**MILC**

**Student Duty of Care Policy**

# Statement of Context and Purpose

* 1. Melbourne Intercultural Learning Centre (MILC) is committed to ensuring the care, safety and welfare of its students. MILC has established strategies, practices, policies and procedures to uphold this commitment, and to ensure that it discharges the duty of care it owes to its students.
  2. MILC treats seriously all of its legal obligations to create a safe space for its students at all times, and seeks to ensure that its culture is defined by a mentality where protecting students forms part of our everyday thinking and activity.
  3. All policies, protocols and procedures flow from MILC’s vision:

To provide strong academic, linguistic and intellectual preparation for U18 students, while helping them to adjust to Australian society in a safe, secure and appropriate living and learning environment.

* 1. The purpose of this policy is to ensure:
     1. staff at MILC has an understanding of the nature of the legal duties owed by teachers and school staff towards children;
     2. MILC complies with its legislative requirements; and
     3. MILC has in place strategies to enhance compliance with the Child Safe Standards
  2. This policy sets out the key elements to MILC's approach in discharging its duty of care to students. This includes:

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|  | 1.5.1 | what "duty of care" means; |
| 1.5.2 | the impact of legal liability; |
| 1.5.3 | how teaching staff may discharge their duty of care to students; and |
| 1.5.4 | the circumstances in which non-teaching staff and external providers may owe students a duty of care. |
| **2** | **Scope** |  |

* 1. This policy applies to all management, employees, contractors and other authorised personnel required to perform functions on MILC's premises. This policy will refer to all employees, contractors and other authorised personnel interchangeably as “staff”.
  2. This policy extends to any person who is engaged in student-related work that has direct and regular contact with students.
  3. This policy is not intended to override or form part of the terms of any award or contract that applies to an employee but should be considered a reasonable direction to staff. As such, staff are expected to abide by this policy and report any suspected or known breaches of this policy.

# Duty of care

* 1. MILC has a legal duty of care to students while they are involved in MILC activities, or present for the purposes of being involved in MILC activities.
  2. This duty extends to taking:
     1. Reasonable measures, with regard to all the circumstances, to protect students from risks of harm and injury that should have been reasonably foreseen.
     2. Reasonable care that any student (and other person) on MILC's premises will not be injured or damaged by reason of the state of the premises or of things done or omitted to be done in relation to the premises.
     3. Reasonable precautions to prevent the abuse of a child by an individual associated with MILC while the child is under MILC’s care, supervision or authority.
  3. This requires not only protection from known hazards, but also protection from harm that could foreseeably arise and against which preventative measures can be reasonably taken.
  4. The fact that a duty of care exists does not of itself mean that MILC will be liable for an injury sustained by a student. In order for MILC to have been negligent with its duty of care, it must be established that:
     1. a duty of care was owed to the person harmed at the time of the injury.
     2. the risk of injury was foreseeable.
     3. the likelihood of the injury occurring was more than insignificant.
     4. there was a breach of the duty of care or a failure to observe a reasonable standard of care.
     5. this breach or failure was a cause of the injury.

# Duty of care – Teaching staff

* 1. Teachers owe a special duty of care toward students.
  2. The standard of care required is that of a ‘reasonable’ teacher. This means that the duty of care owed is the duty one would expect from a hypothetical teacher with normal skills and attributes exercising their professional judgment. The duty owed to students is not an absolute duty to ensure that no harm will ever occur, but a duty to take reasonable care to avoid foreseeable harm being suffered.

# Procedures to assist teachers with discharging their duty of care:

* 1. While teachers must always ensure they discharge their duty of care in all circumstances, MILC has provided the following guidelines to assist them in doing so.
  2. General
     1. Ensuring students arrive on time to their scheduled timetabled class.
     2. Promptly following up unexplained student absences.
     3. Making mandatory reports as required by law.
     4. Acting appropriately and in accordance with MILC’s policies to protect a student who claims to be bullied.
     5. Calling out dangerous play.
     6. Exercising constant vigilance and planning.
     7. Ensuring students are fully and actively supervised at all times during all MILC activities, including excursions and incursions.
     8. Taking appropriate steps to ensure buildings, grounds and equipment are safe and suitable to help prevent injuries to students and other persons.
  3. Student safety
     1. Taking reasonable precautions (including by acting in accordance with MILC’s student safety policies) to minimise the risk of child abuse by an individual associated with MILC.
     2. Complying with MILC’s student safety policies (including the Student Safety and Protection Policy).
     3. Reporting actual and suspected concerns of inappropriate conduct in accordance with MILC's processes.
     4. Complying with mandatory reporting obligations.
  4. Personal care:
     1. Attending to a sick student.
     2. Where possible, teachers should not leave the classroom with the student who is sick.
  5. Classroom supervision:
     1. Teachers must not leave students in the care of ancillary staff, parents or trainee
     2. In an emergency situation, teachers should use the phone to contact their supervising teacher or the Managing Director
     3. No student should be left unsupervised outside the classroom as a withdrawal consequence for misbehaviour. Withdrawal is to be conducted within the classroom or educational environment under the direct supervision of the teacher.
  6. Movement of students
     1. Discretion is to be used when allowing students to visit the toilet or other areas of MILC (eg Reception) during class time.
  7. Excursions, incursions, off-site events and activities (collectively referred to as “excursions):
     1. Teachers should be aware that students are usually less constrained and more prone to accident and injury while on an excursion, compared to a supervised classroom environment.
     2. Teachers should be aware that an incursion with an external provider does not absolve supervision duties of the Teacher, including first aid duties. A teacher must be present at all times and remain the person designated with duty of care responsibilities.
     3. Students must be counted on and off transport and at times on a regular basis whilst on an excursion.
     4. The Teacher in Charge of the excursion will have copies of all confidential medical forms and information, contact details and permission notes. This information is available via MILC’s electronic management system, and is made available to the Teacher in Charge and all staff while on the excursion. A copy of this material will also be stored electronically at MILC.
     5. The Teacher in Charge or designated teacher of an excursion will carry a mobile phone and a first aid kit.
     6. If the return time from an excursion is delayed or otherwise varied, the Teacher in Charge will contact MILC to inform the Managing Director (or their delegate) of the new arrival time so that parents can be contacted and a staff member will remain at MILC until they arrive.
     7. When crossing roads, teachers are to ensure students are using designated crossing points whenever possible.
     8. For further information, refer to MILC’s Excursions policy.
  8. Outside MILC environment:
     1. A teacher’s duty of care is not confined to the geographical location of MILC.
     2. Teacher’s must ensure they discharge their duty of care in circumstances outside of MILC environment when they have assumed the student-teacher relationship.
     3. Risks outside MILC environment may sometimes require a teacher and MILC to take positive and reasonable steps to protect the student from the risk and discharge their duty of care.

# Standard of care – Non-teaching staff, and external providers

* + 1. Non-teaching staff, (including parents) and external providers also owe a modified duty of care to protect students from risks of harm that reasonably ought to be foreseen. This duty arises when the duty is consciously passed from a teacher to a non- teaching staff member, or external provider, and accepted by that individual.
    2. For example, a teacher may ask a non-teaching staff member to accompany a student to a different area of MILC. While normally this staff member may not owe a standard duty of care to that student, as they have accepted the duty to care for and supervise the student passed from the teacher they now must protect that student from foreseeable risks of harm.
    3. In any case, all staff are required to act in a manner which upholds MILC’s duty of care.

# Students’ individual circumstances

* + 1. Individual circumstances will determine what constitutes reasonable care. The following issues may be considered in assessing the reasonableness of the level of care in any particular circumstance: the student's age, experience and capabilities: younger students require more care than mature students.
    2. Physical and intellectual impairment: students with disabilities are exposed to higher levels of risk of injury than students without a disability.
    3. Medical condition: special care must be taken to protect students with known, or ought to be known, medical conditions which expose them to a higher risk of injury (eg asthma or epilepsy).
    4. Behavioural characteristics: the level of care is increased where students are known to behave in a manner that increases the risk of injury.
    5. Cultural characteristics: the cultural characteristics of students may affect a student's exposure to risk.
    6. The nature of hazards present: increased care is required if MILC activity has an inherently high level of risk of injury or the activity takes place in a hazardous environment.
    7. Any conflicting responsibilities MILC or teacher may have; and normal practices and procedures within MILC.
    8. These factors must be taken into account when planning student activities.

1. **Physical contact with students (All employees)**

As a general principle, School Employees should not make physical contact with Students.

* + 1. There may be times when a School Employee feels it is appropriate to comfort a Student who has come to them in distress, such as extreme homesickness or on hearing very sad news from home. In such circumstances, if the Student explicitly consents, a hand lightly placed on the Student’s back or shoulder may be both kindly and appropriate. It is never appropriate to touch the chest area in girls, or below the chest in either sex.
    2. School Employees should be aware that what is intended to be a kindly gesture may be misinterpreted as having some sexual connotation. For the protection of both the Student and School Employee, School Employees must never to be alone with a Student in a closed room unless there is clear vision possible through a window or glass door panel. There must also be proper reason for the door to be closed and generally, doors should be left open if a School Employee is meeting alone with a Student.

# Medical and emergency situations

Physical contact is often required to assist an injured or ill student. Any physical contact must be with the informed consent of the student (unless it is in a lifesaving situation) and in a manner as if a Parent was present.

# Restrictive intervention and seclusion

* 1. MILC believes that restrictive intervention and seclusion of a student are to be used as a method of last resort. However, at times staff may find it necessary to respond to a student behavioural concern in such a manner where:
     1. There is an imminent threat of physical harm or danger to a student and others.
     2. Physical restraint and/or seclusion are reasonable in the circumstances.
     3. There is no less restrictive measure reasonably available in the circumstances.
  2. Restrictive intervention and seclusion of a student must not occur unless the above criteria are met.
  3. In the rare event that a student is restrained, staff must:
     1. Use the minimum force required to address the imminent threat of physical harm or danger.
     2. Only restrain the student for the minimum duration required.
     3. Monitor the student for any indicators of distress and immediately cease the restraint should these be identified.
     4. Communicate with the student to make clear why the restraint is being applied.
     5. Ensure that the restraint used is consistent with the student's individual needs and circumstances, including but not limited to the student's age, gender, size, and any additional needs such as behavioural, intellectual, neurological, sensory, medical or communication impairments.
  4. The decision about whether to use restrictive intervention and seclusion rests with the professional judgement of the staff involved, following consideration of their legal and professional obligations.
  5. Staff must immediately document and report all instances of physical restraint or seclusion to a member of the management team.
  6. For further information regarding restrictive intervention and seclusion please refer to the Child Restraint Policy.

# Civil liability laws

* 1. The Commonwealth and all Australian States and Territories have enacted civil liability laws that apply in relation to claims for damages resulting from negligence.
  2. These laws limit liability in certain circumstances including, in broad terms:
     1. MILC does not owe a duty of care to warn of an "obvious risk".
     2. MILC will not be liable for harm suffered as a result of the materialisation of an "inherent risk".
  3. The existence of civil liability laws means that issues of liability for student care claims in Australia will ultimately be determined by a complex mixture of legislation and common law (judge's decisions).

# Discharging duty of care responsibilities

* 1. In discharging duty of care responsibilities, MILC and staff must exercise professional judgment to achieve a balance between ensuring that students do not face an unreasonable risk of harm, whilst also encouraging students' independence and maximising learning opportunities.
  2. Non-teaching staff and external providers must exercise judgment appropriate in the circumstances.
  3. To assist MILC to discharge its safety responsibilities, MILC has developed an OHS Procedures Manual and Student Safety Risk Register through which MILC identifies potential safety hazards and analyses these in terms of the likelihood of an event occurring, and the potential consequences if the event was to occur.

# Breach

* 1. MILC emphasises the need to comply with the requirements of this policy. Any staff found to be in breach of the requirements of this policy may be subject to disciplinary action, up to and including termination of employment (or engagement, where appropriate). Breaches may also result in appropriate authorities and/or the Police being informed.

# Communication

* 1. This policy is available to parents, students and MILC community via MILC’s website.
  2. This policy is available to staff as part of MILC’s internal policies and procedures, and forms part of MILC’s induction program for incoming staff. Aspects of (and updates to) MILC’s student protection policies will be addressed in MILC’s professional development updates, training programs, and newsletters.

1. **Related documents**