

September 30, 2025

VIA ELECTRONIC MAIL

Mr. David A. Smith
Freedom of Information Officer
Shawnee Mission School District
8200 W. 71st Street
Shawnee Mission, KS 66204
davidsmith@smasd.org

Re: Request Pursuant to Kansas Open Records Act for Records Concerning Shawnee Mission School District's Policies and Practices Concerning Gender Identity

Dear Mr. Smith:

As a member of the public who is interested in compliance by state and local education authorities with the prohibition of sex-based discrimination in federally funded education programs and activities under Title IX of the Education Amendments of 1972 (“Title IX”) and 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 Shawnee Mission Public Schools Unified School District 512 (“SMSD”) regarding access to sex-separated intimate facilities in SMSD’s education programs and activities and parents’ access to the records of their minor children enrolled in SMSD schools.

Background

SMSD Policies

In October 2024, Jennifer Caedran Sullivan, an English teacher at Shawnee Mission North High School, filed a lawsuit against SMSD asserting that the school district had unlawfully disciplined her for exercising her First Amendment right to oppose its diversity, equity, and inclusion (“DEI”) training sessions and, subsequently, for allegedly referring to a student by the student’s legal name and pronouns reflecting the student’s biological sex instead of that student’s gender identity.¹

Ms. Sullivan’s Complaint alleges that, in April 2023, SMSD officials announced at a mandatory professional-development session “their policy prohibiting teachers from disclosing to a student’s parents when a student requests pronouns that are divergent from the sex of the student and preventing teachers from disclosing to a student’s parents when a student requests to be called a

¹ Complaint at 3–4, *Sullivan v. Unified Sch. Dist. 512*, No. 2:24-cv-02491-DDC-BGS (D. Kan. Oct. 28, 2024), available at https://images.johnsoncountypost.com/wp-content/uploads/2024/11/Jennifer-Caedran-Sullivan_Complaint-Filed-1.pdf.

name that might suggest a divergent gender”² At approximately the same time, SMSD unveiled its “transgender practices and FAQs” (“SMSD Guidance”).³ Ms. Sullivan’s Complaint notes that SMSD’s policy prohibiting communication with parents on student name and pronoun requests and the SMSD Guidance “are not published Board policy on BoardDocs®. However, [SMSD and its employees] still require Ms. Sullivan to follow them.”⁴

According to a SMSD spokesperson cited in a local media report in November 2024, “[t]he district has no board policy specific to transgender students, but instead relies on its broader non-discrimination, non-harassment policy and compliance with the federal Title IX law prohibiting discrimination on the basis of sex.”⁵ In place of a public-facing policy, it appears that SMSD intends its “gender identity” guidance, which is in the form of frequently asked questions, as a purely internal document setting out the school district’s expectations and practices for employees.⁶ Consequently, instead of making the SMSD Guidance available alongside its other policies on the school district website, the district has apparently only shared this document with the public in response to KORA requests⁷ and with local media, including in a news report in November 2024 confirming that SMSD maintained the document to describe “its practices when working with transgender students.”⁸

The SMSD Guidance affirms that the school district’s Board of Education “has not adopted a transgender-specific policy” and states that “[t]he current practice in [SMSD] is for administration to evaluate requests for accommodations on a case-by-case basis.”⁹

The SMSD Guidance mandates the following rule with regard to intimate facilities at schools: “Transgender and gender expansive students must be provided access to facilities (restrooms, locker rooms, or changing rooms) consistent with their gender identity asserted at school. A transgender or gender expansive student may not be required to use a single-gender facility or a facility that conflicts with the student’s gender identity asserted at school. However, schools must provide reasonable alternative arrangements for any student who expresses a need or desire for

² *Id.* at 45.

³ *Id.* at 46.

⁴ *Id.* at 47–48.

⁵ Roxie Hamill, *Shawnee Mission Teacher Sues District over “Gender Ideology” and Diversity Policies*, JOHNSON CTY. POST (Nov. 18, 2024), available at <https://johnsoncountypost.com/2024/11/18/sullivan-lawsuit-smsd-dei-247258/>.

⁶ SHAWNEE MISSION SCH. DIST., TRANSGENDER PRACTICES & FAQ (hereinafter “SMSD Guidance”), available at <https://images.johnsoncountypost.com/wp-content/uploads/2024/11/Transgender-Practices-FAQ.pdf> (last visited June 9, 2025).

⁷ See *Shawnee Mission School District Appears to Explain in Guidance that Parents Can Be Left in the Dark Regarding Their Children’s Gender Identity*, DEFENDING EDUC. (June 6, 2023), <https://defendinged.org/incidents/shawnee-mission-school-district-appears-to-explain-in-guidance-that-parents-can-be-left-in-the-dark-regarding-their-childrens-gender-identity/>.

⁸ Hamill, *supra* note 5.

⁹ SMSD Guidance, *supra* note 6, at 1.

increased privacy. Reasonable alternative arrangements may include a single occupancy restroom, use of a private area, or a separate changing schedule.”¹⁰

With regard to name and pronoun changes for students, the SMSD Guidance recognizes that a student may only “formalize” a change to his or her preferred name in the district’s Skyward Student Management System—an information management tool used by SMSD to populate personal details in school platforms and systems—when the student’s family completes a “Request to Add a Preferred Student Name in Skyward and Certain Education Records” form.¹¹ Such family involvement is not required, however, for the student to change the name and pronouns by which he or she is referred at school or for school administrators to inform other staff of such a request by the student. According to the SMSD Guidance:

All students have the right to be addressed by the name and pronouns that correspond to the gender identity they assert at school. School staff and peers are expected to respect a student’s name and pronouns once they have been made aware. The building Administrator, in consultation first with the student, will be responsible for ensuring that the student’s request is honored while working to engage and include the family.¹²

The SMSD Guidance also responds to a question whether changing a student’s name on his or her diploma is a parental decision. According to the FAQs:

Students who are 18 or older have FERPA rights and can make the decision about what name appears on their diploma. Ideally, any changes will be agreed on by both parents/guardians and students. In the event of a dispute between a parent and student that cannot be resolved, the student’s request will be honored a) where the student is 18 and/or b) where the student identifies as transgender.¹³

Thus, according to the guidance, the school district will comply with a minor student’s request to change his or her name on a diploma—even if a parent rejects that request—as long as “the student identifies as transgender.”

Trump Administration’s Enforcement of Title IX

On March 19, 2025, the U.S. Department of Education’s (“Department”) Office for Civil Rights (“OCR”) issued a letter (“March 19 Letter”) to the Commissioner of the Maine Department of Education (“MDOE”) informing her of OCR’s determination that MDOE had not complied with Title IX because public K–12 school districts throughout Maine maintain policies or practices “that

¹⁰ *Id.* at 3.

¹¹ *Id.* at 2.

¹² *Id.*

¹³ *Id.* at 4.

allow boys to participate in girls' athletics programs and/or deny female students access to female-only intimate facilities”¹⁴ Pointing to MDOE’s statewide guidance to schools requiring gender identity-based participation in school athletics programs and also indicating that “students must be permitted to use the bathroom and other sex-separated facilities in accordance with or corresponding most closely to their gender identity,”¹⁵ OCR concluded that “Title IX simply does not permit the bait-and-switch of promising female student-athletes a girls’ competition *and a girls’ locker room* while actually permitting males to participate in the activity *or access the space*.”¹⁶ Because MDOE “has elected to direct and advise [school districts] to allow boys and men to participate in sports programs *and access intimate facilities* designated for girls and women,” OCR concluded that the state educational authority did not comply with Title IX.¹⁷

On April 11, 2025, the Department announced that it had referred its investigation of MDOE’s continuing noncompliance with Title IX to the U.S. Department of Justice “for further enforcement action” and that it would “initiate an administrative proceeding to adjudicate termination of MDOE’s federal K–12 education funding, including formula and discretionary grants.”¹⁸

On July 25, 2025, OCR concluded its investigation of five school districts in Northern Virginia, finding that each school district maintained policies that violate Title IX because they “allow students to access intimate, sex-segregated facilities based on the students’ subjective ‘gender identity.’”¹⁹ At the time, OCR proposed to the school districts resolution agreements that would require them to “[r]escind the policies and/or regulations that allow students to access intimate facilities based on their ‘gender identity’ rather than their sex;” “[i]ssue a memorandum to each . . . school explaining that any future policies related to access to intimate facilities must be consistent with Title IX by separating students strictly on the basis of sex, and that Title IX ensures women’s equal opportunity in any education program or activity including athletic programs;” and “[a]dopt biology-based definitions of the words ‘male’ and ‘female’ in all practices and policies relating to Title IX.”²⁰

¹⁴ Letter from Bradley Burke, Reg’l Dir., Off. for C.R., U.S. Dep’t of Educ., to Pender Makin, Comm’r, Me. Dep’t of Educ. 1 (Mar. 19, 2025) (hereinafter “March 19 Letter”), available at <https://www.ed.gov/media/document/letter-of-finding-maine-doe-109602.pdf?source=email>.

¹⁵ *Id.* at 7 (citing *LGBTQ+ School Resources*, ME. DEP’T OF EDUC., <https://www.maine.gov/doe/LGBTQ/staff> (last visited Mar. 21, 2025)).

¹⁶ *Id.* at 8 (emphases added).

¹⁷ *Id.* at 9 (emphasis added).

¹⁸ Press Release, U.S. Dep’t of Educ., U.S. Department of Education Announces Consequences for Maine’s Title IX Noncompliance (Apr. 11, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-announces-consequences-maine-s-title-ix-noncompliance>.

¹⁹ Press Release, U.S. Dep’t of Educ., U.S. Department of Education Finds Five Northern Virginia School Districts in Violation of Title IX (July 25, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-finds-five-northern-virginia-school-districts-violation-of-title-ix>.

²⁰ *Id.*

The Northern Virginia local education agencies declined to sign OCR’s proposed resolution agreements by OCR’s deadline of August 15.²¹ In response, OCR placed these agencies on high-risk status “with the condition that all federal funding flowing to these districts is done by reimbursement only,” and OCR commenced administrative action “seeking suspension or termination of federal financial assistance” to the districts.²²

SPPO Dear Colleague Letter

On March 28, 2025, the Department’s 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”).²³ 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 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.²⁴

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 . . .”²⁵

²¹ Press Release, U.S. Dep’t of Educ., U.S. Department of Education Places Five Northern Virginia School Districts on High-Risk Status and Reimbursement Payment Status for Violating Title IX (Aug. 19, 2025), <https://www.ed.gov/about/news/press-release/us-department-of-education-places-five-northern-virginia-school-districts-high-risk-status-and-reimbursement-payment-status-violating-title-ix>.

²² *Id.*

²³ 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.

²⁴ *Id.* at 1–2.

²⁵ *Id.* at 3.

OCR and SPPO Investigations of SMSD and Other Kansas School Districts

On August 14, 2025, OCR and SPPO announced investigations of SMSD and three other Kansas school districts to determine whether policies requiring access to intimate facilities on the basis of gender identity instead of sex and preventing school officials from disclosing minor students' gender-transitioning processes to their parents violate Title IX and FERPA, respectively.²⁶ 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."²⁷

Notably, despite the Department's enforcement posture on these issues and its investigation of SMSD for violations of Title IX and FERPA, it does not appear that SMSD has taken steps to modify or abrogate its guidelines for transgender students. If this is in fact the case, then SMSD 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 OCR and SPPO.

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

Requested Records

As an interested member of the public, I request that SMSD produce the following records pursuant to KORA:²⁸

1. The most recent version of the SMSD document entitled "Transgender Practices & FAQs."
2. Any records, including training materials, policies, and guidance, maintained by SMSD 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 gender nonconforming students, including but not limited to policies regarding access to

²⁶ 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>.

²⁷ *Id.*

²⁸ KAN. STAT. ANN. §§ 45-215 *et seq.*

intimate facilities on the basis of gender identity or regarding school staffs' recognition of students' transgender or gender nonconforming 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 SMSD regarding the treatment of transgender or gender nonconforming students, accessing intimate facilities on the basis of gender identity, or 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 SMSD 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 gender nonconforming 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 NEA-Shawnee Mission, dated on or after November 5, 2024, that reference treatment of transgender or gender nonconforming 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 gender nonconforming 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.

“Intimate facilities” means any location designated for individuals to dress or undress with a reasonable expectation of privacy, including but not limited to bathrooms, locker rooms, showers, changing rooms, and lactation spaces.

“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.

“NEA-Shawnee Mission” means the National Education Association – Shawnee Mission, and its employees, contractors, consultants, attorneys, agents, and representatives.

“SMSD” means Shawnee Mission Public Schools Unified School District 512; its employees, contractors, consultants, attorneys, agents, and representatives; and members of the Shawnee Mission Public Schools Unified School District No. 512 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.”²⁹ 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.”³⁰

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 SMSD’s administrative burden, I welcome provision of the records on a rolling basis.
- SMSD 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.
- SMSD 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 SMSD’s IT capabilities to conduct the search. To constitute an adequate search for responsive records, SMSD should not rely solely on a search of a likely custodian’s files by

²⁹ KAN. STAT. ANN. § 45-219(a).

³⁰ KAN. STAT. ANN. § 45-217(l)(1).

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.

- SMSD should search all relevant records and information retention systems (including archived recorded information systems) which may contain records regarding SMSD'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. SMSD 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 SMSD 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.
- SMSD should provide entire records responsive to this request by the end of the third business day after the date this request is received,³¹ broadly construing what information may constitute a "record" and avoiding unnecessarily omitting portions of potentially responsive records,³² 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).
- SMSD should narrowly construe and precisely identify the statutory basis for any constraint which it believes may prevent disclosure.
- If SMSD contends that this request does not contain "the information necessary to ascertain the records" requested and my "right of access to the records,"³³ I request that SMSD 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.

³¹ See KAN. STAT. ANN. § 45-218(d).

³² 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.").

³³ KAN. STAT. ANN. § 45-220(b).

- If SMSD determines that any portions of otherwise responsive records are statutorily exempt from disclosure, I request that SMSD disclose reasonably segregable portions of the records.³⁴
- For any responsive records withheld in whole or part by SMSD, SMSD 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.³⁵

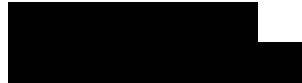
Conclusion

I appreciate SMSD's prompt attention to this request for records pursuant to KORA, which will provide important information regarding SMSD 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

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³⁴ 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.").

³⁵ 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 . . .").