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Policy Holder:	Vice President Human Resources
Administrative Contact:	Director, Centre for Human Rights, Equity & Diversity
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Gender Diversity

Purpose/Rationale:

The Humber College Institute of Technology and Advanced Learning and the University of Guelph–Humber (hereafter referred to as “Humber”, “Humber College”, or “the College”) has the right, as well as the legal and moral responsibility, to ensure that all members of the College Community are treated fairly, equitably, and respectfully, in order to provide a learning, working and living environment that is free from harassment and discrimination on the basis of gender identity and gender expression. This policy outlines Humber’s position on the responsibilities of the College, students and employees with respect to protecting gender expression and gender identity consistent with the Ontario Human Rights Code (hereafter referred to as “the Code”). While this Policy specifically addresses the particular areas of gender identity and gender expression within human rights, it does not replace or derogate in any way from the College’s existing Human Rights Policy and Complaint Resolution Procedure; rather the intention of this Policy is to supplement the existing Human Rights Policy and Complaint Resolution Procedure of Humber College.

This document is available in alternate format on request.

Scope:

This Policy applies to all members of the College Community. This includes students and employees at Humber College and University of Guelph-Humber; members of Humber’s Board of Governors; members of standing and ad hoc committees established by these institutions; members of societies and associations which have a direct relationship to or are under the authority of these institutions; contractors; service providers; researchers; and visitors (including invitees, guests or persons who have no ongoing connection to the institution).

Visitors to any Humber College campus are subject to complaints if they engage in prohibited conduct pursuant to this Policy and/or Humber College’s Human Rights Policy. Such visitors may also be able to initiate a complaint under this Policy.

While this Policy does not apply to gender-segregated facilities that are located off Humber College premises, this Policy does cover incidents that occur off College premises and that affect Humber’s learning, working and living environment. This may include College-related

social functions, in work that occurs off-campus, academic placements, off-campus field trips, or academic related travel. It is understood, however, that in respect to activities that do not take place on campus, the Policy covers incidents that involve persons covered by the Policy and has limited, if any, application to persons who are not covered by the Policy and are, therefore, beyond the reach of the Policy.

Definitions and Terminology: See Appendix A

Policy:

1. General

1.1 Self-identification is the sole and whole measure of a person's gender.

- a) No person shall be asked or required to 'prove' their gender (e.g. by providing a doctor's note, identity documents, etcetera) in order to gain access to any facilities, activities, initiatives and opportunities within the Humber College learning, working and/or living environment.
- b) However, if a person, having established a relationship with the College which is reflected in documents created and stored by the College (whether electronic or hard copy), seeks a change in those documents to reflect their gender and/or preferred gender pronoun, appropriate identification documents will be required in order to ensure against identity fraud. For this purpose, appropriate identification documents for Ontario Residents may include the Change of Name document from the Office of the Registrar General.

1.2 The College will take every reasonable step to ensure that its learning, working and living environments are maintained free from anti-trans* harassment and/or discrimination, as prohibited by the Ontario Human Rights Code, and from personal/psychological harassment as defined in this Policy. In this regard, all members of the College Community have a responsibility to uphold the principles set out in this policy and to report (to a member of the College's management or its Centre for Human Rights, Equity & Diversity | HR Services) any incidents of anti-trans* harassment and/or discrimination which they experience or witness. This is in order that the College can effectively and immediately address any harassment and/or discrimination that may occur.

1.3 Every trans* student and employee has a right to equitable treatment without discrimination with respect to employment, services, goods, facilities, accommodation and membership in vocational associations in accordance with the provisions of the Ontario Human Rights Code.

1.4 The College will enforce the right of its trans* members to equitable treatment without harassment and/or discrimination on the basis of gender identity or gender expression. The College may sanction any member of the College community whose behaviour violates this policy (See Sanctions and Corrective Actions set out in Human Rights Complaint Resolution Procedure Appendix B) or who, having observed harassment or

discrimination, fails to report it to the College (through a member of management or Centre for Human Rights, Equity & Diversity | HR Services).

- 1.5 Every trans* member of the College community has the right to express legitimate concerns about human rights violations that they are experiencing in their work, residence or education at Humber College without fear of reprisal. Anyone who attempts reprisal or threatens reprisal against any member of the Humber Community who initiates a complaint or participates in proceedings under this Policy may be subject to disciplinary action.
- 1.6 As outlined in the College's Human Rights Policy, all of the College's trans* community members have the right to file a Human Rights Complaint with Humber College within six months of the occurrence of the event(s).
- 1.7 The College recognizes that any accusation in a complaint of anti-trans* harassment and/or discrimination is a matter that can cause considerable stress to the person who is the subject of the complaint. Anyone who makes a complaint in bad faith will be subject to disciplinary action under the College's Human Rights Policy.
- 1.8 The College will take appropriate actions and apply appropriate sanctions against visitors (e.g. barring them from campus) who are found to have engaged in harassment or discrimination on the basis of gender identity or gender expression.
- 1.9 Sections 1.7 to 1.13 of the College's Human Rights Policy apply equally to this Policy on Gender Diversity.

2. Privacy and Confidentiality

- 2.1 All members of the Humber Community are provided with legal rights to privacy under the *Freedom of Information and Protection of Privacy Act* ("FIPPA"), which includes the protection of information relating to an individual's gender identity or expression. As such, the trans* status of all members of the Humber Community must be kept confidential, except as permitted or required under the FIPPA.
- 2.2 Grounds upon which the trans* status of a member of the Humber Community may be disclosed are set out in the FIPPA and include the following:
 - a) The trans* individual has directly given the discloser explicit and documented permission to disclose the trans* person's gender identity.
 - b) The disclosure is made to an employee or agent of the College on a "need to know" basis for the purpose of enabling the employee or agent to carry out his/her duties (e.g. to fulfill a specific accommodation request, to allow for the provision of serious medical attention that attends to or prevents impending and significant harm, issuing of payroll or benefits, etcetera).
- 2.3 Members of the Humber Community who identify as trans* must confirm with the College the name(s) and pronoun(s) by which they prefer to be referred in external correspondence and communications (e.g. phone calls home, College bulletins,

unofficial documentation, websites, online portals, Humber-related articles and promotional material, etcetera).

2.4 Disclosing the status of a trans* member of the Humber Community without explicit and directly expressed consent or in the absence of a “need to know” circumstance is generally known as “outing”. Under this Policy, this form of outing is recognized as a form of anti-trans* harassment and/or discrimination that puts the individual’s physical, emotional and psychological safety at risk.

2.5 The intention of a member of the Humber Community to transition or the fact that they are going through a transition process must be kept confidential. Without clear, explicit and documented permission from the person intending or undergoing a transition, disclosure is prohibited, except where such disclosure is necessary to protect the rights of the individual (including the provision of accommodation), to change documentation kept by the College or if required by legal process. If such a disclosure is appropriately made it must always be limited and only go as far as what can be reasonably determined to help prevent the development of a poisoned learning, working and/or living environment within the Humber Community. Disclosing the transition plans of a current member of the Humber Community may be necessary in this regard to manage expectations and to minimize inappropriate responses from others within the Humber Community.

3. All-Gender Washrooms

3.1 The College will make efforts to ensure that all members of the Humber Community can use washrooms with safety, privacy and dignity, regardless of their gender identity or gender expression. All members of the Humber Community may choose to use any accessible all-gender washroom, regardless of their reason(s) for doing so.

3.2 The College will make available maps indicating the location of every accessible all-gender washroom that is on campus.

3.3 Inclusive signage shall be used to identify every all-gender washroom on Humber College premises.

4. Change-rooms

4.1 All members of the Humber Community have the right to a safe change-room that corresponds to their gender identity.

a) Where change-rooms do not have separate privacy stalls, reasonable accommodations will be provided on a case-by-case basis that endeavours to effectively meet the individual’s particular needs. Subject to availabilities, such accommodation may include:

- use of a private area within a public area (a bathroom stall with a door; an area separated by a curtain);
- access to a restricted area or office;

- a separate changing schedule in the private area (utilizing the change-room before or after hours of common access);
- providing access to a single-use facility;
- use of a nearby private area (a nearby washroom or office);
- a reasonable re-design of existing facilities;
- if fully and freely consented to by the person seeking accommodation, access to the change-room corresponding to the individual's assigned sex at birth.

4.2 Reasonable accommodations shall be made upon the request of the person seeking accommodation, or upon the request of a person seeking such accommodation on behalf of another member of the College community.

5. All-Gender Residence

5.1 The College is committed to providing residence accommodation that is inclusive, safe and respectful of all residents regardless of gender identity and expression.

5.2 The Residence will use reasonable efforts to ensure that the option to share an all-gender suite is made available to all Humber Residents. This will be done where there is mutual agreement with the other roommate and where vacancies permit.

5.3 For a Resident in transition or who decides to undergo a transition during their time at Humber, the Residence will reasonably accommodate the student's housing needs as these needs change during the transition process.

6. Gender-inclusive Language

6.1 All individuals within the Humber College community are entitled to be referred to by the gender pronoun(s) of their choice.

6.2 The College will use reasonable effort in its endeavours to use gender-inclusive language in official Humber documentation and communications.

6.3 All members of the College community are encouraged to and will be supported in their endeavours to communicate using gender-inclusive language that is respectful and recognizes the inherent and equal worth of all gender identities and gender expressions.

6.4 Individual members of the Humber Community are encouraged to use gender-inclusive language when it is requested by another individual that they do so.

6.5 Intentionally addressing a trans* member of the College community by the incorrect name or pronoun is considered to be a form of anti-trans* harassment and/or discrimination. Inadvertent slips or honest mistakes are not covered by this provision, but intentional and persistent refusal to acknowledge or use the individual's preferred or changed name or pronoun is a violation of this Policy.

7. Dress Codes and Grooming

- 7.1 Except where inconsistent with security, health and safety concerns, all trans* members of the Humber Community are permitted to dress, be uniformed and groom themselves in attire that reflects their own gender identity and preferred gender expression.

8. Athletics

- 8.1 No member of the College community shall be prevented from full and equal participation in Humber's intramural sporting, fitness or athletic activities on the basis of their gender identity.

9. Transition

- 9.1 The College will take reasonable steps to be supportive, understanding, respectful, responsive, and provide reasonable accommodation to all members of the Humber Community who plan to or actually go through transition while at Humber.

References:

Humber's Human Rights Policy and Human Rights Complaint Resolution Procedure

The Ontario Human Rights Code

The Freedom of Information and Protection of Privacy Act

The Canadian Charter of Rights and Freedom

Sources Consulted:

1. Aisha Sanchez, Esq.. Webinar: "Gender Identity and Expression in the Workplace - Creating Policy and Making Practice", March, 2013
2. Blaney McMurtry LLP, "Gender Identity and Gender Expression Under the Human Rights Code: One Year Later", July, 2013
3. Brown University: Resources for Transgender and Gender Variant Students
4. Dalhousie University: Policy on Gender Neutral Washrooms
5. Hamilton-Wentworth District School Board: "Equity Policy – Supporting Guidelines"
6. Hansard Transcript: Debate of *Toby's Act* in the Legislative Assembly of Ontario, Wednesday 13 June 2012
7. Hicks Morley LLP: "Gender Identity, Gender Expression Now Protected Under Ontario Human Rights Code"
8. Massachusetts Institute of Technology, "Gender-Neutral Pronoun Usage"
9. McGill University: Policies on Gender Neutral Washrooms and Preferred First Name
10. Miller Thompson: "Gender Identity and Access to Women's Washroom Facilities", July 2012
11. New York University: Policy on Changing Title and Name Based on Gender Identity or Expression.
12. Ontario Human Rights Commission: Gender Identity and Gender Expression (brochure)
13. Siskinds LLP: "Gender Expression and Gender Identity: New Protected Grounds of Discrimination", May 2013.
14. Toronto District School Board Guidelines for the Accommodation of Transgender and Gender Non - Conforming Students and Staff (2011)
15. The New School For Social Research: Policy for Transgender Student Identification
16. The World Health Organization webpage, "What do we mean by "sex" and "gender"?: <http://www.who.int/gender/whatisgender/en/>
17. Transgender Law and Policy Institute: Brett-Genny Janiczek Beemyn, "Ways that U.S. Colleges and Universities Meet the Day-to-Day Needs of Transgender Students"
18. University of British Columbia: Sexual Orientation and Gender Identity Programs and initiatives
19. University of Arizona: Office of Institutional Equity, "Statement on Restroom Access"
20. University of California at Berkeley Gender Equity Resource Centre Glossary of Terms
21. University of Nebraska: LGBTQ on Campus, "Creating Inclusive Spaces: Safe space and Allies"
22. University of Missouri LGBTQ Resource Centre, "Trans* At Mizzou"
23. University of Oregon: U-OUT Resources on Gender Identity and Gender Expression
24. York University: "Policy on Gender-Free Language"

Appendices:

Appendix A – Definitions

Related Procedure:

Humber Human Rights Complaint Resolution

Appendix A Definitions

NOTE: The definitions provided below are not intended to label an individual but are intended as sometimes helpful functional descriptors. These words, like all words, are social constructs developed over time. New language is constantly formed to unite community members as well as divide groups by experience, politics, and other group memberships.¹

*These terms and definitions are NOT standardized and may be used differently by different people, and in different regions. Labels and identities should only be self-selected by individuals, not assumed by others. Biology does not imply identity. Nor do behaviour or expression alone constitute identity.*²

All-Gender: Is a label used to indicate that a good, facility, benefit or service is equally available to all persons regardless of their gender identity.

Anti-trans* Discrimination: Every trans* student, employee or person in receipt of services from the College has the right to equal treatment, without discrimination on the basis of gender identity or gender expression as set out in the Ontario Human Rights Code. Direct discrimination occurs when a trans* individual is subjected to differential treatment as a result of their gender identification or gender expression, or their association with trans* individuals or causes. Such acts are sometimes generally referred to as being “anti-trans*”. Examples of direct discrimination against a trans* person include:

- refusal to provide goods, services or facilities to persons because of an individual’s gender identity or gender expression;
- refusal to work with or teach someone because of their gender identity or gender expression.

Anti-trans* Harassment: Is prohibited by the Code and generally involves written, verbal and/or physical actions which express negative attitudes, derogation, and/or hate for a person or group of persons based on their gender identity or gender expression. Such acts are sometimes generally referred to as being “anti-trans*”. This kind of harassment may include, but is not limited to, the following behaviours:

- demeaning comments, unwelcome remarks, jokes, innuendoes or taunting about a person’s or group of persons’ gender identity or gender expression;
- disclosing a person’s trans* status without consent or without the presence of a “need to know” circumstance;
- displaying of, derogatory or offensive pictures or sexually explicit materials, either through printed copy or personal computer;
- denial of normal co-operation with an individual because of that individual’s gender identity or gender expression;
- insulting gestures or practical jokes based on gender identity or gender expression which cause embarrassment or awkwardness;

¹ *Supra* Note 3

² *Ibid.*

- demeaning remarks about trans* individuals in the presence of any individual (not necessarily a member of the group mentioned) that creates a poisoned work/learning environment;
- using pejorative names based on gender identity or gender expression.

Biological Sex: Generally refers to the sex assigned at birth based on external genitalia but also includes internal reproductive structures, chromosomes, hormone levels and secondary sex characteristics such as breasts, facial and body hair and fat distribution.

Cisgender: A label that denotes or relates to a person whose self-identity conforms with the gender that corresponds to their biological sex.³

Gender: Refers to the socially constructed roles, behaviours, activities, and attributes that a given society associates with individuals who have particular biological features and/or sexual reproduction organs.⁴

Gender Identity: Concerns an individual's intrinsic or psychological sense of self, particularly their sense of being female, male, a combination of both, or neither, regardless of their biological sex.

Gender Expression: Refers to the external attributes, behaviour, appearance, etcetera by which people express their gender and through which others perceive the person's gender. For example, gender expression is related to the way an individual dresses, the length and style of their hair, the way they act or speak, the preferred pitch of their voice, and their choice of whether or not to wear make-up).

Gender Non-Conforming: Refers to individuals who do not follow socially dominant ideas or stereotypes about how they should dress, look or act based on the female or male sex they were assigned at birth. This is also called Gender variance and/or Gender Independence. For example, this includes "feminine boys," "masculine girls," and individuals who are androgynous.

Harassment: Harassment is defined by the Ontario Human Rights Code as engaging in a course of vexatious comment or conduct that is known or ought reasonably to be known to be unwelcome (Section 10 (1) (f)). The College interprets this to include any behaviour that is known or ought reasonably to be known to the perpetrator to be offensive, embarrassing or humiliating to other individuals. Such conduct may include visual representations, electronic messages, written messages, verbal and/or physical conduct, and may relate to any of the grounds of discrimination prohibited by the Ontario Human Rights Code, or other malicious grounds. Examples of harassment include:

- unwelcome remarks, jokes, slurs innuendoes or taunting;
- hazing, stalking or shunning;
- the repeated mistreatment of one person, targeted by one or more other persons with a malicious mix of humiliation, intimidation and sabotage of performance (bullying);

³ Oxford Online Dictionary: <http://www.oxforddictionaries.com/definition/english/cisgender>

⁴ The World Health Organization webpage, "What do we mean by "sex" and "gender"?: <http://www.who.int/gender/whatisgender/en/>

- displaying derogatory or offensive pictures, graffiti or materials either through printed copy or personal computer;
- verbal abuse;
- insulting gestures or practical jokes which cause embarrassment or awkwardness;
- unauthorized and/or unnecessary physical contact;
- An impassioned, collective campaign by co-workers to exclude, punish and humiliate a targeted worker.

For the purposes of this policy, “harassment” also includes personal/psychological harassment.

Note: Harassment does not occur where a supervisor gives legitimate directions or instructions to an employee in the course of employment or conducts performance reviews in accordance with the College's normal procedures.

Personal/Psychological Harassment: Behaviour in the form of repeated and hostile or unwanted conduct, verbal comments, actions or gestures, that affects a trans* person’s dignity or psychological or physical integrity and that result in a harmful learning, working or living environment for that person. It includes and is not limited to behaviours defined as bullying, mobbing, victimization, emotional abuse, psychological abuse, and psychological violence. A single serious incident of such behaviour that has a lasting harmful effect may constitute psychological harassment. It must be demonstrated that this behaviour affects the trans* person’s dignity or physical or psychological integrity and that it results in a harmful learning, working or living environment for the individual.

Poisoned Learning, Working and Living Environment: Occurs when conduct and/or comments related to gender identity or gender expression unreasonably interfere with a trans* individual's ability to work and/or learn by creating an intimidating, hostile, offensive or threatening environment. Depending on the impact of the comments or conduct on the individual, one anti-trans* instance may be sufficient to create a poisoned environment for a trans* individual or trans* people in general. A poisoned environment can create unequal conditions of employment for the person or persons affected by it. It can interfere with an individual's learning and/or work performance and cause emotional or psychological stress not experienced by other individuals.

An individual does not have to be the person targeted by the anti-trans* comments to experience a poisoned environment. A person who is subjected to overhearing anti-trans* slurs or sexually offensive jokes, or viewing offensive cartoons or sexually explicit, suggestive or demeaning pictures may view the behaviour as poisoning the environment. Some examples of poisoning the environment are:

- displaying graffiti, signs, pictures or cartoons which would qualify as prohibited anti-trans* harassment, either through print or computers;
- making derogatory remarks about trans* peoples in the classroom or the workplace.

Reasonable Accommodation: For the purposes of this Policy, reasonable accommodation means changes, arrangements and/or programs that are undertaken for the purpose of removing arbitrary barriers that prevent the right to gender identity and gender expression from enjoying protection that is equal to the protection afforded under the other fifteen grounds of discrimination outlined in the Ontario Human Rights Code. Decisions to accommodate will be balanced against several factors including undue hardship, e.g.: the cost of the accommodation

to the College; health and safety risks to the person requesting accommodation and to others; and the effect of accommodation on the College's ability to fulfill its duties under other Humber policies and the laws governing the College.

Sexual Harassment: Is prohibited by the Code and may be based on gender identity and/or gender expression. This kind of harassment may involve the use of overt sexual language or sexual innuendo which makes an individual feel uncomfortable. Sexual harassment includes, but is not limited to, the following:

- any deliberate and unsolicited sexual comment, suggestion or physical contact that creates an uncomfortable learning, working and/or living environment for the recipient and is made by a person who knows or ought reasonably to know that such action is unwelcome;
- a sexual advance or solicitation made by a person where the person making the advance or solicitation knows or ought reasonably to know that it is unwelcome;
- a reprisal or threat of reprisal for the rejection of a sexual solicitation or advance where the reprisal is made or threatened by a person in a position to confer, grant or deny a benefit or advancement to the person;
- unwelcome remarks, jokes, sexual innuendoes or taunting about a person's body, attire, sex, personal or social life;
- practical jokes of a sexual nature which cause awkwardness or embarrassment;
- displaying and/or distributing pornographic pictures or other offensive material of a sexual nature, either through printed copy or personal computer;
- leering (suggestive staring) or other gestures;
- unnecessary physical contact such as touching, patting or pinching;
- expressions of gender bias which may include remarks that are discriminatory, degrading or derogatory and create a poisoned work environment;
- requests for sexual favours; and/or
- sexual assault.

NOTE: Relationships between consenting adults which are voluntary and based on mutual attraction do not constitute sexual harassment unless one of the parties has communicated to the other that he/she wishes the relationship to end and the other thereafter engages in conduct which is harassing in nature.

NOTE: In romantic and sexual relationships between faculty members and students or between supervisors and employees or students, a power differential may exist. Abuse of that power differential creates a negative environment for work and study and casts doubt on the validity of the consent to such relationships. Such relationships could be construed as a Breach of Trust in one's employment with the College as a faculty member or supervisor, the student-teacher relationship being a professional one, which involves a significant issue of trust in regards to both the institution and students. Sexual intimacy between faculty and student removes all professional boundaries between them and creates a perception of bias in the eyes of the institution, faculty and other students, thus distorting and damaging the learning environment.

Trans*: An umbrella term used to describe individuals who, to varying degrees, do not conform to what society usually defines as a man or a woman. This term captures the descriptor, "transgender", which refers to individuals whose gender identity is different from their biological sex assigned at birth, and/or whose gender expression is different from the way males or

females are stereotypically expected to look or behave. Individuals who identify as trans* may do so because they self-identify as a person who is any one or more of the following: androgynous; bigender; a cross-dresser; gender diverse; gender fluid; gender non-conforming; genderqueer; gender-transitioning; gender-variant; intersex; pangender; queer; a transman; a transwoman; two-spirit, etcetera.

Transition: The process (which for some people may also be referred to as the “gender reassignment process”) whereby people change their appearance and/or bodies to match their internal (gender) identity, while living their lives full-time in their preferred gender role.