian universities around the questions above, and to incorporate accepted “best practices” into its recommendations. In conducting this review, the Committee will research mechanisms by which faculty members can express concerns about the
perceived undue compromise of academic standards.

The work of the Committee will require soliciting the participation of students, faculty, staff and experts in various fields, including law, disability services, student advocacy and privacy. The Committee shall determine who should be solicited for input, how input will be solicited, and how representations will be made to the Committee (written, oral, etc.). At the conclusion of its work, the Committee shall produce a detailed report, which shall include the following:

1. A summary of the individuals who have made submissions to the Committee;
2. A listing of recommendations resulting from the Committee’s work; and
3. An explanation for each of the Committee’s recommendations, based upon the evidence and information acquired by the Committee.

The Chair shall submit the report for consideration by the Senate Executive. Senate Executive will consider which, if any, of the recommendations it intends to recommend to Senate or to Administration, as appropriate. The recommendations recommended by Senate Executive will be presented to the full Senate.

**Committee Members:**
- Prof. J. Cooper, Chair
- Dean D. Crooks
- Prof. M. Gabbert
- Ms. L. Leclair
- Chancellor H. Secter
- Prof. A. Shalaby
- Dean M. Whitmore

**Resource Members**
- Mr. G. Juliano
- Dr. L. Smith
- Mr. J. Leclerc
- Ms. M. Brolley (until Sep. 23, 2011)
- Dr. S. Coyston (from Oct. 11, 2011)
APPENDIX B: INDIVIDUALS WHO PROVIDED INPUT TO THE COMMITTEE

1. SPECIAL PRESENTATIONS
‘Disability Services and Reasonable Accommodations’ – L. Smith (Executive Director, Student Services) and D. Stewart (Director of Student Counselling and Career Centre)

‘Accommodation of Students, A Human Rights and Privacy Context’ – G. Juliano (Director and General Counsel, Office of Fair Practices and Legal Affairs), J. Gruber (Human Rights and Equity Advisor), and K. Krahn (Records Analyst/Archivist)

‘Authority of Deans and Other Academic Administrators’ – J. Leclerc (University Secretary).

2. CONSULTATION MEETING
N. Marnoch, Registrar, University of Manitoba – regarding awarding of degrees notwithstanding

3. RESPONSES TO AN INVITATION FOR SUBMISSIONS FROM MEMBERS OF THE UNIVERSITY COMMUNITY
Prof. Sharon Alward (representing UMFA) 
Dr. Judy Anderson 
Ms. Terri Ashcroft 
Dr. Brian Blakley 
Dr. Peter Blunden 
Ms. Cara Brown 
Dr. Colin Dawes 
Dr. John Doering 
Dr. Emily Etcheverry 
Ms. Claire Fleet 
Dr. Rick Freeze 
Dr. DeLloyd Guth 
Ms. Mary Horodyski 
Dr. Philip Hultin 
Ms. Cindy Isaak-Ploegman 
Dr. Terry Janzen 
Dr. Sylvia Kovnats

Dr. Cheryl Kristjanson
Dr. Ed Kroeger
Prof. Laura MacDonald
Ms. Joan McConnell
Dr. Charles Mossman
Dr. Michele Piercey-Normore
Dr. Pamela Orr
Mr. Greg Sobie
Dr. Richard Sparling
Dr. Wesley Stevens
Dr. Shelley Sweeney
Dr. Robert Thomas
Ms. Brandy Usick (representing Student Advocacy and Accessibility)
Dr. Allan Woodbury
Dr. Elizabeth Worobec
APPENDIX C: DEFINITIONS IN THE UNIVERSITY OF MANITOBA ACCESSIBILITY PROCEDURES FOR STUDENTS WITH DISABILITIES

Student(s) with a Disability(ies): Any student(s) registered with the Disability Services (DS) office following procedures as outlined in section 2.3.

Accommodations: A service provided through the DS office which allows the student access to programs at the University of Manitoba.

DS Advisor: DS staff responsible for providing direct service to students with disabilities.

Interpreter: DS Staff American Sign Language/English interpreter responsible for providing course-related interpretation.

Invigilator: DS Staff responsible for overseeing tests and exams written at DS.

Scribe/Reader: DS staff responsible for working one-on-one with a student to write on behalf of the student or read course-related information to the student.

Computerized Notetaker: DS staff responsible for providing in-class notetaking services on a computer for students who are hard of hearing or deaf.

http://umanitoba.ca/admin/governance/governing_documents/students/906.html
APPENDIX D: IMPORTANT LINKS FOR LEGAL CONTEXT IN THE ACCOMMODATION OF STUDENTS

MANITOBA HUMAN RIGHTS COMMISSION POLICIES
Definition of Disability:

Reasonable Accommodation:

Bona Fide:

COURT AND TRIBUNAL DECISIONS
Mercier Decision:

Berg Decision:

Halliday Decision:

Singh Decision:

Council of Canadians with Disabilities Decision:

Meiorin Decision:

Grismer Decision:
http://www.canlii.org/en/ca/scc/doc/1999/1999canlii646/1999canlii646.html

Jaffer Decision:

Renaud Decision:
APPENDIX E: POLICIES REVIEWED FROM OTHER CANADIAN UNIVERSITIES

Carleton University
Concordia University
Dalhousie University
McGill University
McMaster University
Memorial University
Queen’s University
Ryerson University
Simon Fraser University
University of Alberta
University of British Columbia
University of Calgary
University of Guelph
University of Ottawa
University of Regina
University of Saskatchewan
University of Toronto
University of Victoria
University of Waterloo
University of Western Ontario
University of Winnipeg
Wilfred Laurier University
York University
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<td>Ontario Human Rights Commission</td>
<td>The opportunity to succeed; achieving barrier-free education for students with disabilities</td>
<td><a href="http://www.ohrc.on.ca/en/resources/discussion_consultation/ConsultEduDisability2/pdf">http://www.ohrc.on.ca/en/resources/discussion_consultation/ConsultEduDisability2/pdf</a></td>
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<td>The Personal Health Information Act</td>
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<td>University of California, Berkeley Division of Equity &amp; Inclusion</td>
<td>Berkeley Campus Plan for Accommodating the Academic Needs of Students with Disabilities</td>
<td><a href="http://dsp.berkeley.edu/policies.html">http://dsp.berkeley.edu/policies.html</a></td>
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<td>University of California, Irvine Office of Student Conduct</td>
<td>141.00 Definitions</td>
<td><a href="http://www.dos.uci.edu/conduct/policy.php?s=141.00">http://www.dos.uci.edu/conduct/policy.php?s=141.00</a></td>
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<td>Personal Health Information</td>
<td><a href="http://www.umanitoba.ca/admin/vp_admin/ofp/fippa/Health_information.html">http://www.umanitoba.ca/admin/vp_admin/ofp/fippa/Health_information.html</a></td>
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<td>University of Manitoba Administrative Bulletin 76 re FIPPA and PHIA</td>
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<td><a href="http://www.umanitoba.ca/admin/vp_admin/media/bulletin76.rev.pdf">http://www.umanitoba.ca/admin/vp_admin/media/bulletin76.rev.pdf</a></td>
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<td>University of Manitoba Department of Occupational Therapy</td>
<td>Essential Skills and Attributes Required for the Study of Occupational Therapy at the University of Manitoba</td>
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<td>Faculty of Medicine</td>
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<td><a href="http://umanitoba.ca/faculties/medicine/student_affairs/special_circumstances.html">http://umanitoba.ca/faculties/medicine/student_affairs/special_circumstances.html</a></td>
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<td>University of Manitoba Faculty of Nursing</td>
<td>Faculty of Nursing Disability Policy</td>
<td><a href="http://umanitoba.ca/faculties/nursing/students/523.html">http://umanitoba.ca/faculties/nursing/students/523.html</a></td>
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<td>University of Manitoba Faculty of Nursing</td>
<td>Representative Skills, Abilities, and Capacities for the 4-Year Baccalaureate Program</td>
<td><a href="http://umanitoba.ca/faculties/nursing/prospective/undergrad/rep_skills.html">http://umanitoba.ca/faculties/nursing/prospective/undergrad/rep_skills.html</a></td>
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<td>University of Manitoba Governance</td>
<td>Accessibility for Students with Disabilities - Policy</td>
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<td>University of Manitoba Senate</td>
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<td>Carlton University</td>
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<td><a href="http://www.tis.uoguelph.ca/projects/uid/UG17-workbook%2017.pdf">http://www.tis.uoguelph.ca/projects/uid/UG17-workbook%2017.pdf</a></td>
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<td>York University</td>
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