

# Duty to Accommodate

Saskatchewan Teachers' Federation and  
Saskatchewan School Boards Association  
Collaborative Project





*“We like to bring together people from radically different fields and wait for the friction to produce heat, light and magic. Sometimes it takes a while.”*



“Yes, yes. I know that Randy... everybody knows *that*...But look, four wrongs squared, minus two wrongs to the fourth power, divided by this formula, **do make a right.**”

# Welcome – Why Are We Here?

A Memorandum of Agreement contained in the 2007-10 Provincial Collective Bargaining Agreement set the establishment of a joint committee to:

- \* Review recommendations of previous committees regarding Duty to Accommodate and return to teaching
- \* Review applicable legislations, jurisprudence and good practices regarding Duty to Accommodate
- \* Examine implications of Duty to Accommodate within the context of Income Continuance Plan
- \* Draft contract language specific to Duty to Accommodate and return to work for consideration of the parties involved

# Welcome – Why Are We Here?

In 2009, an agreement was reached to endorse four recommendations:

- \* Adoption of draft contract language
- \* Parties to the Provincial Collective Bargaining Agreement would develop shared professional growth opportunities for each party's members
- \* Create learning opportunities for members of the education community, including LEADS and SASBO
- \* Develop a comprehensive communication strategy regarding changes to the agreement – specifically Duty to Accommodate in Article 7

# Welcome – Why Are We Here?

- \* In June 2012, a committee was established consisting of three Senior Administrative Staff from the STF and three from SSBA to work on creating learning opportunities and communication strategies in regards to Duty to Accommodate.
- \* ***Duty to Accommodate: Guide for School Divisions and Saskatchewan Teachers' Federation Members*** was created. Role out scheduled for April 9, 2013.

# Introduction to Duty to Accommodate

- \* This is a guide, not a rule book
- \* It reflects shared understandings between the STF and the SSBA
- \* It is meant to support the process and the conversation, not replace collaboration of the individuals involved in the process
- \* Ultimately, it will lead to sound decision making and avoid a flawed or failed process
- \* **Refer to page iii in your guide**

# Guiding Principles: The Process

1. Read through the Guiding Principles found on page one
2. Highlight the words that strike you as powerful descriptors or actions
3. Turn to an elbow partner and share what you have highlighted and why



# Statutory Requirements

Accommodation arises from statutory requirements:

- \* *Saskatchewan Human Rights Code*
- \* *Charter of Rights and Freedoms*
- \* *The Labour Standards Act*

# What is Accommodation?

- \* Accommodation is the obligation to adjust the workplace to give employees with disabilities equal opportunities.

# *Saskatchewan Human Rights Code*

*The Saskatchewan Human Rights Code*  
defines disability as:

- \* any degree of physical impairment;
- \* intellectual or learning impairment; or
- \* mental disorder.

# Clarifying Accommodation

- \* Decisions of courts and arbitrators help us understand the meaning of disability and accommodation.

# Legislation, Policies and Contracts

- \* *Canadian Charter of Rights and Freedoms*
- \* *Saskatchewan Human Rights Code*
- \* Statutes and Regulations
- \* Collective Bargaining Agreements
- \* Employment Contracts
- \* Employer Policy and Procedures

# Courts and Arbitrators

- \* Supreme Court of Canada
- \* Saskatchewan Court of Appeal
- \* Saskatchewan Court of Queen's Bench
- \* Arbitrators

Decisions from other provinces are persuasive but not binding

# Employer Obligations

Employers are obliged to:

- \* accommodate; and
- \* accommodate to the point of undue hardship.

# Employee Obligations

Employees are obliged to:

- \* provide medical information on restrictions.



# Undue Hardship

- \* Undue hardship exists when requirements to accommodate are so extreme, onerous or difficult that it is unreasonable to require accommodation.

# Duty to Accommodate – STF and SSBA Collaborative Meeting



# Restrictions

- \* Restrictions are the limitations of skills and abilities due to a disability preventing a person from performing essential duties of their job.

# Restrictions

Restrictions can broadly be characterized into:

- \* Physical Limitations
- \* Cognitive Limitations
- \* Socio-emotional or psychosocial limitations

***It is important to note that an individual can have restrictions in one or more categories.***

# Restrictions

- \* Physical restrictions affect an individual's activity limitations due to impairment in body function or structure.
- \* Cognitive restrictions affect an individual's ability to think logically, concentrate, formulate ideas, reason, remain focused and remember.
- \* Socio-emotional or psychosocial restrictions affect an individual's ability to respond appropriately to everyday situations.

# A Closer Look

## Part 1

1. Work with an elbow partner.
2. Review cases Number 1, 2, 3 on the Restriction Case Study sheet at your table.
3. Using Page 11 and 12 of the Guide, identify the category each case falls within and the possible restrictions.

# A Closer Look

## Part 2

1. Work in groups of 4.
2. Review the case on the back of the Restriction Case Study sheet.
3. Using pages 11 and 12, Section 5, Appendix II on page 25, and Appendix III on page 29, identify the possible restrictions and accommodations for Joe.

The chart provided may be helpful.

# Restrictions, Symptoms or Recommendations

1. Quickly scan those sections that have “restrictions” in the title.
2. Share with a partner your understanding of the meaning of:
  - a) a restriction
  - b) a symptom
  - c) a recommendation



# Restrictions, Symptoms or Recommendations – Name It!

**short concentration**

pain in left knee

**difficulty seeing in low light**

should only be teaching senior math

**needs regular breaks throughout day**

needs a quiet classroom

**moved to lower grades**

challenges in projecting voice

can't write on blackboards

sharpened anxiety due to stress

**can work mornings 10%**

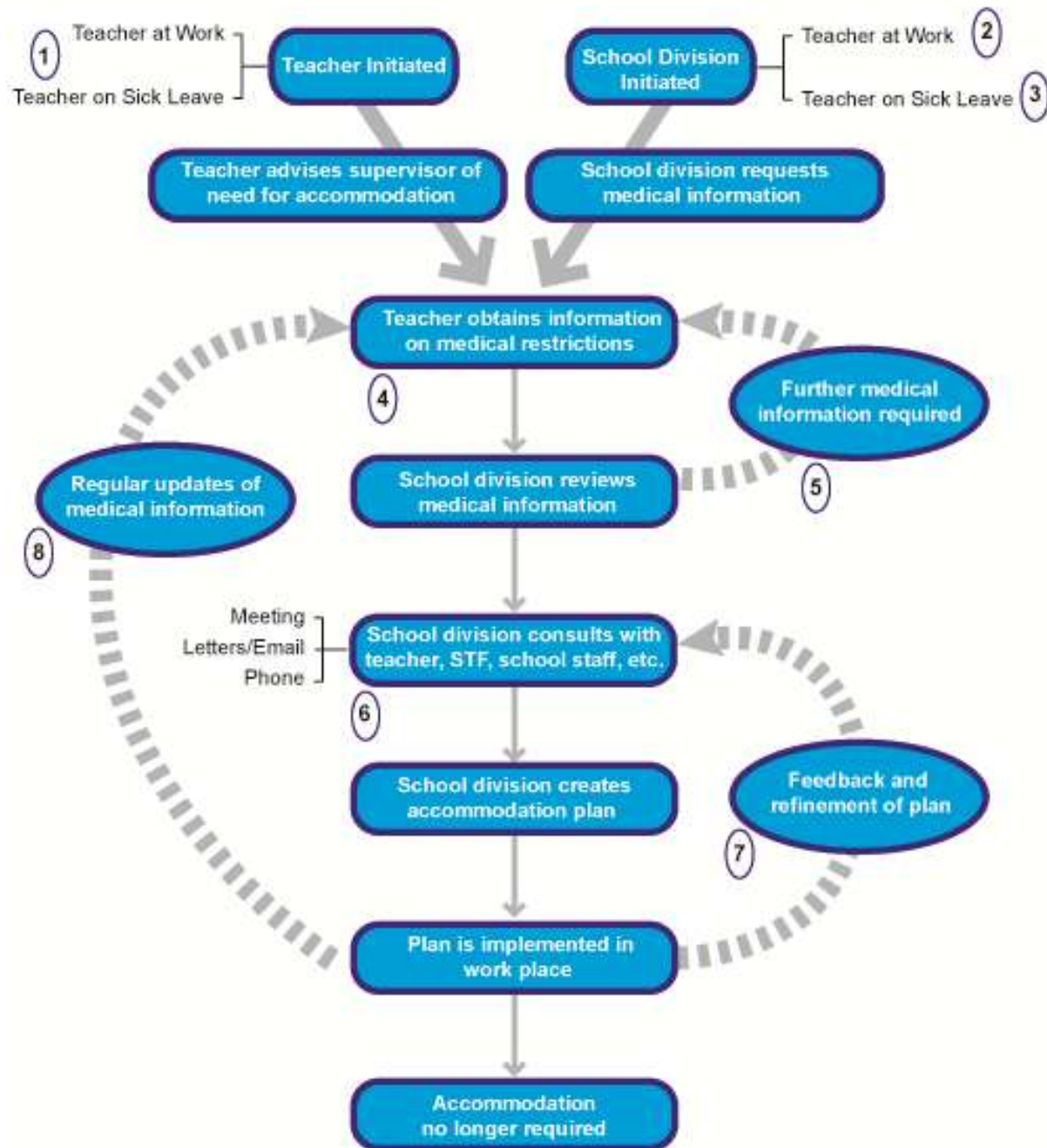
# Duty to Accommodate – STF and SSBA Collaborative Meeting



# Questions from this Morning



# Duty to Accommodate: The Typical Process



# Roles and Responsibilities

## **Purpose of this session:**

- \* Develop common understandings on how the process works
- \* Clarify who is involved in the accommodation process
- \* Explore roles and responsibilities

# Activity

On your tables you will find cards with the following roles:

- \* Director
- \* Human Resource Superintendent
- \* Superintendent
- \* Teacher seeking the accommodation
- \* Medical Practitioner
- \* Principal/School Based Administrator
- \* Colleague
- \* Federation Senior Administrative Staff

# Activity

1. Select a “role” card
2. Refer to pages 13-15 in the guide and learn about your role
3. Introduce yourself in that role to your table group and briefly state what you understand your role to be
4. You will have 10 minutes for this activity

# Instructions for Scenario

- \* In your role, use the “typical process” reference card and pages 13 -15 in the guide and work through the accommodation process using the following scenario:
- \* Primary teacher has been on Accumulated Sick Leave following a knee replacement
- \* In January, the teacher approaches the school administrator/principal about returning to work
- \* Context: rural school division, approximately 200 km from major centre
- \* Table groups will have 20 minutes for this activity



# Common Understandings

- \* Every one has a role in the process, and we have to work as a team
- \* In the accommodation process there are complexities and grey areas
- \* Accommodations are fluid and each case is unique

# Case Study

- \* Purpose: To apply principles of accommodations to a real life Case Study.

# Activity

On your tables you will find a sheet with the summary of the facts of a recent Ontario Human Rights Tribunal:

1. Read the summary individually
2. Break into groups of 3 or 4 at your table
3. Go through the guiding questions
4. Back to large group for summary and tribunal decision

# Summary and Tribunal Decision

- \* The tribunal found that the teacher did not supply appropriate medical information and therefore, the board did not have the duty to accommodate on these particular facts.

# Where Do We Go From Here?

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