

September 30, 2025

VIA ELECTRONIC MAIL

Dr. Brent Yeager
Superintendent, USD #233
Education Center
14160 S. Black Bob Road
Olathe, KS 66063-2000
superintendent@olatheschools.org

Re: Request Pursuant to Kansas Open Records Act for Records Concerning Olathe Public Schools' Policies and Practices Concerning Gender Identity

Dear Dr. Yeager:

As a member of the public who is interested in compliance by state and local education authorities with records-access requirements under the Family Educational Rights and Privacy Act of 1974 (“FERPA”), I am sending this request pursuant to the Kansas Open Records Act (“KORA”) to learn more about the policies of Olathe Public Schools Unified School District 233 (“OPS”) regarding parents’ access to the records of their minor children enrolled in OPS schools.

Background

OPS Guidance

In December 2021, OPS shared guidance with its schools regarding how they should respond to a student’s request to change his or her name or gender in school records to align with his or her gender identity (“OPS Guidance”).¹ According to a statement from OPS in 2024, the school district “does not have, nor has it ever had, a formal policy adopted by the Board of Education regarding gender identity and pronoun usage.”² Rather, the OPS Guidance “references internal administrative guidelines to assist our staff and administrative teams as situations arise on a case-by-case basis, not a formal policy.”³

The OPS Guidance states that its purpose is “to help administrators, teaching staff, counselors, social workers, and nurses develop and maintain the strong relationships needed to

¹ *Olathe Public Schools Has Guidance to Keep the Gender Identity of Students a Secret from Parents*, DEFENDING EDUC. (June 6, 2023), <https://defendinged.org/incidents/olathe-public-schools-has-guidance-to-keep-the-gender-identity-of-students-a-secret-from-parents/>.

² Sarah Motter, *Olathe Schools, ACLU Respond to AG’s Office After Letter Claims Parents Cut out of Decisions*, KCTV 5 (Feb. 8, 2024), <https://www.kctv5.com/2024/02/08/olathe-schools-respond-ags-office-after-letter-claims-parents-cut-out-decisions/>.

³ *Id.*

support our students.”⁴ It provides that “[a]dministration and staff must evaluate each student request to go by a preferred name and/or pronoun on a case-by-case basis. It is expected that building principals will acknowledge the student’s request and partner with the student and the family *to the greatest extent possible* in supporting the student’s request, all without causing trauma to the student during the process.”⁵

The document states that “[b]est practice is for staff to obtain parental consent before addressing the student publicly by their preferred name and/or pronoun.”⁶ However, the next paragraph of the OPS guidance states:

Staff must be careful to refrain from incautious disclosure of a student’s gender status and/or sexual orientation. Informing the decision to disclose to a parent/guardian are considerations related to the age of the student; whether the student has developmental disabilities; protecting the privacy interests of the student; whether the communications with the parent would cause trauma to the student, and a fear for the child’s health as a result of that communication.⁷

SPPO Dear Colleague Letter

On March 28, 2025, the U.S. Department of Education’s (“Department”) Student Privacy Policy Office (“SPPO”) issued a Dear Colleague Letter (“SPPO DCL”) as part of its legally required annual notification of federal funding recipients regarding their obligations under FERPA and the Protection of Pupil Rights Amendment (“PPRA”).⁸ The SPPO DCL described some of the formal and informal policies and practices of school districts that thwart parental rights under FERPA:

For example, schools often create “Gender Plans” for students and assert that these plans are not “education records” under FERPA, and therefore inaccessible to the parent, provided the plan is kept in a separate file and not as part of the student’s “official student record.” While FERPA does not provide an affirmative obligation for school officials to inform parents about any information, even if that information is contained in a student’s education records, FERPA does require that a school provide a parent with an opportunity to inspect and review education records of their child, upon request. Additionally, under the current regulatory

⁴ OLATHE PUB. SCHS. USD 233, GUIDANCE RELATED TO GENDER IDENTITY 1 (2021) (hereinafter “OPS Guidance”), *available at* https://defendinged.org/wp-content/uploads/2023/05/Guidance-Related-to-Gender-Identity_12.2.21_REV.pdf.

⁵ *Id.* (emphasis added).

⁶ *Id.*

⁷ *Id.*

⁸ Letter from Frank E. Miller Jr., Acting Dir., Student Priv. Pol’y Off., U.S. Dep’t of Educ., to Chief State School Officers and Superintendents (Mar. 28, 2025), *available at* https://studentprivacy.ed.gov/sites/default/files/resource_document/file/Secretary_Comb_SPPO_DCL_Annual%20Notice_0.pdf.

framework, FERPA does not distinguish between a student’s “official student record” or “cumulative file.” Rather, all information, with certain statutory exceptions, that is directly related to a student and maintained by an educational agency or institution, is part of the student’s “education records” to which parents have a right to inspect and review.⁹

Based on SPPO’s awareness of these policies that conflict with parental FERPA rights, it requested that every state education agency submit to SPPO documentation “to provide assurance that the SEA and their respective LEAs are complying with the provisions of FERPA and PPRA”¹⁰

SPPO Investigations of OPS and Other Kansas School Districts

On August 14, 2025, SPPO announced investigations of OPS and three other Kansas school districts to determine, in relevant part, whether policies preventing school officials from disclosing minor students’ gender-transitioning processes to their parents violate FERPA.¹¹ In a statement on this announcement, U.S. Secretary of Education Linda McMahon declared, “From day one, the Trump Administration promised to protect students and parents by restoring Title IX and parental rights laws My offices will vigorously investigate these matters to ensure these practices come to an end.”¹²

Notably, despite the Department’s enforcement posture on these issues and its investigation of OPS for violations of FERPA, it does not appear that OPS has taken steps to modify or abrogate its guidelines regarding gender identity. If this is in fact the case, then OPS is requiring its schools to treat students and families in a manner that risks sanctions from the Department, including the cessation of federal funding across the school system and other potential enforcement actions at the disposal of SPPO.

For these reasons, I am interested in inspecting records of OPS policies and communications relating to its guidance regarding gender identity in light of its obligations under FERPA and the recent developments described above.

Requested Records

As an interested member of the public, I request that OPS produce the following records pursuant to KORA:¹³

⁹ *Id.* at 1–2.

¹⁰ *Id.* at 3.

¹¹ Press Release, U.S. Dep’t of Educ., U.S. Department of Education Launches Investigations into Four Kansas School Districts for Alleged Title IX, FERPA Violations (Aug. 14, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-launches-investigations-four-kansas-school-districts-alleged-title-ix-ferpa-violations>.

¹² *Id.*

¹³ KAN. STAT. ANN. § 45-215 *et seq.*

1. The most recent version of the OPS document entitled “Guidance Related to Gender Identity.”
2. Any documents, including training materials and guidance, maintained by OPS from November 5, 2024, through the date of the search, aside from that described in Item 1, relating specifically to the treatment of transgender and non-binary students, including but not limited to policies regarding school staffs’ recognition of students’ transgender or non-binary status.
3. Electronic copies of all communications and correspondence (including but not limited to electronic mail [“email”], email attachments, texts, letters, memoranda, and other documentation), both internal and external, to or from OPS regarding the treatment of transgender or non-binary students, including school staffs’ recognition of students’ transgender or gender nonconforming status from November 5, 2024, through the date of the search.
4. Electronic copies of all communications and correspondence (including but not limited to electronic mail [“email”], email attachments, texts, letters, memoranda, and other documentation), both internal and external, to or from OPS regarding the enforcement by any federal agency, including the Department, of Title IX or FERPA from November 5, 2024, through the date of the search.
5. Electronic copies of all communications and correspondence (including but not limited to electronic mail [“email”], email attachments, texts, letters, memoranda, and other documentation) to or from the Kansas Association of School Boards dated on or after November 5, 2024, that reference treatment of transgender or non-binary students.
6. Electronic copies of all communications and correspondence (including but not limited to electronic mail [“email”], email attachments, texts, letters, memoranda, and other documentation) to or from Olathe NEA, dated on or after November 5, 2024, that reference treatment of transgender or non-binary students.
7. Electronic copies of all communications and correspondence (including but not limited to electronic mail [“email”], email attachments, texts, letters, memoranda, and other documentation) to or from Kansas NEA dated on or after November 5, 2024, that reference treatment of transgender or non-binary students.

For purposes of this request:

“Department” means the United States Department of Education.

“FERPA” means the Family Educational Rights and Privacy Act of 1974, as amended.

“Kansas Association of School Boards” means the Kansas Association of School Boards and its employees, contractors, consultants, attorneys, agents, and representatives.

“Kansas NEA” means the Kansas National Education Association and its employees, contractors, consultants, attorneys, agents, and representatives.

“Olathe NEA” means the Olathe National Education Association, and its employees, contractors, consultants, attorneys, agents, and representatives.

“OPS” means Olathe Public Schools Unified School District 233; its employees, contractors, consultants, attorneys, agents, and representatives; and members of the Olathe Public Schools Unified School District 233 Board of Education.

“Title IX” means Title IX of the Education Amendments of 1972, as amended.

KORA provides that “[a]ny person may . . . obtain copies of any public record to which such person has access under this act.”¹⁴ The law defines “public record” accessible by members of the public as “any recorded information, regardless of form, characteristics or location, that is made, maintained or kept by or is in the possession of . . . [a]ny public agency; or . . . any officer or employee of a public agency pursuant to the officer’s or employee’s official duties and that is related to the functions, activities, programs or operations of any public agency.”¹⁵

I request the following regarding the provision of the requested records:

- I request that you provide any public record identified in the following electronic format, instead of in paper format: PDF format or all Microsoft Office formats, including Word, Excel, Access, and PowerPoint. If it helps speed production and eases OPS’s administrative burden, I welcome provision of the records on a rolling basis.
- OPS should immediately act to protect and preserve all records potentially responsive to this request, notifying any and all responsible officials of this preservation request and verifying full compliance with the preservation request.
- OPS should search all record systems that may contain responsive records, promptly consulting with its information technology (“IT”) officials to ensure the completeness of the records search by using the full range of OPS’s IT capabilities to conduct the search. To constitute an adequate search for responsive records, OPS

¹⁴ KAN. STAT. ANN. § 45-219(a).

¹⁵ KAN. STAT. ANN. § 45-217(l)(1).

should not rely solely on a search of a likely custodian's files by the custodian or representations by that likely custodian but should conduct the search with applicable IT search tools enabling a full search of relevant agency records, including archived records, without reliance on a likely custodian's possible deletion or modification of responsive records.

- OPS should search all relevant records and information retention systems (including archived recorded information systems) which may contain records regarding OPS's business operations. Responsive records include official business conducted on unofficial systems which may be stored outside of official recording systems and are subject to KORA. OPS should directly inquire, as part of its search, if likely custodians have conducted any such official business on unofficial systems and should promptly and fully acquire and preserve those records as OPS official records. Such unofficial systems include, but are not limited to, governmental business conducted by employees using personal emails, text messages or other direct messaging systems (such as iMessage, WhatsApp, Signal, or X direct messages), voicemail messages, instant messaging systems such as Lync or ICQ, and shared messages systems such as Slack.
- OPS should provide entire records responsive to this request by the end of the third business day after the date this request is received,¹⁶ broadly construing what information may constitute a "record" and avoiding unnecessarily omitting portions of potentially responsive records,¹⁷ as they may provide important context for the requested records (*e.g.*, if a particular email is clearly responsive to this request, the response to the request should include all other emails forming the email chain, to include any attachments accompanying the emails).
- OPS should narrowly construe and precisely identify the statutory basis for any constraint which it believes may prevent disclosure.
- If OPS contends that this request does not contain "the information necessary to ascertain the records" requested and my "right of access to the records,"¹⁸ I request that OPS promptly assist by eliciting additional information that will clarify this request and more clearly identify the records I am seeking or identify my right to access them.

¹⁶ See KAN. STAT. ANN. § 45-218(d).

¹⁷ See KAN. STAT. ANN. § 45-216(a) ("It is declared to be the public policy of the state that public records shall be open for inspection by any person unless otherwise provided by this act, and this act shall be liberally construed and applied to promote such policy.").

¹⁸ KAN. STAT. ANN. § 45-220(b).

- If OPS determines that any portions of otherwise responsive records are statutorily exempt from disclosure, I request that OPS disclose reasonably segregable portions of the records.¹⁹
- For any responsive records withheld in whole or part by OPS, OPS should provide a clear and precise enumeration of those records in index form presented with sufficient specificity and should identify the specific statute section/exemption that authorizes the withholding of the records.²⁰

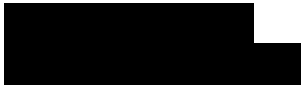
Conclusion

I appreciate OPS's prompt attention to this request for records pursuant to KORA, which will provide important information regarding OPS policies relating to gender identity and compliance with federal law.

If you have any questions or I can further clarify my request, please contact me at your earliest convenience at pfzimmerman@gmail.com.

Sincerely,

Paul Zimmerman



¹⁹ See KAN. STAT. ANN. § 45-221(d) (“If a public record contains material that is not subject to disclosure pursuant to this act, the public agency shall separate or delete such material and make available to the requester that material in the public record that is subject to disclosure pursuant to this act.”).

²⁰ See KAN. STAT. ANN. § 45-218(d) (“If the request for access is denied, the custodian shall provide, upon request, a written statement of the grounds for denial. Such statement shall cite the specific provision of law under which access is denied and shall be furnished to the requester . . .”).