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*, and 2:265-AP2, *Formal Title IX Complaint Grievance Process*.

Glossary of Terms

Actual Knowledge – Notice of sexual harassment or allegations of sexual harassment to any District employee or to the District's Title IX Coordinator. Assumption of knowledge based solely on the District's status as an employer or other presumption under law does not constitute actual knowledge. This standard is not met when the only official of the District with actual knowledge is the Respondent. *Notice* as used here includes, but is not limited to, a report or complaint of sexual harassment to the Title IX Coordinator in person, by mail, by telephone, or by email using the contact information listed for the Title IX Coordinator, or by any other means that results in the Title IX Coordinator receiving the person's verbal or written report. 34 C.F.R. §§ 106.30, 106.8(a).

Appellate Decision-Maker – An individual or group, e.g., a Board-appointed appeal examiner or the Board, which reviews an appeal of the Initial Decision-Maker's determination regarding responsibility or a dismissal of a Formal Title IX Sexual Harassment Complaint (defined below). The Appellate Decision-Maker cannot be the same person as the Initial Decision-Maker, the Investigator, or the Title IX Coordinator. 34 C.F.R. §106.45(b)(8)(iii)(B). The Appellate Decision-Maker must be free from conflicts of interest or bias against complainants and respondents generally or against an individual Complainant or Respondent, and must be trained to serve impartially. 34 C.F.R. §106.45(b)(1)(iii).

Complainant – An individual who is alleged to be the victim of conduct that could constitute sexual harassment. 34 C.F.R. §106.30.

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 under age; 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:** 34 C.F.R. §106.30, added at 85 Fed. Reg. 30574, states that Title IX recipients are not required to adopt a particular definition of consent with respect to sexual assault; however, in its 2020 Title IX rulemaking, the U.S. Dept. of Education (DOE) stated that "recipients must clearly

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define consent and must apply that definition consistently." 85 Fed. Reg. 30125. **Consult the Board Attorney if the District would like to customize this definition.**

Education Program or Activity – Includes locations, events, or circumstances in the United States over which the District exercised substantial control over both the Respondent and the context in which the sexual harassment occurred. 34 C.F.R. §106.44(a).

Note: Title IX jurisdiction is geographically limited to discrimination against a person in the United States. 34 C.F.R. §106.8(d). The District's Title IX obligations extend to off-campus sexual harassment incidents "if the off-campus incident occurs as part of the [district]'s 'operations' pursuant to 20 U.S.C. 1687 and 34 CFR 106.2(h)" or if the District "exercised substantial control over the respondent and the context of alleged sexual harassment that occurred off campus pursuant to § 106.44(a)." 85 Fed. Reg. 30196. No single factor is determinative of whether the District exercised *substantial control* or whether an incident occurred as part of the District's *operations*. Id. at 30197. *Operations* may include computer and internet networks, digital platforms, and computer hardware or software owned or operated by, or used in, the District's operations. Id. at 30202. **Consult the Board Attorney for further guidance.**

Formal Title IX Sexual Harassment Complaint – A document filed by a Complainant or signed by the Title IX Coordinator alleging sexual harassment against a Respondent and requesting that the District investigate the allegation. At the time of filing a Formal Title IX Sexual Harassment Complaint, a Complainant must be participating in or attempting to participate in the District's education program or activity with which the Formal Title IX Sexual Harassment Complaint is filed.

Note: Whether a Complainant is *attempting to participate* is a fact-specific inquiry. For example, a Complainant who has graduated may still be attempting to participate in an education program where he or she intends to remain involved in alumni programs or activities. 85 Fed. Reg. 30138. **Consult the Board Attorney for further guidance.**

Initial Decision-Maker – An individual designated by the Title IX Coordinator to reach an initial determination regarding responsibility in a Formal Title IX Sexual Harassment Complaint (defined above) by applying the standard of proof set forth in administrative procedure 2:265-AP2, *Formal Title IX Complaint Grievance Process*. See 85 Fed. Reg. 30054. The Title IX Coordinator cannot be the Initial Decision-Maker. 34 C.F.R. §106.45(b)(7)(i). The Initial Decision-Maker must be free from conflicts of interest or bias against complainants and respondents generally or against an individual Complainant or Respondent, and must be trained to serve impartially. 34 C.F.R. §106.45(b)(1)(iii).

Investigator – The Title IX Coordinator or an individual designated by the Title IX Coordinator to investigate a Formal Title IX Sexual Harassment Complaint (defined above) according to administrative procedure 2:265-AP2, *Formal Title IX Complaint Grievance Process*. The Investigator must be free from conflicts of interest or bias against complainants and respondents generally or against an individual Complainant or Respondent, and must be trained to serve impartially. 34 C.F.R. §106.45(b)(1)(iii).

Respondent – An individual who has been reported to be the perpetrator of the conduct that could constitute sexual harassment. 34 C.F.R. §106.30.

Supportive Measures – Non-disciplinary, non-punitive individualized services offered as appropriate, as reasonably available, and without fee or charge to a Complainant or Respondent before or after the filing of a Formal Title IX Sexual Harassment Complaint or where no Formal Title IX Sexual Harassment Complaint has been filed. Such measures are designed to restore or preserve equal access to the District's education program or activity without unreasonably burdening the other party, including measures designed to protect the safety of all parties or the District's educational environment, or deter sexual harassment. Supportive measures may include counseling, extensions of

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deadlines or other course-related adjustments, modifications of work or class schedules, campus escort services, mutual restrictions on contact between the parties, changes in work locations, leaves of absence, increased security and monitoring of certain areas of the campus, and other similar measures. The District will maintain as confidential any supportive measures provided to a Complainant or Respondent, to the extent that maintaining such confidentiality would not impair the ability of the District to provide the supportive measures. The Title IX Coordinator is responsible for coordinating the effective implementation of supportive measures. 34 C.F.R. §106.30.

Sexual Harassment Governed by Laws Other Than Title IX – The District must also address sexual harassment that does not meet the definition of Title IX sexual harassment, including but not limited to 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 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.
- 5:20, *Workplace Harassment Prohibited*. This policy prohibits employees from engaging in sexual harassment.
- 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.
- 5:120, *Employee Ethics; Code of Professional Conduct; and Conflict of Interest*. This policy sets forth high standards for employee ethics and conduct, and incorporates by reference the Code of Ethics for Illinois Educators.
- 7:20, *Harassment of Students Prohibited*. This policy prohibits all sexual harassment of students.
- 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 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.
- 7:255, *Students Who are Parents, Expectant Parents, or Victims of Domestic or Sexual Violence*. This policy requires that support services be provided to students who are parents, expectant parents, or victims of domestic or sexual violence under 105 ILCS 5/26A. It also provides a complaint resolution procedure to address alleged violations of 105 ILCS 5/26A.

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Title IX Sexual Harassment – Conduct on the basis of sex that satisfies one or more of the following (34 C.F.R. §106.30):

- A District employee conditions the provision of an aid, benefit, or service on an individual's participation in unwelcome sexual conduct; or
- Unwelcome conduct determined by a reasonable person to be so severe, pervasive, and objectively offensive that it effectively denies a person equal access to the District's education program or activity; or
- *Sexual assault* as defined in 20 U.S.C. §1092(f)(6)(A)(v), *dating violence* as defined in 34 U.S.C. §12291(a)(11), *domestic violence* as defined in 34 U.S.C. §12291(a)(12), or *stalking* as defined in 34 U.S.C. §12291(a)(36).
    - *Sexual assault* means an offense classified as a forcible or nonforcible sex offense under the uniform crime reporting system (UCR Program) of the Federal Bureau of Investigation (FBI), and includes rape, fondling, incest, and statutory rape. 20 U.S.C. §1092(f)(6)(A)(v); 34 C.F.R. Part 668, Appendix A to Subpart D. For more information regarding the FBI UCR Program, see www.fbi.gov/services/cjis/ucr/.
    - *Dating violence* means 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 length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship. 34 U.S.C. §12291(a)(11).
    - *Domestic violence* includes any felony or misdemeanor crimes committed by a current or former spouse or intimate partner of the victim under the family or domestic violence laws of the jurisdiction receiving grant funding and, in the case of victim services, includes the use or attempted use of physical abuse or sexual abuse, or a pattern of any other coercive behavior committed, enabled, or solicited to gain or maintain power and control over a victim, including verbal, psychological, economic, or technological abuse that may or may not constitute criminal behavior, by a person who: (1) is a current or former spouse or intimate partner of the victim, or 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 domestic or family violence laws of the jurisdiction. 34 U.S.C. §12291(a)(12).
    - *Stalking* means engaging in a course of conduct directed at a specific person that would cause a reasonable person to: (1) fear for his or her safety or the safety of others, or (2) suffer substantial emotional distress. 34 U.S.C. §12291(a)(36).

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