



Book	SMSD Policies
Section	A: School District Organization
Title	Prohibition of Discrimination, Harassment, and Retaliation
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### **Statement of Prohibition of Discrimination, Harassment, and Retaliation**

The Shawnee Mission School District is strongly committed to maintaining an educational environment and workplace that is free from discrimination, harassment, and retaliation in admission or access to, or treatment or employment in, its programs, services, activities, and facilities. The District will provide equal opportunity in all areas of education, recruiting, hiring, retention, promotion, and contracted service. The District strictly prohibits discrimination and harassment against students, employees, or others on the basis of race, creed, religion, color, national origin, ancestry, age, sex, sexual orientation, gender identity, disability, genetic information, or any statutorily prohibited basis. Any form of discrimination or harassment toward any person associated with the District, regardless of where the conduct occurs, is a violation of this policy. The District also strictly prohibits retaliatory actions against those who engage in protected activities.

All policies of the Board of Education and administrative procedures shall be enforced in compliance with this policy.

### **Statement of Compliance with Non-Discrimination and Equal Access Laws**

The District will comply with the provisions and requirements of:

- Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in education programs and activities, and which protects students and employees of educational institutions from sex discrimination and sexual harassment
- Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin in programs that receive federal financial assistance
- Title VII of the Civil Rights Act of 1964, which prohibits employment discrimination based on race, color, religion, sex (including discrimination on the basis of pregnancy, childbirth, and related medical conditions and discrimination based on sexual orientation or gender identity), and national origin
- Section 504 of the 1973 Rehabilitation Act, which protects qualified individuals with disabilities from discrimination in programs that receive federal financial assistance and which requires reasonable accommodations for individuals with disability
- Individuals with Disabilities Education (IDEA), which ensures students with a disability are provided with Free Appropriate Public Education (FAPE)
- Americans with Disabilities Act (ADA), which prohibits discrimination on the basis of disability, which guarantees equal opportunity for individuals with disabilities in employment, public

accommodations, transportation, state and local government services, and telecommunications, and which requires reasonable accommodations for individuals with disabilities

- Title II Subtitle A of the Americans with Disabilities Act (ADA), which protects qualified individuals with disabilities from discrimination in the services, programs, or activities provided by State and local government entities
- Age Discrimination in Employment Act (ADEA), which protects applicants and employees 40 years of age and older from discrimination on the basis of age in hiring, promotion, discharge, compensation, or terms, conditions or privileges of employment
- Genetic Information Nondiscrimination Act (GINA), which prohibits discrimination based on genetic discrimination in health insurance and employment
- Kansas Act Against Discrimination and Kansas Age Discrimination in Employment Act, which prohibit discrimination in employment on the basis of race, religion, color, sex, disability, national origin, ancestry, or age
- Boy Scouts of America Equal Access Act, which requires equal access to District facilities and related benefits and services, and which prohibits discrimination against any group officially affiliated with the Boy Scouts of America, the Girl Scouts of the United States of America, or any other designated youth groups
- U.S. Department of Agriculture (USDA) civil rights regulations and policies, which prohibit discrimination in any program or activity conducted or funded by the USDA, including the National School Lunch Program, the School Breakfast Program, and the Summer Food Service Program

In addition to the prohibitions and protections outlined above, retaliation is prohibited by civil rights laws, and individuals who exercise their rights under those laws are protected from retaliatory acts.

### **Equal Opportunity Employer**

The District is an equal opportunity employer and will not discriminate in its employment practices and policies with respect to hiring, compensation, terms, conditions, or privileges of employment because of a person's race, creed, religion, color, national origin, ancestry, age, sex, sexual orientation, gender identity, disability, genetic information, or any statutorily prohibited basis. Discrimination on any of these characteristics will not be tolerated. The District will make reasonable accommodations to applicants and employees who need them for medical or religious reasons, as required by law.

### **Definition of Discrimination, Harassment, and Retaliation**

*Protected Class:* A person's race, creed, religion, color, national origin, ancestry, age, sex, sexual orientation, gender identity, disability, genetic information, or any statutorily protected basis

*Discrimination:* Unequal, adverse, or negative treatment of a person or class of persons based on one or more protected class that denies or limits the person's ability to obtain educational benefits or that interferes with the educational or work environment

Conduct that could constitute prohibited discrimination includes, but is not limited to, the following if based on a protected class: unequal treatment in regard to the terms and conditions of employment (e.g., hiring, firing, compensation, benefits, assignment, transfer, recall, layoff or RIF, recruitment, testing, access to facilities and programs, training, etc.); unequal treatment in terms of educational programs or opportunities (e.g., discipline, grading, class assignments, testing, internships, access to facilities, admission to programs, etc.); employment or academic decisions based on stereotypes or assumptions about a person's abilities, traits, or performance.

*Harassment:* A form of discrimination; any unwelcome verbal, written, physical, or other conduct toward a person or class of persons based on a protected class that is sufficiently severe, pervasive, and/or persistent that it unreasonably interferes with, or deprives the person from participating in or benefiting from the District's education or employment programs and/or activities

Conduct that could constitute prohibited harassment includes, but is not limited to, the following if based on a protected class: slurs; derogatory stereotypes or remarks; name-calling or insults, including name-calling or insults about personal appearance or hair; teasing or taunting; derogatory jokes; derogatory gestures; display of derogatory drawings, graffiti, pictures, symbols or other written material; threats or intimidating conduct; hostile action or physical acts of aggression or violence; theft or damage to property. A single sufficiently serious act, such as an act of physical violence or quid pro quo, can amount to harassment if the act is based on a protected class.

*Sexual Harassment:* A form of harassment based on sex, sexual orientation, or gender identity involving unwelcome conduct of a sexual nature

Behaviors that could constitute prohibited sexual harassment include: conditioning the provision of an aid, benefit, or service on a person's participation in unwelcome sexual conduct (quid pro quo); punishing or reprimanding persons who refuse to comply with sexual requests, activities, or contact; sexual violence, including but not limited to sexual assault, unwanted sexual contact, or sexual coercion perpetrated against a person's will or where a person is incapable of giving consent; stalking; physical contact or touching of a sexual nature, including touching of intimate parts and sexually-motivated or inappropriate patting, pinching or rubbing; sexual advances and requests or pressure of any kind for sexual favors, activities, or contact; name-calling, slurs, jokes, gestures or communications of a sexual nature or based on sex; comments about an individual's body, sexual activity or sexual attractiveness.

Sexual harassment may occur between persons of the same or opposite sex. Any conduct of a sexual nature directed by an employee toward a student is presumed to be unwelcome.

*Retaliation:* Intimidation, threats, coercion, or discrimination against a person based on the person engaging in a protected activity

*Protected Activity:* Making a complaint of prohibited discrimination or harassment, reporting prohibited discrimination or harassment, or participating in an investigation, formal proceeding or informal resolution, whether conducted internally or outside the District, concerning prohibited discrimination or harassment

### **Compliance Coordinator**

The Compliance Coordinator designation and responsibilities are jointly held by the Director of Student and Family Services and the General Counsel, who can be reached at 8200 W. 71st Street, Shawnee Mission, Kansas, 66204, (913) 993-6200, and whose individual contact information can be found on the District's website. As used in this policy, the term "Compliance Coordinator" refers to one or both individuals.

The Compliance Coordinator or designee has the following responsibilities:

1. Coordinate compliance with this policy and the law.
2. Serve as the District's designated Title IX, Section 504, and Title II coordinator, as well as the contact person for compliance with other non-discrimination laws.
3. Receive complaints of discrimination, harassment, or retaliation.
4. Oversee the grievance process, including coordinating the effective implementation of supportive measures and remedies.
5. Make recommendations regarding changing this policy or the implementation of this policy.
6. In coordination with the Coordinator of Diversity, Equity, and Inclusion, assess the training needs of District staff and students in connection with this policy, and coordinate training as necessary to meet the goals of this policy.

### **Reporting Responsibility**

All District employees share in the responsibility of preventing and responding to discrimination, harassment, and retaliation. All employees who personally observe conduct that could constitute discrimination, harassment, or retaliation, or who are notified about an allegation of discrimination, harassment, or retaliation, or about conduct or events reasonably suggesting that such conduct has

occurred, are required to immediately report the conduct to the Compliance Coordinator. Additionally, employees who observe discrimination, harassment, or retaliation are expected to intervene to stop the conduct in situations in which they have supervisory control and it is safe to do so.

Some conduct qualifying as discrimination, harassment, or retaliation, particularly conduct involving physical or sexual violence, may also qualify as child abuse or neglect and/or a crime. Before taking any action related to this policy, an employee should determine whether there is reasonable cause to suspect that child abuse or neglect has occurred, triggering the employee's mandatory reporting obligation under Policy GAAD. The employee also should determine whether they have reason to believe that the conduct constituted the commission of a felony or misdemeanor, involved the possession of a weapon or drugs, or resulted in or was substantially likely to have resulted in serious bodily injury to others, triggering the employee's duty to report the conduct to law enforcement under Policies EBC and JDDB.

If at any point during a grievance investigation an employee has reasonable suspicion that the underlying conduct involved child abuse or neglect, the employee is required to immediately contact the Department for Children and Families (DCF). If at any point during a grievance investigation an employee has reason to believe that the underlying conduct involved the commission of a crime the employee is required to immediately contact law enforcement officials or ensure that a building principal has contacted law enforcement.

District employees who fail to meet these reporting requirements will be subject to discipline, up to and including termination, but in no event will a victim be disciplined for failing to make a report.

All students, parents, visitors, community members, contractors, and others must immediately report any conduct that could constitute discrimination, harassment, or retaliation to the Compliance Coordinator, or to any District employee with whom they are comfortable discussing the conduct.

### **Grievance Process - Definitions**

*Prohibited Conduct:* Discrimination, harassment (including sexual harassment), or retaliation as defined above; aiding, abetting, inciting, compelling, or coercing discrimination, harassment, or retaliatory actions; discrimination, harassment or retaliation against any person because of their association with a person protected from such conduct in accordance with this policy

*Complainant:* Any person who is participating in or attempting to participate in the District's education or employment programs and/or activities and who is alleged to be the victim of conduct that could constitute prohibited conduct

*Formal Complaint:* A document filed by or on behalf of a complainant alleging prohibited conduct, or a document signed by the Compliance Coordinator setting forth a report of alleged prohibited conduct

Where a complainant is unable for any reason to file a complaint, for example due to age or disability, a complaint may be filed by a parent, guardian, or representative on behalf of the complainant.

*Respondent:* A person who has been reported to be the perpetrator of conduct that could constitute prohibited conduct

*Party/Parties:* All complainant(s) and respondent(s) involved in a formal complaint; formal complaints may involve multiple complainants and/or respondents

*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 complaint or where no formal complaint has been filed, which are designed to restore or preserve equal access to education or employment programs and/or activities without unreasonably burdening the other party, including measures designed to protect the safety of parties or the educational/work environment or to deter prohibited conduct

The range of supportive measures for students include, but are not limited to: separating or restricting contact between the parties; altering class schedules, passing periods, or class seating arrangements; offering counseling, social emotional programming or other supportive resources; providing additional supervision or monitoring for a student; placing an employee-respondent on leave during the pendency of an investigation; and assisting with filing criminal charges.

The range of supportive measures for employees include, but are not limited to: separating or restricting contact between the parties; altering duties, work schedules, or work locations; placing an employee-respondent on leave during the pendency of an investigation; and assistance with filing criminal charges.

*Working Days:* Days on which the District's business offices are open

*Investigator:* The District administrator designated to investigate a formal complaint

For formal complaints alleging student-on-student prohibited conduct, the building principal, associate principal, athletic director, or administrative intern will be the designated investigator.

For formal complaints alleging student-on-staff prohibited conduct, a building principal from a school building that the student does not attend will be the designated investigator.

For formal complaints alleging staff-on-staff prohibited conduct, staff-on-student prohibited conduct, and all other formal complaints, a Human Resources Director or Human Resources Coordinator or designee will be the designated investigator.

*Decision-Maker:* The District administrator designated to issue a decision regarding an investigation conducted into a formal complaint alleging sexual harassment under Title IX.

For formal complaints against student-respondents alleging sexual harassment under Title IX, the designated decision-maker will be a Director of Elementary or Secondary Services or designee.

For formal complaints against staff-respondents alleging sexual harassment under Title IX and all other formal complaints implicating Title IX, the designated decision-maker will be the Associate Superintendent of Human Resources or designee.

*Remedy:* Prompt, effective, and appropriate action taken to restore or preserve equal access to education or employment programs and/or activities that is taken with the goal of preventing future recurrence of prohibited conduct and redressing the effects of prohibited conduct

Remedies may have educational, restorative, rehabilitative, and/or punitive components. Remedies may include, but are not limited to: the same services provided as supportive measures; follow-up contact with a complainant; disciplinary sanctions or consequences against the respondent; additional training for students and/or employees; and data reviews, assessments, or climate checks to ensure compliance with this policy.

*Appeal Officer:* The District administrator assigned to issue a decision regarding appeal of an investigation determination

For all formal complaints, the appeal officer will be the Deputy Superintendent or designee.

## **Grievance Process - Overview**

The protections of this policy apply to all students, employees, parents, and visitors to District property or District-sponsored activities or events. The District will investigate and address alleged prohibited conduct regardless of where it occurs.

When a party is a student under 18 years old, all written notifications provided pursuant to this policy will be directed to the student's parents/guardians.

The grievance process may be temporarily delayed and/or timelines may be extended for good cause with written notice to the parties explaining the reason(s) for the action.

#### Effect of Law Enforcement Investigation

When a Compliance Coordinator, investigator, decision-maker, or appeal officer reasonably believes that a law enforcement investigation will commence, they immediately will temporarily suspend the grievance process and investigative efforts, but will continue supportive measures as appropriate. However, the Compliance Coordinator in conjunction with the District's Chief of Police, may decide that continuation of the internal investigation during a pending law enforcement investigation is permissible and necessary due to: requirements under state or federal law including student due process rights related to discipline; delay in the law enforcement investigation; and/or exceptional circumstances. As soon as the District becomes aware that the law enforcement investigation has concluded, the grievance process will resume. A finding by law enforcement that no wrongdoing occurred will not determine the outcome of the District's investigation but will be considered along with the other evidence.

In the event that any person involved in an investigation has a concern that the designated investigator, decision-maker, or appeal officer may have a bias or conflict of interest, or for any other reason, the Compliance Coordinator will evaluate the situation and determine in their sole discretion whether to designate a different internal investigator, decision-maker, or appeal officer. In their sole discretion, the Compliance Coordinator may choose to retain an outside investigator, decision-maker, or appeal officer.

At any time during the grievance process before a determination is reached, the parties may be offered or request an informal resolution process, such as mediation or restorative justice, in lieu of a full investigation and determination, but in no event will informal resolution be facilitated to resolve a complaint of staff-on-student sexual harassment. In order for informal resolution processes to be implemented, all parties must voluntarily agree in writing. In the event that a resolution is reached during the informal resolution process and agreed to in writing by the parties, then the formal complaint will be dismissed, and the complainant is precluded from filing a second complaint concerning the original allegation, however, patterns of conduct will be considered in subsequent complaints involving the same respondent. At any time prior to agreeing to a resolution, any party may withdraw from the informal resolution process and resume the grievance process.

At any time, whether or not a complainant files a formal complaint under this policy, a complainant may file a complaint with the U.S. Department of Education Office for Civil Rights (OCR), the U.S. Equal Employment Opportunity Commission (EEOC), the U.S. Department of Agriculture (USDA) Office of the Assistant Secretary for Civil Rights, the U.S. Department of Justice, the Kansas Human Rights Commission (KHRC), DCF, law enforcement and/or any other appropriate agency. To the extent permitted by law, the District will investigate all formal complaints, even if an outside agency or law enforcement is also investigating a complaint arising from the same circumstances.

In determining whether prohibited conduct occurred, an objective evaluation of all relevant evidence will be made and the following will be considered: the surrounding circumstances; the nature of the conduct; the relationships between the parties involved; past incidents; and the context in which the alleged incidents occurred. Investigations begin with presumptions that the respondent did not engage in any prohibited conduct, and that the complainant is credible. A determination that this policy has been violated and credibility determinations will only be made at the conclusion of an investigation. In no event will past sexual behavior of a complainant be considered, except in the limited circumstance where the evidence is offered to prove consent or that someone other than the respondent committed the alleged misconduct.

If, at the conclusion of an investigation, a determination is made that prohibited conduct occurred, the District will institute appropriate remedies, including appropriate disciplinary sanctions or consequences against the respondent.



Students who violate this policy will be subject to discipline, which may include detention, loss of a privilege, parent and/or student conference, an alternative disposition agreement, in-school suspension, out-of-school suspension with or without probation, and expulsion with or without probation. Students are subject to discipline for prohibited conduct that occurs off District property or outside of a District-sponsored activity or event if the conduct interferes with a student's educational opportunities, or substantially disrupts the orderly operations of the District, a school, a classroom, or a District-sponsored activity or event.

Employees who violate this policy will be subject to discipline, which may include a conference, written reprimand, required training or other measures, reassignment, unpaid leave, and termination.

Parents, visitors, community members, contractors or others who violate this policy may be prohibited from District property or otherwise restricted while on District property.

Students, employees, and others will not be disciplined for speech in circumstances where it is protected by law, but other non-disciplinary remedies may be instituted to address prohibited conduct.

### **Grievance Process - Steps**

#### **1. Compliance Coordinator or Designee Offers Supportive Measures**

Upon receiving notice of conduct that could constitute prohibited conduct, the Compliance Coordinator or designee will promptly contact the complainant in a confidential manner to discuss the availability of supportive measures and to explain the process for filing a formal complaint.

#### **2. Filing a Formal Complaint**

A complainant may file a formal complaint by submitting the complaint in person, by mail, by telephone, or by e-mail to the Compliance Coordinator or designee. If a verbal report of prohibited conduct is made, the complainant will be asked to submit a written complaint. If a complainant refuses or is unable to submit a written complaint, the Compliance Coordinator or other District employee to whom the report was made will summarize the verbal complaint in writing and sign the summary.

If a complainant does not file a formal complaint, the Compliance Coordinator in their sole discretion may sign a formal complaint and initiate the grievance process. The Compliance Coordinator will initiate the grievance process over the wishes of the complainant only where such action is not clearly unreasonable in light of the known circumstances.

A complaint should be filed immediately after alleged prohibited conduct occurs and as soon as possible in order to ensure the best possible investigation. Delay in filing can result in an impaired investigation due to lack of sufficient evidence and a compromised ability to rely on recollections of parties and witnesses.

#### **3. Investigation by Designated Investigator**

The designated investigator will interview the complainant, witnesses, and the respondent and review relevant records. District employees and students are required to fully participate in investigations, but in no event will a complainant be subjected to any disciplinary sanctions or consequences for refusing or failing to participate.

Within 30 working days of receiving the formal complaint, the investigator will conclude the investigation and create a report that summarizes the relevant evidence. For all complaints other than complaints alleging sexual harassment under Title IX: (a) the report also will include the investigator's determination as to whether the preponderance of the evidence shows that this policy was violated; (b) the investigator or Compliance Coordinator will give written notice to the parties of the investigator's determination, including information regarding remedies as appropriate; and (c) the investigator's determination is final, unless a timely appeal is filed.

#### **3a. Additional Investigation Steps for Formal Complaints Alleging Sexual Harassment under Title IX**

Upon receiving a formal complaint and before beginning their investigation, the designated investigator will send written notice to the parties of the allegations, including the identities of the parties involved, the alleged prohibited conduct, and the date and location of the alleged incident.

Within 20 working days of receiving the formal complaint, the investigator will gather all relevant evidence and, as appropriate, provide the parties with copies of the evidence gathered. The parties will have 10 working days to inspect, review, and respond to the evidence.

Once the investigator's report summarizing the relevant evidence is completed, the investigator or Compliance Coordinator\_simultaneously will send the report to: (a) parties for their review and written response; and (b) the decision-maker. The parties will have 10 working days to submit a response to the investigator's report, including proposed relevant questions for the decision-maker to ask the other party and/or any witnesses. In their sole discretion, the decision-maker may re-interview parties and/or witnesses to ask follow-up questions.

The decision-maker will review the investigation, including any of the following steps: review of the evidence gathered and investigation report, re-interviewing a party or witness, and gathering additional evidence if deemed necessary.

No later than 20 working days after receipt of the investigator's report, the decision-maker or Compliance Coordinator simultaneously will issue to the parties the decision-maker's written determination as to whether the preponderance of the evidence shows that this policy was violated. The written determination to each party will include the following information as appropriate: identification of the allegations, a description of the procedural steps taken, findings of fact, conclusion regarding application of the student discipline code or policies/procedures applicable to employees to the facts, a concise statement of the rationale supporting the conclusion on each allegation, any disciplinary sanctions imposed on the respondent, what remedies will be instituted, and notice of the appeal procedure. The decision-maker's determination is final, unless a timely appeal is filed.

#### 4. Appeal

No later than 20 working days after the issuance of a determination, a party may appeal the determination due to the following reasons only: procedural irregularity that affected the determination, new evidence that was not reasonably available at the time the determination was made, or conflict of interest or bias on behalf of the Compliance Coordinator, investigator, or decision-maker.

Upon receipt of appeal, the appeal officer or Compliance Coordinator\_will issue written confirmation to the parties that the appeal was received. In their sole discretion, the appeal officer's review of the investigation may include any of the following steps: review of the evidence gathered and written reports and determinations, re-interviewing a party or witness, and gathering additional evidence if deemed necessary. No later than 20 working days after receiving notice of the appeal, the appeal officer or Compliance Coordinator simultaneously will give written notice to the parties of the appeal officer's determination and a concise rationale for the result. The appeal officer's decision is final.

### **Confidentiality and Retention of Investigation Information and Records**

Except as necessary to complete a thorough and effective investigation and grievance process under this policy and as required by law or Board policy, the identity of complainants, respondents, and witnesses, information related to investigations, evidence gathered, and records created during investigations will be maintained in strict confidence.

In implementing this policy, the District will comply with state and federal laws regarding the confidentiality of student and employee records. Information and records regarding any disciplinary sanctions imposed on an employee or student will be maintained and disclosed in the same manner as any other disciplinary record.



The Compliance Coordinator will retain investigation files for a time period of no less than 7 years, and investigation determination notices will be permanently retained in individual employee and student files. Where a charge or civil action alleging discrimination, harassment, or retaliation has been filed, all relevant records will be retained until final disposition of the matter.

### **Training**

The District will provide annual training to employees on identifying and reporting acts that may constitute discrimination, harassment or retaliation. The Compliance Coordinator, designated investigators, designated decision-makers, designated appeal officer, and any District administrators who are designated to facilitate informal resolution processes, will receive additional annual training on this policy and implementation of the grievance process.

The District will provide, as appropriate, instruction to students regarding discrimination, harassment, and retaliation.

### **Public Notice of Policy**

The District continuously will publicize notice of this policy, including information on how to report discrimination, harassment, and retaliation and the name and contact information for the Compliance Coordinator. The Notice of Non-Discrimination will appear on the District's website, in staff handbooks, and in student handbooks, and the Notice will be posted in a public area of each building used for instruction or employment or open to the public. District application forms and recruitment material will include a statement that the District does not discriminate in its programs, services, activities, facilities or with regard to employment. The District will provide information in alternative formats when necessary to accommodate persons with disabilities.

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