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Student Disability Discrimination Policy

SILVER LINING FOUNDATION AUSTRALIA LTD ('SLFA')
CAIRNS SILVER LINING SCHOOL: VERSION 1 APRIL 2022

Student Disability Discrimination Policy

Purpose:	The purpose of this policy is to protect students with a disability or students who have an associate with a disability from unlawful discrimination, harassment and victimisation on the basis of that disability.	
Scope:	This policy applies to students and employees, including full-time, part-time, permanent, fixed-term and casual employees, as well as contractors, volunteers and people undertaking work experience or vocational placements.	
Accreditation and Board Governance Requirements:	To attain and maintain accreditation, section 11 of <i>Education (Accreditation of Non-State Schools) Regulation 2017</i> provides that a school must have, and implement, written processes for identifying students of the school who are persons with a disability and devising an educational program, specific to the educational needs of students who are persons with a disability. The educational program must comply with the <i>Anti-Discrimination Act 1991</i> (Cth) and the Disability Standards under the <i>Disability Discrimination Act 1992</i> (Cth).	
Status:	Version 1 - Approved	Supersedes: n/a – this is Version 1
Authorised by:	School's Governing Body	Date of Authorisation: April 2022
References:	<ul style="list-style-type: none"> • <u>Anti-Discrimination Act 1991 (Qld)</u> • <u>Australian Human Rights Commission Act 1986 (Cth)</u> • <u>Disability Discrimination Act 1992 (Cth)</u> • <u>Disability Standards for Education 2005 (Cth)</u>, including Guidance Notes • <u>Australian Education Act 2013 (Cth)</u> • Student Bullying Policy • Behaviour Management Policy and procedures • Child Protection Policy • Child Risk Management Strategy • Staff Code of Conduct • Complaints Handling Policy and procedures • Privacy Policy 	
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Policy Owner:	SLFA School Governing Body (the Board of Directors)	

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POLICY STATEMENT

All students at the School have the right to learn in an environment free from unlawful discrimination and all students with disability have the right to the same educational opportunities as other school students.

The School will provide a fair, inclusive and safe learning environment where all students will be have equal opportunities. In particular, the School will ensure that students with a disability are provided with opportunities to help them realise their potential through participating in education and training **on the same basis** as other students.

(Note: bolded and underlined terms on this page are defined below under 'Definitions').

In accordance with relevant law, the School is committed, while students are engaging in their education, to protecting students with a disability and students associated with a person where that person has a disability, from both **direct and indirect**:

- discrimination on the basis of disability
- harassment and victimisation on the basis of disability

In accordance with relevant law, the School will take reasonable steps to prevent unlawful discrimination, including harassment and victimisation, against students on the basis of disability in all facets of education at the School, including:

- enrolment
- participation
- curriculum development, accreditation and delivery
- student support services

The School will aim to eliminate discrimination against persons on the ground of disability in the area of education and training and will ensure, as far as practicable, that persons with disabilities have the same rights to equality before the law in the area of education and training as the rest of the community. The School will promote recognition and acceptance within the community, based on the principle that persons with disabilities have the same fundamental rights as the rest of the community.¹

The School will make **reasonable adjustments** to a student's educational program that do not cause **unjustifiable hardship** on the student so as to ensure that students with a disability are given equality of access to and participation in learning and education.

The School is committed to responding appropriately should discrimination, harassment or victimisation occur, including possible disciplinary action. Any instances of disability discrimination, harassment or victimisation should be reported in the first instance under the School's *Complaints Handling Policy*.

¹ *Disability Discrimination Act 1992* (Cth); *Disability Standards for Education 2005* plus Guidance Notes, p 7.

DEFINITIONS

- **Disability**: in relation to a person, means:

- a) total or partial loss of the person's bodily or mental functions
- b) total or partial loss of a part of the body
- c) the presence in the body of organisms causing disease or illness
- d) the presence in the body of organisms capable of causing disease or illness
- e) the malfunction, malformation or disfigurement of a part of the person's body
- f) a disorder or malfunction that results in the person learning differently from a person without the disorder or malfunction
- g) a disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour

and includes a disability that:

- h) presently exists
- i) previously existed but no longer exists
- j) may exist in the future (including because of a genetic predisposition to that disability)
- k) is imputed to a person.

To avoid doubt, a *disability* that is otherwise covered by this definition includes behaviour that is a symptom or manifestation of the disability.²

- **Associate**, in relation to a person: includes:

- a) a spouse of the person
- b) another person who is living with the person on a genuine domestic basis
- c) a relative of the person
- d) a carer of the person
- e) another person who is in a business, sporting or recreational relationship with the person.³

- **Direct disability discrimination**: a person (the *discriminator*) *discriminates* against another person (the *aggrieved person*) on the ground of a disability of the aggrieved person if, because of the disability, the discriminator treats, or proposes to treat, the aggrieved person less favourably than the discriminator would treat a person without the disability in circumstances that are not materially different.

A person (the *discriminator*) also *discriminates* against another person (the *aggrieved person*) on the ground of a disability of the aggrieved person if:

- a) the discriminator does not make, or proposes not to make, reasonable adjustments for the person; and
- b) the failure to make the reasonable adjustments has, or would have, the effect that the aggrieved person is, because of the disability, treated less favourably than a person without the disability would be treated in circumstances that are not materially different.

² *Disability Discrimination Act 1992* (Cth) s 4.

³ *Disability Discrimination Act 1992* (Cth) s 4.

For the purposes of this section, circumstances are not *materially different* because of the fact that, because of the disability, the aggrieved person requires adjustments.⁴

- **Indirect disability discrimination:** a person (the *discriminator*) *discriminates* against another person (the *aggrieved person*) on the ground of a disability of the aggrieved person if:
 - a) the discriminator requires, or proposes to require, the aggrieved person to comply with a requirement or condition; and
 - b) because of the disability, the aggrieved person does not or would not comply, or is not able or would not be able to comply, with the requirement or condition; and
 - c) the requirement or condition has, or is likely to have, the effect of disadvantaging persons with the disability.

A person (the *discriminator*) also *discriminates* against another person (the *aggrieved person*) on the ground of a disability of the aggrieved person if:

- a) the discriminator requires, or proposes to require, the aggrieved person to comply with a requirement or condition; and
 - b) because of the disability, the aggrieved person would comply, or would be able to comply, with the requirement or condition only if the discriminator made reasonable adjustments for the person, but the discriminator does not do so or proposes not to do so; and
 - c) the failure to make reasonable adjustments has, or is likely to have, the effect of disadvantaging persons with the disability.⁵
- **Reasonable adjustment:** an adjustment to be made by a person is a *reasonable adjustment* unless making the adjustment would impose an unjustifiable hardship on the person.⁶ Each of the following is regarded as an *adjustment*:

- a) a measure or action (or a group of measures or actions) taken by an education provider that has the effect of assisting a student with a disability:
 - i) in relation to an admission or enrolment — to apply for the admission or enrolment; and
 - ii) in relation to a course or program — to participate in the course or program; and
 - iii) in relation to facilities or services — to use the facilities or services;

on the same basis as a student without a disability, and includes an aid, a facility, or a service that the student requires because of his or her disability;

- b) the provision and facilitation of specialised support services which enable a student with a disability to participate in activities for which they are enrolled;
- c) if a change is made to an adjustment mentioned in paragraph (a) or (b) — the adjustment is affected by the change.⁷

⁴ *Disability Discrimination Act 1992* (Cth) s 5(1)-(3).

⁵ *Disability Discrimination Act 1992* (Cth) s 6(1)-(2).

⁶ *Disability Discrimination Act 1992* (Cth) s 4.

⁷ Disability Standards for Education 2005 plus Guidance Notes, 3.3 Adjustments, p 13.

An adjustment is **reasonable** in relation to a student with a disability if it balances the interests of all parties affected (note that what is reasonable for a particular student, or a group of students, with a particular disability may change over time).⁸

- **Unjustifiable hardship:** An adjustment is not mandatory if it would cause ‘unjustifiable hardship’ to the provider⁹ (SLFA is the provider). In determining whether a hardship that would be imposed on a person (the **first person**) (SLFA is regarded as the first person) would be an **unjustifiable hardship**, all relevant circumstances of the particular case must be taken into account, including the following:
 - a) the nature of the benefit or detriment likely to accrue to, or to be suffered by, any person concerned;
 - b) the effect of the disability of any person concerned;
 - c) the financial circumstances, and the estimated amount of expenditure required to be made, by the first person;
 - d) the availability of financial and other assistance to the first person;
 - e) any relevant action plans given to the Commission under section 64.

The burden of proving that something would impose unjustifiable hardship lies on the person claiming unjustifiable hardship.¹⁰

- **Harassment:** It is unlawful for a person who is a member of the staff of an educational institution to harass another person who:
 - a) is a student at that educational institution or is seeking admission to that educational institution as a student; and
 - b) has a disability;in relation to the disability.¹¹

The Disability Standards for Education 2015 plus Guidance Notes¹² provides that **harassment**:

- a) in relation to a person with a disability, includes an action taken in relation to the person’s disability that is reasonably likely, in all the circumstances, to humiliate, offend, intimidate or distress the person; and
 - b) in relation to a person who has an associate with a disability, includes an action taken in relation to the associate’s disability that is reasonably likely, in all the circumstances, to humiliate, offend, intimidate or distress the person or the associate.
- **Victimisation:** a person (the **victimiser**) is taken to commit an act of victimisation against another person if the first-mentioned person subjects, or threatens to subject, the other person to any detriment on the ground that the other person makes or proposes to make a complaint or bring proceedings against the victimiser under relevant laws.¹³

⁸ Disability Standards for Education 2005 plus Guidance Notes, 3.4 Reasonable adjustments, p 14.

⁹ Disability Standards for Education 2005 plus Guidance Notes, p iv.

¹⁰ *Disability Discrimination Act 1992* (Cth) s 11(1)-(2).

¹¹ *Disability Discrimination Act 1992* (Cth) s 37.

¹² 8.1 Meaning of harassment, p 31.

¹³ *Disability Discrimination Act 1992* (Cth) s 42.

- **'On the same basis' means:**

- (1) A person with a disability is able to seek admission to, or apply for enrolment in, an institution **on the same basis** as a prospective student without a disability if the person has opportunities and choices in admission or enrolment that are comparable with those offered to other prospective students without disabilities.
- (2) An education provider treats a prospective student with a disability **on the same basis** as a prospective student without a disability, if the provider makes any decisions about admission or enrolment on the basis that reasonable adjustments will be made so that a prospective student with a disability can participate in school programs and activities and use school facilities and services.
- (3) A person with a disability is able to participate in courses or programs provided by an educational institution, and use the facilities and services provided by it, **on the same basis** as a student without a disability if the person has opportunities and choices in the courses or programs and in the use of the facilities and services that are comparable with those offered to other students without disabilities.¹⁴

RESPONSIBILITIES

School Responsibilities

The School will not unlawfully discriminate, harass or victimise a student on the ground of the student's disability or a disability of any associate of a student. The School acknowledges that its responsibilities are as follows based on the requirements of the *Disability Discrimination Act 1992* (Cth) ('the Act') and the *Disability Standards for Education 2005 (plus Guidance Notes)* which have been formulated under the Act. The School will ensure that it will:

- **Enrolment** - take reasonable steps to ensure that a student with a disability is able to seek admission to, or apply for enrolment in, the School **on the same basis** as a prospective student without a disability, and without experiencing discrimination.
- **Participation** - take reasonable steps to ensure that a student with a disability is able to participate in the courses or programs provided by the School, and use the facilities and services provided by the School, **on the same basis** as a student without a disability, and without experiencing discrimination.
- **Curriculum development, accreditation and delivery** - take reasonable steps to ensure that courses and programs are designed in such a way that a student with a disability is able to participate in the learning experiences (including the assessment and certification requirements) of the course and program **on the same basis** as a student without a disability, and without experiencing discrimination.
- **Student support services** - take reasonable steps to ensure that a student with a disability is able to use support services used by other students of the School in general **on the same basis** as a student without a disability, and without experiencing discrimination.

¹⁴ Disability Standards for Education 2005 plus Guidance Notes, 2.2 Meaning of on the same basis, p 11-12.

- **Harassment and victimisation** - develop and implement strategies and programs to prevent harassment or victimisation of a student with a disability, or a student who has an associate with a disability, in relation to the disability.

In order to treat a student with a disability *on the same basis* as a student without a disability, the School is committed to making all decisions about the student's admission, enrolment, participation in a course or program and use of facilities and services on the basis that reasonable steps will be taken dependent upon the specific circumstances at the time, but may include reasonable adjustments that do not impose an unjustifiable hardship. This process includes:

- Consultation with the student (and their family);
- Consideration of whether an adjustment is necessary;
- If an adjustment is necessary, identification of a reasonable adjustment;
- Whether the adjustment would impose an unjustifiable hardship on the School; and
- Making the reasonable adjustment.

When considering an adjustment for a student with a disability, any confidential information provided to the School will not be disclosed except for the purposes of the adjustment or in accordance with a lawful requirement, in compliance with the School's *Privacy Policy*.

Student and Employee Responsibilities

All students and all SLFA employees and School staff have a responsibility not to engage in discriminatory conduct, including harassment and victimisation, and to uphold the School's policies on these issues.

If students, parents or employees believe that this type of behaviour is occurring in the school, they are able to make a complaint under the School's *Complaints Handling Policy*.

PURPOSE OF DATA COLLECTION

The annual *Nationally Consistent Collection of Data on School Students with Disability* (the 'NCCD') collects information about Australian school students who receive an adjustment to address disability. Nationally consistent information on students in Australian schools receiving adjustments for disability enables schools, education authorities, and governments to better understand the needs of students with disability and how they can be best supported at school.

The School follows guidelines provided by the Department of Education, Skills and Employment which assists the School's teachers and Principal/Head of Campus to determine the level of adjustments provided to students with disability to access and participate in education *on the same basis* as other students.

The NCCD is used to calculate the student with disability loading in recurrent funding for schools provided by the Australian Government. This loading is based on the level of adjustment being provided to the student.

POLICY IMPLEMENTATION

The Disability Standards for Education (the 'Disability Standards') under the *Disability Discrimination Act 1992* (Cth) (the 'DDA') provide a framework for the School to ensure that students with disability are able to access and participate in education *on the same basis* as other students. The Disability Standards provide clarity and specificity for education and training providers and for students with disability.¹⁵

The School will follow the processes set out by the Disability Standards to ensure that students with a disability are provided with opportunities to realise their potential through participating in education and training *on the same basis* as other students.

The School will implement procedures and take all necessary steps to prevent discrimination on the basis of disability, including the following:

- **Awareness** - regularly make employees aware of the need to avoid discrimination, harassment and victimisation. This would include issuing this *Student Disability Discrimination Policy* as well as more direct advice to and discussion with employees, such as through related procedures, and via the clear support and promotion of the policy by the school Principal and senior staff.
- **Training** - regularly take reasonable measures to ensure that employees have sufficient information and expertise concerning non-discriminatory methods of service delivery. This may include the provision of formal training.
- **Complaints Handling Policy** - promoting the School's *Complaints Handling Policy* and procedures and ensuring that complaints are properly and effectively dealt with in accordance with policy.
- **Recording, monitoring, reporting** - implementing other reasonably available monitoring strategies, in addition to complaint mechanisms, including internal monitoring through supervisory and management responsibilities and external monitoring.
- **Culture** - removing any discriminatory or offensive materials, rules and practices and encouraging students, parents, carers and employees to contribute to a healthy school culture.

COMPLIANCE, MONITORING AND RECORD KEEPING

The School has a legal obligation to provide to the Department of Education, Skills and Employment, information about students' disabilities. The required information is specified under the *Australian Education Regulation 2013* (Cth).¹⁶

The information that must be provided for each student with disability at the School is the student's:

- Level of adjustment
- Category of disability
- Year of schooling
- Fraction of the full-time study load
- Whether the student is an overseas student
- Any other information required by the NCCD Guidelines

¹⁵ Disability Standards for Education 2005 plus Guidance Notes, p iii.

¹⁶ Subsections 58A(2), 58A(2A) and 58A(3A).

- Any information specified in a legislative instrument made by the Minister

At a *minimum*, the School must keep records for each student included in the NCCD demonstrating:

1. that the student has a disability as defined in the *Disability Discrimination Act 1992* (Cth), which informs the category of disability specified in the NCCD;
2. that, at least, six weeks of adjustment have been provided (as required under the NCCD Guidelines June 2020) (NB: Best practice however requires the collection of 10 weeks evidence where there is capacity to do so);
3. justification for the adjustment level chosen to be reported in the NCCD (i.e. support provided within Quality Differentiated Teaching Practice, Supplementary, Substantial, Extensive);
4. suitable quality assurance measures exist at each school of the approved authority, to ensure that the NCCD is accurate, meets the requirements of the Australian Government, and is submitted correctly.

The School will maintain documentation which adequately reflects the frequency, range and complexity of adjustments recorded for students with disabilities including:

- curriculum planning documents identifying adjustments;
- timetables for students and staff;
- current confirmation of verification letter;
- use of IEP's/Support Plans to assist teaching staff in meeting the individual learning needs of students with a disability;
- renewal of IEP's every 12 months with ongoing evaluation and review of current IEP's.

RESOURCES

Disability Standards for Education 2005 plus Guidance Notes

<https://www.dese.gov.au/swd/resources/disability-standards-education-2005-plus-guidance-notes>

Data on school students with disability (Qld Government)

<https://education.qld.gov.au/about-us/reporting-data-research/data/disability-data-collection>

NCCD Guidelines

<https://www.nccd.edu.au/tools/nccd-guidelines-0> (Note: these guidelines may change from year to year; the most current version should be used at any relevant time. Access or request the most current guidelines version at <https://www.nccd.edu.au>).

SLFA NCCD Guidelines

These guidelines are available on the School's SharePoint system.