

## School Board

### Exhibit – Title IX Glossary of Terms

Use this exhibit to educate employees and students about Title IX terms, and with the required Title IX response and grievance process in Board policy 2:265, *Title IX Grievance Procedure*, implemented by administrative procedures 2:265-AP1, *Title IX Response*, 2:265-AP2, *Formal Title IX Complaint Grievance Process*, and 2:265-AP3, *Title IX Coordinator*.

#### Glossary of Terms

**Appeal Decisionmaker** – An individual or group, e.g., an administrator or the Board, appointed by the Title IX Coordinator, who reviews an appeal of the Decisionmaker’s determination regarding responsibility or a dismissal of a Complaint (defined below). The Appeal Decisionmaker cannot be the same person as the Decisionmaker, the Investigator, or the Title IX Coordinator. 34 C.F.R. §106.45(d)(3)(iii). The Appeal Decisionmaker must be: free from conflicts of interest or bias against complainants and respondents generally or against an individual Complainant or Respondent; and be trained as set out in 34 C.F.R. §106.8(d)(2) (see the **Training** subhead in administrative procedure 2:265-AP1, *Title IX Response*). 34 C.F.R. §106.45(d)(3)(iv).

**Complainant** – (1) A student or employee who is alleged to have been subjected to conduct that could constitute Title IX Sex Discrimination; or (2) a person other than a student or employee who is alleged to have been subjected to conduct that could constitute Title IX Sex Discrimination and who was participating or attempting to participate in the District’s education program or activity at the time of the alleged Title IX Sex Discrimination. 34 C.F.R. §106.2.

**Complaint** – An oral or written request to the District that objectively can be understood as a request for the District to investigate and make a determination about alleged discrimination under Title IX. 34 C.F.R. §106.2.

**Consent** – Knowing, voluntary, and clear permission by word or action, to engage in mutually agreed upon sexual activity. Consent may not be inferred from silence, passivity, or a lack of verbal or physical resistance. A person’s manner of dress does not constitute consent. Past consent to sexual activities, or a current or previous dating relationship, does not imply ongoing or future consent. Consent to some sexual contact (such as kissing or fondling) cannot be presumed to be consent for other sexual activity (such as intercourse). Consent to engage in sexual activity with one person does not constitute consent to engage in sexual activity with another person. Consent may be withdrawn at any time. A person cannot consent to sexual activity if that person is unable to understand the nature of the activity or give knowing consent due to circumstances, including without limitation the following: (1) the person is incapacitated due to the use or influence of alcohol or drugs; (2) the person is asleep or unconscious; (3) the person is underage; or (4) the person is incapacitated due to a mental disability. The existence of consent is based on the totality of the circumstances, including the context in which the alleged incident occurred. Coercion, force, or the threat of either invalidates consent.

**Note:** The 2024 Title IX regulations do not define *consent*, leaving the definition to the District's discretion. Nothing precludes the District from using a definition of consent that takes into account a student's age or developmental level, but the definition should consider relevant State law and be consistent with applicable disability laws. See 89 Fed Reg. 33519-33521. **Consult the Board Attorney if the District would like to customize this definition.**

**Confidential Employee** – An employee of the District that the District has designated as confidential for the purpose of providing services to persons related to Title IX Sex Discrimination. If the employee also has a duty not associated with providing those services, the employee’s confidential status is only with respect to information received about Title IX Sex Discrimination in connection with providing those services. <sup>1</sup> 34 C.F.R. §106.2.

**Disciplinary Sanctions** – Consequences imposed on a Respondent following a determination under Title IX that the respondent violated the District’s prohibition on Title IX Sex Discrimination. 34 C.F.R. §106.2.

**Impermissible Evidence** – Evidence which must not be accessed or considered (except by the District to determine whether: an exception applies, it must not be disclosed, and/or must not otherwise be used), regardless of whether it is relevant because it is (34 C.F.R. §106.45 (b)(7)(i)-(iii)):

1. Evidence that is protected under a privilege as recognized by federal or State law or is evidence provided to a confidential employee, unless the person to whom the privilege or confidentiality is owed has voluntarily waived the privilege or confidentiality;
2. A party’s or witness’s records that are made or maintained by a physician, psychologist, or other recognized professional or paraprofessional in connection with the provision of treatment to the party or witness, unless the District obtains that party’s or witness’s voluntary, written consent for use in the District’s Title IX Complaint Grievance Process (Grievance Process) under administrative procedure 2:265-AP2, *Formal Title IX Complaint Grievance Process*; or
3. Evidence that relates to the Complainant’s sexual interests or prior sexual conduct, unless evidence about the Complainant’s prior sexual conduct is offered to prove that someone other than the Respondent committed the alleged conduct or is evidence about specific incidents of the Complainant’s prior sexual conduct with the Respondent that is offered to prove consent to the alleged sex-based harassment. The fact of prior consensual sexual conduct between the Complainant and Respondent does not by itself demonstrate or imply the Complainant’s consent to the alleged sex-based harassment or preclude determination that sex-based harassment occurred.

**Decisionmaker** – An individual designated by the Title IX Coordinator to make a written determination regarding whether Title IX Sex Discrimination occurred using the preponderance of the evidence standard. 34 C.F.R. §106.45(h)(1). The Decisionmaker may be the same person as the Title IX Coordinator or Investigator. 34 C.F.R. §106.45(b)(2). The Decisionmaker cannot have served as the Informal Resolution Facilitator for the same Complaint. 34 C.F.R. §106.44(k)(4). The Decisionmaker must be: free from conflicts of interest or bias against complainants and respondents generally or against an individual Complainant or Respondent; and be trained as set out in 34 C.F.R. §106.8(d)(2) (see the **Training** subhead in administrative procedure 2:265-AP1, *Title IX Response*). 34 C.F.R. §§106.45(b)(2), 106.8(d)(2)(iii).

**Investigator** – An individual designated by the Title IX Coordinator to investigate a Complaint using the Grievance Process. The Investigator may be the same person as the Title IX Coordinator or Decisionmaker. 34 C.F.R. §106.45(b)(2). The Investigator cannot have served as the Informal Resolution Facilitator for the same Complaint. 34 C.F.R. §106.44(k)(4). The Investigator must be: free from conflicts of interest or bias against complainants and respondents generally or against an

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The footnotes should be removed before the material is used.

<sup>1</sup> Title IX regulations do not require districts to designate confidential employees. Consult the board attorney about whether to designate any employees as *confidential employees* and the practical implications of doing so.

individual Complainant or Respondent; and be trained as set out in 34 C.F.R. §106.8(d)(2) (see the **Training** subhead in 2:265-AP1, *Title IX Response*). 34 C.F.R. §§106.8(d)(2), 106.45(b)(2).

**Informal Resolution Facilitator** – An individual designated by the Title IX Coordinator to facilitate the District’s informal resolution process, detailed in **Section F. Informal Resolution of Title IX Sex Discrimination Complaint** of 2:265-AP2, *Formal Title IX Complaint Grievance Process*. The Informal Resolution Facilitator must: not be the same person as the Investigator or Decisionmaker; be trained on the rules and practices associated with the District’s informal resolution process; be trained to serve impartially; and be free of conflicts of interest and bias. 34 C.F.R. §§106.8(d)(3).

**Parental Status** – The status of a person who, with respect to another person who is under the age of 18 or who is 18 or older but is incapable of self-care because of a physical or mental disability, is: a biological parent; an adoptive parent; a foster parent; a stepparent; a legal custodian or guardian; in loco parentis with respect to such a person; or actively seeking legal custody, guardianship, visitation, or adoption of such a person. 34 C.F.R. §106.2.

**Party** – A Complainant or Respondent. 34 C.F.R. §106.2.

**Peer Retaliation** – Retaliation by a student against another student. 34 C.F.R. §106.2.

**Preponderance of the Evidence** – Preponderance of the evidence is defined to mean “the greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force.” Black’s Law Dictionary, 11th ed. 2019.

**Pregnancy or Related Conditions** – Pregnancy, childbirth, termination of pregnancy, or lactation; medical conditions related to pregnancy, childbirth, termination of pregnancy, or lactation; or recovery from pregnancy, childbirth, termination of pregnancy, lactation, or related medical conditions. 34 C.F.R. §106.2.

**Relevant** – Related to the allegations of Title IX Sex Discrimination under investigation. Relevant questions are those which seek evidence that may aid in showing whether the alleged Title IX Sex Discrimination occurred. Evidence is relevant when it may aid a Decisionmaker in determining whether the alleged Title IX Sex Discrimination occurred. 34 C.F.R. §106.2.

**Remedies** – Measures provided, as appropriate, to a Complainant or any other person the District identifies as having had their equal access to the District’s education program or activity limited or denied by Title IX Sex Discrimination. These measures are provided to restore or preserve that person’s access to the District’s education program or activity after a District determines that Title IX Sex Discrimination occurred. 34 C.F.R. §106.2.

**Respondent** – A person who is alleged to have violated the District’s prohibition on Title IX Sex Discrimination. 34 C.F.R. §106.2.

**Retaliation** – Intimidation, threats, coercion, or discrimination against any person by the District, a student, or an employee or other person authorized by the District to provide aid, benefit, or service under the District’s education program or activity, for the purpose of interfering with any right or privilege secured by Title IX or its regulations, or because the person has reported information, made a complaint, or participated or refused to participate in any manner in an investigation, proceeding, or hearing under the Title IX regulations. Nothing in this definition precludes the District from requiring an employee or other person authorized by the District to provide aid, benefit, or service under the District’s education program or activity to participate as a witness in, or otherwise assist with, an investigation or proceeding under Title IX. 34 C.F.R. §106.2.

**Sex-based Harassment** – Prohibited conduct which is a form of Title IX Sex Discrimination and means sexual harassment and other harassment on the basis of sex (including based on sex stereotypes, sex characteristics, pregnancy or related conditions, sexual orientation, and gender identity), that is (34 C.F.R. §106.2):

1. **Quid pro quo harassment.** An employee, agent, or other person authorized by the District to provide an aid, benefit, or service under the recipient’s education program or activity explicitly or impliedly conditioning the provision of such an aid, benefit, or service on a person’s participation in unwelcome sexual conduct;
2. **Hostile environment harassment.** Unwelcome sex-based conduct that, based on the totality of the circumstances, is subjectively and objectively offensive and is so severe or pervasive that it limits or denies a person’s ability to participate in or benefit from the recipient’s education program or activity (i.e., creates a hostile environment). Whether a hostile environment has been created is a fact-specific inquiry that includes consideration of the following:
  - a. The degree to which the conduct affected the complainant’s ability to access the District’s education program or activity;
  - b. The type, frequency, and duration of the conduct;
  - c. The parties’ ages, roles within the District’s education program or activity, previous interaction, and other factors about each party that may be relevant to evaluating the effects of the conduct;
  - d. The location of the conduct and the context in which the conduct occurred; and
  - e. Other sex-based harassment in the recipient’s education program or activity; or
3. **Specific offenses.**
  - a. *Sexual assault*, meaning an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system of the Federal Bureau of Investigation.<sup>2</sup>
  - b. *Dating violence*, meaning violence committed by a person (1) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (2) where the existence of such a relationship shall be determined based on a consideration of the following factors: (a) the length of the relationship; (b) the type of relationship; and (c) the frequency of interaction between the persons involved in the relationship.
  - c. *Domestic violence*, meaning felony or misdemeanor crimes committed by a person who: (1) is a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction of the recipient, or a person similarly situated to a spouse of the victim; (2) is cohabitating, or has cohabitated, with the victim as a spouse or intimate partner; (3) shares a child in common with the victim; or (4) commits acts against a youth or adult victim who is protected from those acts under the family or domestic violence laws of the jurisdiction; or
  - d. *Stalking*, meaning engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for the person’s safety or the safety of others; or (2) suffer substantial emotional distress.

**Supportive Measures** – Individualized measures offered as appropriate, as reasonably available, without unreasonably burdening a Complainant or Respondent, not for punitive or disciplinary reasons, and without fee or charge to the Complainant or Respondent to: (1) restore or preserve that party’s access to the District’s education program or activity, including measures that are designed to protect

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<sup>2</sup> See [www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/ucr](http://www.fbi.gov/how-we-can-help-you/more-fbi-services-and-information/ucr).

the safety of the parties or the District's educational environment; or (2) provide support during the Grievance Process or during the informal resolution process. Supportive measures may vary depending on what the District deems to be reasonably available. These measures may include, but are not limited to: counseling, extensions of deadlines and other course-related adjustments, campus escort services, increased security and monitoring of certain areas of the campus, restrictions on contact applied to one or more parties, leaves of absence, changes in schedules (work, class, housing, extracurricular, or any other activity) regardless of whether there is or is not a comparable alternative, and training or education programs related to sex-based harassment. 34 C.F.R. §§106.2, 106.44(g)(1). If the Grievance Process or informal resolution process has been initiated, the Title IX Coordinator must offer and coordinate supportive measures for the Respondent. 34 C.F.R. §106.44(f)(i)(ii).

**Sex Discrimination Governed by Laws Other Than Title IX** – The District must also address sex discrimination that does not meet the definition of Title IX Sex Discrimination, including but not limited to sex discrimination and/or sexual harassment in violation of the State Officials and Employees Ethics Act (5 ILCS 430/), Illinois Human Rights Act (775 ILCS 5/), and Title VII of the Civil Rights Act of 1964 (42 U.S.C. §2000e et seq.).

For each report or complaint received, the Title IX Coordinator reviews the following Board policies<sup>3</sup> to determine if they require additional action by the District in addition to or at the exclusion of policy 2:265, *Title IX Grievance Procedure*:

- 2:260, *Uniform Grievance Procedure*. This policy provides a method for any student, parent/guardian, employee, or community member to file a complaint if he or she believes that the School Board, its employees, or its agents have violated his or her rights under the State or federal Constitution, State or federal statute, Board policy, or various enumerated bases.
- 5:10, *Equal Employment Opportunity and Minority Recruitment*. This policy requires that equal employment opportunities be available to all persons without regard to, among other protected statuses: sex; sexual orientation; being a victim of domestic violence, sexual violence, gender violence, or any other crime of violence; and pregnancy, childbirth, or related medical conditions.
- 5:20, *Workplace Harassment Prohibited*. This policy prohibits harassment by employees on the basis of, among other protected statuses: sex; sexual orientation; and pregnancy.
- 5:90, *Abused and Neglected Child Reporting*. This policy requires employees who suspect or receive knowledge that a student may be an abused or neglected child to immediately report their suspicion to the Ill. Dept. of Children and Family Services (DCFS). If an employee reports an alleged incident of sexual abuse to DCFS and DCFS accepts the report for investigation, it further requires the District to coordinate with the local Children's Advocacy Center.<sup>4</sup>
- 5:120, *Employee Ethics; Code of Professional Conduct; and Conflict of Interest*. This policy sets forth standards for employee ethics and conduct, and incorporates by reference the Code of Ethics for Illinois Educators.
- 7:10, *Equal Educational Opportunities*. This policy requires that equal educational and extracurricular opportunities be available for all students without regard to, among other

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<sup>3</sup> Ensure the referenced locally adopted board policies contain the language paraphrased in this exhibit. If not, either substitute similar language from the locally adopted board policies on the same topics, or insert the titles from relevant locally adopted policies.

<sup>4</sup> Delete the second sentence if your district is not within a county served by an accredited Children's Advocacy Center. For further discussion see f/n 14 in sample policy 5:90, *Abused and Neglected Child Reporting*.

protected statuses: sex; sexual orientation; gender identity; and actual or potential parental status, including pregnancy.

- 7:20, *Harassment of Students Prohibited*. This policy prohibits harassment, intimidation, or bullying of students on the basis of, among other protected statuses, actual or perceived: sex; sexual orientation; gender identity; gender-related identity or expression; and actual or potential parental status, including pregnancy.
- 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*. This policy prohibits students from engaging in bullying, intimidation, and harassment at school, school-related events, and electronically. Prohibited conduct includes stalking, sexual harassment, sexual violence, or retaliation for asserting or alleging an act of bullying.
- 7:185, *Teen Dating Violence Prohibited*. This policy prohibits students 13-19 years of age<sup>5</sup> from using or threatening to use physical, mental, or emotional abuse to control an individual in the dating relationship, and from using or threatening to use sexual violence in the dating relationship.
- 7:190, *Student Behavior*. This policy sets forth student conduct rules, prohibited student conduct, and behavioral interventions and disciplinary measures designed to address the causes of misbehavior and teach students positive behavioral skills.

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<sup>5</sup> Ensure the age range stated here aligns with the age range stated in locally adopted board policy 7:185, *Teen Dating Violence Prohibited*.