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May 4, 2026

Jennifer Brooks
Office for Civil Rights

Frank E. Miller
Acting Director
Student Privacy Policy Office

U.S. Department of Education
District of Columbia Office
400 Maryland Avenue, SW
Washington, D.C. 20202-1475

Re: Shawnee Mission School District - OCR Case No. 07251503; SPPO Case No. 25-0739

Dear Ms. Brooks and Mr. Miller:

We have received the Letter of Findings (the "LOF") and the accompanying draft resolution agreement (the "Resolution Agreement") that the U.S. Department of Education's Office for Civil Rights ("OCR") and Student Privacy Policy Office ("SPPO") (collectively the "Department") issued to our client, Shawnee Mission School District ("SMSD" or the "District") on April 17, 2026.[1]

We were disappointed to receive these materials, as they contain inaccurate statements of law, false allegations of fact, and unreasonable conditions required for voluntary resolution of this investigation. Contrary to the Department's findings, SMSD is in full compliance with Title IX of the Education Amendments of 1972 ("Title IX"), the Family Educational Rights and Privacy Act ("FERPA"), and Kansas state law, as outlined in its April 10, 2026 letter to OCR (the "SMSD Letter"). SMSD has been fully cooperative with your investigation and strongly disputes the allegation that the District has "intentionally failed to provide the Department with access to sources of information to determine the District's compliance with Title IX and FERPA during the investigation" LOF at 2. Finally, the Resolution Agreement you have provided contains provisions that are inconsistent with the values that inform our work of supporting all children in our communities. SMSD will not agree to the voluntary resolution agreement on the terms you've set forth.

[1] While the LOF and the corresponding press release posted to the Department's website are dated April 17, 2026, OCR did not deliver these documents to undersigned counsel until Monday, April 27, 2026.

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I. SMSD's Complies with Federal and State Law with Respect to Facilities Access, Student Participation in Sports, and Parental Access to Educational Materials

Much of the LOF consists of boilerplate language regarding the scope of Title IX, the statute that governs OCR's inquiry. The Department takes the position that Title IX requires recipients of federal funding to restrict access to restrooms and locker rooms ("facilities") and limit participation in sports to students' gender assigned at birth. The LOF, however, fails to recognize the split of authority on the core issue of the scope of Title IX and its coverage of gender identity as a protected class. Courts around the country have struggled with that question and reached contrary conclusions, which the letter simply ignores. The letter also fails to recognize that the Department's own guidance on the issue of gender identity and Title IX has shifted within the past 2 years—moving from mandating that students be given access to these facilities consistent with their gender identity to a 180-degree reversal, directing just the opposite. School districts have been forced to reckon with these conflicting judicial opinions and contrary federal guidance on the issues of access to school facilities and participation in sports. The LOF simply ignores this important contextual reality and invents a world in which the law is settled and consistent.

Just last week, the legal uncertainty surrounding the scope of Title IX as applied to gender identity was recognized by the United States Court of Appeals for the Eighth Circuit. In a case upholding the right of a transgender female to participate in girls' sports at a high school in Minnesota, the Court of Appeals observed "**there can be no dispute that whether Title IX requires, permits, or prohibits the participation of transgender athletes in female athletics remains an open question of law**. Until it is resolved by the judicial process, the Executive Branch's views on that question may guide its own enforcement approach, but they cannot independently establish a 'strong likelihood' that [a transgender female athlete's] participation violates Title IX or its implementing regulations." *Female Athletes United v. Ellison*, 2026 WL 1019029, at *5 (8th Cir. Apr. 15, 2026) (emphasis added). The Court further observed that the President's January 2025 Executive Order 14201 on which the Department relies in the LOF does not control the question of whether or not Title IX does or does not protect gender identity: "**executive guidance and agency findings, in and of themselves, do not reflect settled law**. As such, they cannot independently establish a likelihood that certain policies or conduct violate federal rights." *Id.* at *6 (citing *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (noting that "interpretation of the laws" is "emphatically the province and duty of the judicial department" (citation modified)) (emphasis added). Indeed, the Supreme Court recently heard a case involving the participation of transgender girls in interscholastic sports and will soon issue a ruling that will provide clarity on this important issue. *See e.g.*, *West Virginia et al. v. B.P.J.*, No. 24-43 and *Little et al. v. Hecox, et al.*, No. 24-38 (argued Jan. 13, 2026). This authority shows that the legal issues governing the instant matter are far from settled—a reality the LOF chooses to ignore rather than address.

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a. Facilities Access

As stated in our April 10 letter to the Department, SMSD has always attempted to comply with Title IX and other standards of state and federal law, even as those standards have evolved over time. For years, SMSD operated under the prior administration's direction which required schools to provide student access to facilities consistent with their gender identity. As thoroughly described in our letter, Kansas state law on this issue materially changed earlier this year, which has resulted in a change in SMSD's approach to this issue. Specifically, SMSD has modified its approach to the issue of facilities access in response to a Kansas state law that limits such access to students' gender assigned at birth. The LOF acknowledges that SMSD's February 2026 *Guidelines for Transgender Student Matters* ("2026 Guidelines") represented a "change in SMSD's approach . . . that requires compliance with Kansas Senate Bill 244 ("SB 244"), which restricts use of facilities to students' gender assigned at birth." LOF at 25–26.

Despite this acknowledgement of SMSD's clear compliance with the Department's interpretation of Title IX, the Department has found the District in violation of Title IX. The inconsistency of the Department's position is difficult to discern, as its finding on noncompliance is seemingly based on one years-old complaint that was resolved pursuant to the rescission of the former guidance document "Transgender Practices & FAQ" ("FAQ"). The Department's acknowledgement of SMSD's current compliance with its own one-sided view of Title IX undercuts its finding of a violation and should end this inquiry.

b. Participation in Interscholastic Sports

Similarly, SMSD is in full compliance with the Department's interpretation of Title IX and Kansas state law with respect to student participation in sports. The LOF acknowledges that SMSD's Policy JH entitled *Student Activities* "generally states that students must meet all applicable regulations of the Kansas State High School Athletics Association ("KSHSAA")" which is modeled on the *Fairness in Women's Sports Act*. LOF at 21. The LOF then states that "portions of the revised KSHSAA policy permit participation in some KSHSAA events based on a student's 'gender identity,'" and because "the district has not developed or implemented a policy stating that it will not follow KSHSAA policies that result in the district's violation of Title IX," OCR has "concerns" that can be addressed by adopting a "clear policy." *Id.* at 29.

As above, we are uncertain as to the basis of the Department's finding of a Title IX violation here. We are unaware of what provision of the KSHSAA policy allows the participation of transgender girls in girls' sports, as the LOF suggests. Regardless, the LOF makes no allegation that SMSD has violated that phantom provision and allowed the participation of a transgender girl in girls' sports. To the contrary, the letter cites no instance of such participation in violation of the *Fairness*

in Women's Sports Act or the Department's one-sided interpretation of Title IX. SMSD's Policy JH and 2026 Guidelines make clear that student participation in athletics is limited to students' gender assigned at birth, as required by the KSHSAA Policies for Transgender Student Participation and the *Kansas Fairness in Women's Sports Act*.[2] As SMSD complies with Kansas law and the Department's view of Title IX, there is no basis for the finding of a Title IX violation on this issue or a resolution agreement requiring remedial action.

c. Parental Access to Student Records

In addition to the Title IX findings addressed above, the LOF finds that SMSD has violated FERPA by preventing parents from accessing educational records. This allegation is even more confusing than the Title IX findings, as the Department points to neither a policy nor a practice inconsistent with the requirements of FERPA. Moreover, the LOF points to not even one instance in which a parent was prevented from accessing educational records.

The LOF first suggests that the policies set forth in SMSD's former FAQ document, specifically that school staff and peers are expected to respect students' chosen names and pronouns and that a transgender student's decision about what name appears on their diploma will be honored, violates FERPA. LOF at 29. The first flaw in this allegation is that it involves the now-rescinded FAQ document and is no longer timely. Even if it was, the prioritization of student choice over parents' preference in terms of name change is not covered by FERPA, which rather provides parental access to educational records. As indicated in a document produced to the Department in this investigation, SMSD involves parents when students make a request to change their name and/or gender in their education records and requires signed parent/guardian consent—which demonstrates clear compliance with FERPA. In short, nothing about SMSD's approach to student names, pronouns, or gender violates or even implicates FERPA.

In the LOF, the Department also finds that the failure to mention FERPA in the 2026 Guidelines and the absence of "documentation demonstrating that the aforementioned FAQ document was formally rescinded," constitutes a FERPA violation. LOF at 29–30.[3] This is yet another curious allegation, as it does not allege a violation of any specific provision of the FERPA statute. Failure

[2] SMSD's former guidance document "Transgender Practices & FAQ" also stated that it will follow KSHSAA policy and the *Fairness in Women's Sports Act*.

[3] The Department also faults SMSD for failing to provide documentation "demonstrating that any communications were issued throughout the District notifying school officials of the changes that have been (or must be) implemented as a result of SB 244." LOF at 29–30. It is difficult to understand how a failure to demonstrate that SMSD has issued such communications constitutes a violation under the Department's own recitation of FERPA. *See id.* at 5–6. Even still, SB 244, a Kansas state law, has no bearing on federal law regarding "parental rights to inspect and review their children's education records." *Id.* at 5.

to mention FERPA in a guidance document is not a violation of FERPA. Indeed, SMSD maintains separate policies setting forth the requirements of FERPA. *See* SMSD Policy IDEA titled "Student Privacy Policy" and Policy JR titled "Student Records". Moreover, the 2026 Guidelines document itself, which was distributed to SMSD officials, plainly states: "This document replaces the previous guidance document titled 'Transgender Practices and FAQ.'"

SMSD has been and remains in compliance with FERPA. The Department has not found that SMSD has interfered with parental access to education records. Thus, there is no basis for a finding of a FERPA violation or a resolution agreement requiring remedial action.

II. SMSD Has Fully Cooperated with OCR's Investigation

The Department alleges that SMSD's "data response was far from forthcoming or complete" and that "the District failed to provide the Department with access to sources of information and its facilities to ascertain compliance with Title IX and FERPA." LOF at 17. The Department "acknowledges" that "after the District retained outside counsel and the Department informed the District that the Department knew of specific responsive documents in the District's possession," SMSD turned over "a redacted portion of the records OCR had received independently from parents in the District." *Id.* However, the Department claims that disclosure of those documents was "late" because they were turned over "only after OCR had informed the District the investigation had concluded." *Id.* These accusations are not credible and are rather inconsistent with the record in this matter and direct communication between undersigned counsel and the Department.

Review of the course of dealing between SMSD and the Department is instructive, as SMSD has been responsive, cooperative, and accommodating since receiving the Department's initial data request in August of 2025. On September 19, 2025, SMSD submitted a letter and accompanying documents to OCR in which SMSD's General Counsel outlined the district's compliance with state and federal law and requested a meeting to explore a voluntary resolution of the pending investigations. Those documents included the FAQ document, which was in effect at the time.

After SMSD responded to the Notification Letter and produced responsive documents, the Department did not respond or otherwise communicate with the District for several months. OCR attorney Bradley Burke indicated that the lack of response and substantial delay was due to a lengthy government shutdown. On December 4, 2025, OCR contacted SMSD to inform them that the Department had returned from the shutdown and were resuming the investigation.

SMSD responded to OCR's resumed outreach by reiterating its commitment to compliance with the law and requesting that OCR and SPPO stay the investigation given the pendency of Kansas state law that would materially impact the District's approach to the issues involved. That law, discussed thoroughly in our April 10 letter and herein, has been the subject of both political and legal uncertainty. As this investigation has been pending, the law has been passed by the Kansas

legislature, vetoed by the Governor, then subsequently overridden by the Kansas legislature. The Kansas law has also been the subject of federal litigation over its enforceability. That litigation remains pending. Regardless of this clear uncertainty and unusual procedural and legal posture of the Kansas legislation, OCR and SPPO declined SMSD's requests for a stay and pressed on with its so-called "investigation."

The Kansas law that directly impacts the issues discussed herein went into effect on February 26, 2026, a week after the final passage of SB 244. On that date, SMSD issued the 2026 Guidelines that complied with the material changes in Kansas law. Also on February 26, 2026, General Counsel for SMSD provided the Department with the 2026 Guidelines, which went into effect immediately and replaced the previous FAQ which had been produced in September of 2025. OCR responded with an acknowledgement that the new SMSD guidance complied with Title IX, specifically stating that "a cursory review of Kansas law seems to indicate state law appears to conform to many of the federal requirements that apply in this case." The Department also noted its interest in obtaining additional information in the investigation, indicated that it would like to arrange a time for an onsite review of documents, and asked if SMSD was interested in "enter[ing] into negotiations to resolve any violations and areas of concern that OCR and SPPO have identified."

On March 10, SMSD informed OCR that they intended to seek school board approval to retain outside counsel on March 23, at which point counsel would facilitate OCR's review of responsive documents and pursue negotiations to reach a mutually agreeable resolution. On March 25, I informed OCR that my firm, Heaphy, Smith, Harbach & Windom, LLP, had been retained by SMSD to pursue that resolution. I also immediately contacted Mr. Burke and asked for a call to discuss the status of the investigation and outstanding requests for information.

I spoke with Mr. Burke and Mr. Miller by telephone on April 1, 2026. In that conversation, I specifically inquired as to whether there were any specific documents OCR wanted to review but had not received. I told Mr. Burke and Mr. Miller that while SMSD had not received formal complaints regarding its transgender access or FERPA policies, the District would conduct targeted searches for the names of the students or schools where OCR believes specific issues were raised. I also specifically inquired as to which individual SMSD employees OCR would like to interview and what facilities OCR wanted to visit.

Rather than accept that clear offer to produce additional information and make both employees and facilities available to OCR, Mr. Burke indicated on April 1 that he was **ready to conclude the investigation without additional documents or interviews.** Mr. Burke would not provide specific names of students or schools to facilitate targeted searches for additional documents, indicating rather that SMSD personnel would likely be aware of a specific situation in which parents had expressed concerns about student restroom use in a particular elementary school. Mr. Miller and Mr. Burke expressed the view that SMSD had created "shadow files" of documents regarding "gender transition plans" that had not been provided to students, though neither provided

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specific names or evidence to support that accusation beyond mere suspicion. Mr. Burke and Mr. Miller closed the call by inviting SMSD to submit any additional information to the Department by April 10, 2026.

After the April 1 call, SMSD performed searches for the documents vaguely described during our conversation. SMSD did locate email communications regarding a specific student in an SMSD elementary school that involved restroom access and promptly produced those documents to the Department. *See* SMSD000001–26. SMSD did not identify any other relevant emails or complaints that would be responsive to the original data request. SMSD did not identify any "shadow files" or "gender transition plans" that had been created for particular students. Given that no such documents exist, SMSD confirmed that nothing was withheld from parents in violation of FERPA. On April 10, 2026, I delivered to Mr. Burke and Mr. Miller a lengthy letter with both a narrative explanation of SMSD's compliance with law and a description of the documents produced.[4]

The history of our communications demonstrates that from the onset of this investigation, the Department has made vague allegations of noncompliance and refused to identify any specific complaints or issues which form the basis of the instant investigation. SMSD has been forced to guess as to the specific facts and circumstances at issue in the Department's investigation, given the refusal to provide any names, schools, specific allegations or other details. When Mr. Burke and Mr. Miller made reference on April 1 to one unnamed student in an unidentified school, SMSD promptly searched and located responsive documents regarding one specific allegation—which is the only instance of alleged noncompliance ultimately cited in the LOF. Nothing else has been withheld from your review.

These facts rebut the baseless accusation that SMSD has been intentionally nonresponsive to the Department's investigation and failed to provide documents or make relevant people or facilities unavailable. SMSD has provided all responsive documents it has identified and explicitly offered to make individual employees and facilities available for interview and inspection. Rather than engage in good faith by identifying individual cases of alleged noncompliance, identifying SMSD personnel with whom you wished to speak or school facilities you wished to visit, the Department has made a blanket allegation of intentional noncompliance—an accusation that is patently unfair and made in bad faith. SMSD has approached this investigation with transparency and candor. We have received neither from the Department. To the contrary, it seems as if this "investigation" was pre-determined to result in a letter of findings, regardless of any facts provided by SMSD or

[4] In addition to the documents described herein involving the single complaint regarding restroom access, we also produced a form provided to students seeking a name change and/or gender change in education records. That form demonstrates that parental consent is required for any such change, consistent with the requirement of parental access to educational records. *See* SMSD000027–28.

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our clear record of compliance. Your bad faith approach to the investigation informs our response to the draft resolution agreement, which we discuss below.

III. The Terms of the Proposed Resolution Agreement Are Unreasonable

The Resolution Agreement that you delivered to SMSD on April 25 is both unnecessary to correct violations of law and patently unreasonable on its face. As a threshold matter, resolution agreements are pursued to remedy violations of law. They change conduct and impose conditions that ensure future compliance with standards of federal law. As we have thoroughly developed above and in our prior correspondence, there are no violations of law that the Department can credibly assert here. To the contrary, SMSD's approach to facilities access, participation in interscholastic sports, and parental access to educational records is in full compliance with the Department's interpretation of Title IX and FERPA. There is nothing to remedy here, which makes a resolution agreement inappropriate.

Even if a resolution agreement was appropriate on these facts, the Agreement you delivered contains several provisions that are both unreasonable and inconsistent with the SMSD community's core values. Action Item 1, for example, would require SMSD to issue a policy that suggests that "there are only two sexes (female and male) . . . and the sex of a human – female or male – is unchangeable." Resolution Agreement at 2. Issuing a policy with that language would in effect constitute a refusal to acknowledge the existence of transgender individuals. The effect of such a statement on transgender students in our schools and others in our community would unfairly demean and diminish those members of our community and conflict with our District's core value of belonging. We will never issue a policy that devalues certain members of our diverse community.

In addition, Action Item 3 of the Resolution Agreement would require the Superintendent of SMSD to "issue an apology letter to all students expressing genuine regret and remorse that students were placed in a position in which they had their privacy rights and personal dignity violated at school." Resolution Agreement at 4. We strongly disagree with the presumption of this condition—that SMSD has somehow violated the "privacy rights" or "personal dignity" of any student. I will not restate here all the ways in which SMSD has endeavored to comply with the shifting requirements of law or argue again there is no legal violation that would justify an apology. This condition also suggests that there are many students who feel as if their "privacy rights" or "personal dignity" have been violated. That is inconsistent with the fact that you have identified one, and only one, situation in which an SMSD student expressed any discomfort or objection to SMSD's approach to restroom access—an approach that was governed by the law that applied at the time the complaint was made. Our experience is that students across our schools have broadly accepted and endorsed SMSD's approach to facilities access, as evidenced by the lack of additional complaints. An apology as required by the Resolution Agreement would

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actually have a deleterious effect and clash with our well-established value of belonging and acceptance of all students.

IV. Conclusion

Given these onerous terms proposed for resolution and the baseless allegation of noncompliance with this investigation, SMSD is not interested in pursuing a resolution agreement in this matter. The Department has not established that there are any violations of law that SMSD must remedy. The Department has alleged that SMSD intentionally failed to comply with its data request, an accusation made in bad faith, without evidence. The Department has put forth a draft resolution agreement that would force SMSD to issue a new policy and make public statements that intentionally devalue some members of our community. The "investigation" which has led to these conditions was never a constructive effort to reach a mutually agreeable resolution, consistent with the traditional approach of the Department. Rather, it was a sham process designed to reach a predetermined outcome untethered to the facts or controlling standards of law. For these reasons, we see little to no prospect of coming to agreement on a resolution that would maintain our commitment to accept and support all students. Should OCR be willing to propose a resolution to this matter that recognizes SMSD's compliance with law and is consistent with our community's core values, we would be happy to engage in further discussions. If, however, the Department maintains its insistence on the terms discussed above, we do not believe such a resolution is possible.

Sincerely,

/s/ Timothy J. Heaphy

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cc:
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