

EDUCATIONAL MEMORANDUM

From: School Boards for Academic Excellence (SBAE)

To: Kansas School Board Resource Center (KSBRC) – For Public Release

Date: June 13, 2025

Re: Legal Education/Guidance about gender ideology language in CNP Agreements

The Kansas Department of Education (“KSDE”) has issued modified Child Nutrition Program (“CNP”) agreements for local school district providers (“Program Agreements”). The modified agreements inserted gender ideology language in two different sections: the Nondiscrimination Statement (“NDS” or the “Statement”) and the Anti-Discrimination Clause (“ADC” or the “Clause”).

After several school districts raised issues with the newly inserted gender ideology language, because it appears to conflict with the January 20, 2025 United States Executive Order 14168¹ (requiring removal of gender ideology language from federally funded organizations and programs), the KSDE backtracked on only one of its new requirements, the Statement.

So now the KSDE is requiring gender ideology language in the Clause, but has removed the requirement for the following language in the definition of 'sex' from the Statement: “*including gender identity and sexual orientation.*”²

The KSDE has provided only two “acceptable” Program Agreements for 2026:

2026 Program Agreement Version 1

Which can be found here:

https://ksbrc.org/wp-content/uploads/2025/06/V1-2026_SNP_program_agreement.pdf

The gender ideology language in Version 1 appears in two places:

“The Sponsor agrees to:

Use the current nondiscrimination statement for Child Nutrition Programs:

... this institution is prohibited from discriminating on the basis of ... sex (*including gender identity and sexual orientation*) ...” (Section K.1, the Statement).

“The contractor agrees: (a) to comply with ... *Kansas Executive Order No. 19-02, and to not discriminate against any person because of gender, sexual orientation, gender identity or expression ...*” (Section Z.5, the Clause).

¹ <https://www.whitehouse.gov/presidential-actions/2025/01/defending-women-from-gender-ideology-extremism-and-restoring-biological-truth-to-the-federal-government/>

² KSDE has now indicated that providers may sign an earlier version of the Program Agreement (the 2022 version under Biden-era direction), but not the 2020 version that was acceptable and had been accepted in renewals by the KSDE through school year 2025. The 2020 version’s antidiscrimination clause did not require gender identity and sexual orientation in the definition of sex.

2026 Program Agreement Version 2

Which can be found here:

https://ksbrc.org/wp-content/uploads/2025/06/V2-2026_SNP_Program_Agreement.pdf

The gender ideology language appears still appears in one place in Version 2:

“The contractor agrees: (a) to comply with ... *Kansas Executive Order No. 19-02, and to not discriminate against any person because of gender, sexual orientation, gender identity or expression ...*” (Section Z.5, the Clause).

Reference to Gender Ideology Language in Both Versions

As part of the Clause, incorporated in both 2026 versions, the 2019 Executive Order No. 19-02, from Governor Laura Kelly states:

“No entity under my jurisdiction shall discriminate, harass, or retaliate against an individual in employment, in the provision of State services or State programs, or in awarding State contracts or grants, on the basis of ... *gender, sexual orientation, gender identity or expression ...*” (Section 1).

Bottom Line

While the KSDE acted as though it was removing gender ideology language from the Program Agreement, there is a difference between the Statement and the Clause. So gender ideology language it still exists, both expressly and by reference in the Clause. School board members could be easily confused by the changes, as obfuscation could be perceived to be intentional.

Current Options

The SBAE provided legal education and guidance on this topic through a webinar with its Legal Hotline attorney Fritz Edmunds June 11, 2025. The webinar is available online at: <https://ksbrc.org/event/legal-briefing-ksdes-2026-agreement-and-anti-discrimination-clause-changes/>; and its accompanying slide presentation is available here: <https://ksbrc.org/wp-content/uploads/2025/06/20250611-slides.pdf>

To be clear, the Options portion of the presentation discussed *options in the alternative* to signing one of the two options offered by KSDE, should local districts decide neither version of the 2026 Program Agreement is acceptable. So, at present, the current options for local school boards appear to be:

- Sign Version 1;
- Sign Version 2;
- Raise the issue with individual State Board of Education members;³
- Lobby the KSDE with other school districts;³
- Seek an extension of the signing deadline;
- Opt out of the CNP program (depending on percentage of budget);

³ in hopes of a resolution by signing deadline June 30.

At least one webinar participant raised the issue of simply changing or striking out the offending language. While that may be an option if acceptable to KSDE, it does not appear that KSDE would allow such amendment to the Program Agreement and school boards may risk contract rejection or a court finding the amendment to be void or in bad faith if not brought to the attention of KSDE.

We will endeavor to provide updates as we receive new information. Thank you for all you do.

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