

IN THE SUPREME COURT OF THE STATE OF KANSAS

BUTLER, KRISTIN, ET AL.,

Plaintiffs,

vs.

Case No. 124205

SHAWNEE MISSION SCHOOL DISTRICT
BOARD OF EDUCATION,

Defendant/Appellee.

KANSAS ATTORNEY GENERAL
DEREK SCHMIDT,

Intervenor/Appellant.

**SHAWNEE MISSION SCHOOL DISTRICT BOARD OF EDUCATION'S
RESPONSE TO ATTORNEY GENERAL'S MOTION FOR A STAY PENDING APPEAL**

This matter was brought by Plaintiffs against Defendant Shawnee Mission School District Board of Education seeking to assert a challenge, pursuant to the procedures outlined in Sections 1(c) and 1(d) of Senate Bill 40, to certain actions taken by Shawnee Mission School District in response to the COVID-19 pandemic. Senate Bill 40 imposes unconstitutional and unworkable hearing procedures on public school districts and other governmental entities as they are attempting to navigate the worst times of the COVID-19 pandemic when a state of disaster emergency is in effect. These hearing procedures abuse the education and court systems, mow over well-established school district and court procedures, and violate the separation of powers and the fundamental due process rights of school districts and other governmental entities. The District Court recognized these constitutional defects and utilized appropriate statutory procedure,

K.S.A. 75-764, to give the Attorney General a full and fair opportunity to defend the constitutionality of the law and its “unprecedented” enforcement mechanism. Ultimately, the District Court declared SB 40 to be unenforceable and, for that and other reasons set forth in its Orders, dismissed the action with prejudice in favor of the Shawnee Mission School District. The Attorney General has appealed from the District Court’s final Order and now seeks both an expedited appeal pursuant to Kan. Sup. Ct. R. 7.01 (which is not opposed by Shawnee Mission School District) and a stay of the District Court’s final Order dismissing with prejudice the action against the Shawnee Mission School District Board of Education (which is opposed).

A stay of the District’s Court Order should **not** be granted because: (a) with the imminent start to the 2021-22 school year (classes begin on August 12, 2021), Shawnee Mission School District, as well as other schools and other government entities, should be able to take responsive actions to mitigate against the spread of COVID-19 in the upcoming months without trepidation of being subjected to SB 40’s hearing procedures; (b) no reason exists for granting a stay that outweighs the risk of continued constitutional violations and further disruptions to the Shawnee Mission School District’s efforts to operate its schools in a safe and appropriate manner; and (c) an expedited appeal proceeding has been requested which will bring this matter to final resolution more quickly than the standard appeal timeline.

A. The relevant procedural history of this case shows that the request for a stay seeks overbroad relief that would unfairly prejudice the Shawnee Mission School District.

On July 27, 2021, the District Court denied a motion for stay requested on identical grounds, finding that: (a) “the request for stay outlined by the Attorney General cites speculative harm and is not justified”; and (b) there was “no basis for any stay of its judgment.” District Court’s July 27, 2021 Order, p. 6, attached to Attorney General’s Motion for Stay Pending Appeal as Ex. C. The District Court noted that its July 15th Order merely “restored the baseline

constitutional rights of the District that was hampered by SB 40’s enforcement provisions.” *Id.* at p. 2. The Order was in the form of a declaratory judgment; the Court did not issue an injunction or any other order or remedy with which the State is required to comply. *Id.* at pp. 3-4. The Court determined that the Shawnee Mission School District, as the prevailing party, had a right to rely on its Order and noted that the District had already relied on its Order by adopting a Fall Mitigation Plan at its July 26, 2021 Board meeting. *Id.* at p. 5.¹

After the Court entered its Final Judgment and Order on July 15, 2021, the Attorney General filed a motion for stay pending appeal with the District Court, citing a concern that there is “confusion about the validity of other provisions of SB 40 not at issue in this case.” The Shawnee Mission School District opposed the stay, arguing that it “should not be deprived of the benefit of the judgment in its favor because the Attorney General failed to address other portions of the act in its pre-judgment briefing, and/or to file a post-judgment brief providing arguments and authorities in support of a request for an amended judgment.” The District Court declined to enter a stay and admonished the Attorney General for failing to make any arguments about portions of SB 40 that should be severed under the law’s severability provision. *See* Attorney General’s Motion for Stay Pending Appeal, Ex. C, pp. 2-4.

¹It is worth noting that the District Court’s decision is not precedent nor is it binding on other district courts. *See, e.g., In re Executive Office of President*, 215 F.3d 20, 24 (D.C.Cir . 2000) (district court decisions do not establish the law of the circuit or even the law of the district); *Anderson v. Romero*, 72 F.3d 518, 525 (7th Cir. 1995) (district court decisions have no precedential weight); *Ass’n of Cmty. Orgs. for Reform Now (ACORN) v. Edgar*, 880 F.Supp. 1215, 1218 (N.D.Ill. 1995) (same); *IBM Credit Corp. v. United Home for Aged Hebrews*, 848 F.Supp. 495, 497 (S.D.N.Y. 1994) (same). Unless affirmed on appeal, it is simply the law of this case and serves as collateral estoppel or *res judicata* as to the parties in this case (to include the State whose interests were represented by the intervention of the Attorney General pursuant to K.S.A. 75-764). Thus, the requested stay really only impacts the Shawnee Mission School District and, conversely, the absence of a stay does not really create any Statewide crisis concerning SB 40 that did not already exist prior to the District Court’s decision.

A stay of the District Court's Order would harm the Shawnee Mission School District (the prevailing party), and all other governmental targets of SB 40 that have the responsibility to address pandemic issues and make critical public health decisions. Significantly, on August 5, 2021, the Board of County Commissioners of Johnson County, Kansas, sitting as the County Board of Health, issued a Public Health Order, attached hereto as Exhibit A, effective August 9, 2021, through May 31, 2022, which orders the Shawnee Mission School District, as well as other public and private schools located in Johnson County, Kansas, to require individuals, including certain students, to use masks or other face coverings in certain school settings "[t]o ensure that schools may operate as safely as possible." The Johnson County Public Health Order provides that "[t]his Order shall apply to all public and private K-12 schools within Johnson County" and that "[t]he Board of Educations for each unified school district within Johnson County and the respective governing body of each K-12 private school within Johnson County shall be responsible for enforcement of this Order." This Public Health Order is premised on the state of local disaster emergency declaration issued by the Board of Commissioners of Johnson County, which remains in place. Based on this Public Health Order and in response to the issues and continuing concerns regarding the spread of COVID-19 as expressed in the Order, the Shawnee Mission School District adopted a revised Mitigation Plan for the 2021-22 school year at a Special Board of Education meeting held on August 5, 2021 (attached as Exhibit B hereto). If the requested stay is granted, then, as anticipated by the District Court, the very provisions in SB 40, specifically Sections 8(e)(1) & 12(d)(1), determined to be unconstitutional will be in effect and the Shawnee Mission School District together with the County will be required to spend time and resources defending its Mitigation Plan instead of providing safe educational opportunities for its students.

While low numbers of COVID-19 cases in the late Spring and early Summer of 2021 signaled a possible turning point in pandemic response, the delta variant has contributed to cases and hospitalizations in Kansas increasing by 70% in the past 2 weeks.² School districts and local governmental entities have already begun considering and adopting mask requirements and other mitigation measures in an effort to reduce cases and prevent school and business closures this Fall and Winter. The Attorney General’s claim that there is “no current harm” to the District is incorrect. The start of the Fall 2021 semester is days away. The Shawnee Mission Board of Education approved a 21-22 Fall Mitigation Plan at its July 26th meeting, and it made the first amendment to that Plan last week. Further amendment to the Mitigation Plan during this school year likely will be necessary as pandemic conditions change.

The District Court’s July 15th Order provided clear direction to the Shawnee Mission School District, as well as other schools and local governmental entities, that SB 40 could not be enforced against them through the law’s unconstitutional hearing procedures. With the benefit of this direction, the Shawnee Mission School District recently adopted and updated a COVID-19 Mitigation Plan, based in part on an Order issued by Johnson County applicable to schools. Kansas school districts should be able to continue to adopt and update plans as necessary to keep students safe in school buildings with the assurance that they will not be subjected to a flood of SB 40 hearings, and parents should be able to send their students to school without concern that mitigation plans could be voided at any time through a SB 40 challenge. The requested stay would severely and unnecessarily impair Shawnee Mission School District’s constitutional and statutory authority to operate its schools during this continuing and unprecedented crisis.

² <https://www.nytimes.com/interactive/2021/us/kansas-covid-cases.html>

B. No specific problems have arisen following the District Court’s Order, and any alleged confusion over the scope or impact of the District Court’s Order does not justify removing the Order’s protection against further constitutional violations.

Neither the motion for stay nor the letter from the Senate President and Speaker of the House, filed herein on August 6, 2021, articulate any real problematic consequences to any party flowing from SB 40 being deemed unconstitutional. To the contrary, the ruling brought an end to the Shawnee Mission School District, as well as other Kansas school districts and government entities, being statutorily pressured to sit idle in response to COVID-19, with the knowledge that any action could result in an onslaught of SB 40 lawsuits. The main reason proffered to support the requested stay is the purported belief that the District Court’s decision is “creating confusion about the state of the law and calling into question the ability of the State to respond to new emergencies.” There is no evidence to support this belief. In fact, as reflected in Kansas Attorney General Opinion No. 2020-08, pp. 9-13 which was issued prior to SB 40, the law is clear that, in the absence of SB 40’s unconstitutional hearing procedures, school districts have the constitutional and statutory authority “to adopt local policies for the operation of local schools regarding wearing masks, social distancing, washing hands, and temperature takings in local schools.” This clear state of the law should not be disturbed by the issuance of a stay during the pendency of this appeal.

While arguments regarding judiciability and mootness have also been raised, those are substantive arguments for the Court to consider in evaluating whether to uphold or overturn the District’s Court decision; those argument should not be considered at this juncture. Further, as indicated above, these arguments are negated by the recent Public Health Order issued by the Johnson County Board of County Commissioners and the Shawnee Mission School District’s required actions taken pursuant to that Order. Regardless, if SB 40 has expired and is no longer

effective, then that certainly undermines any argument that a stay is necessary. Why would the Court need to stay a lower court ruling that renders an expired statute unenforceable?

Finally, the real issue appears to not be one of “confusion” about the state of the law following the District Court’s Order, but instead simple disagreement and frustration with the Order and its scope. Specifically, there appears to be concern that there are “many provisions of SB 40 unconnected to the challenged review process” and a belief that those provisions should have been separated by the District Court from its Order and preserved as valid. This dissatisfaction with the result out of the lower court is not “confusion” necessitating a stay. And, as stated by the District Court, it did not sever any provisions because the Attorney General “deliberately avoided addressing” that issue. *See* Attorney General’s Motion for Stay Pending Appeal, Ex. C, pp. 2-3; *Mynatt v. Collis*, 274 Kan. 850, 851, (2002) (“Generally, a party is not allowed to raise an issue on appeal not presented previously to the district court or inconsistent with the position taken before the district court.”); *Jarboe v. Bd. of Cty. Comm’rs of Sedgwick Cty.*, 262 Kan. 615, 622, 938 P.2d 1293, 1299 (1997) (“issues not raised to the trial court cannot be raised on appeal”); *South Central Kansas Health Ins. Group v. Harden & Co. Ins. Services, Inc.*, 278 Kan. 347 (2004).

At oral argument on the motion for stay, the District Court reminded the Attorney General that it retained jurisdiction over the case and that a motion to alter or amend judgment was still an available option for seeking to preserve some portions of SB 40 while the appeal process plays out. No motion to alter or amend was filed in the district court, and instead this appeal was docketed immediately after the District Court entered its order denying the request for a stay. Notably, there has been no narrowing of the stay request to limit it to those portions of SB 40 that the Attorney General believes fall outside of the unconstitutional enforcement mechanisms.

Instead, the same broad stay relief is sought with the request to make the entirety of the District Court's Order ineffectual during the pendency of this appeal. Because the strategic decision was made to not seek to alter or amend the judgment and separate out any provisions of SB 40 at the District Court, a blanket stay should not issued to push the consequences of that strategy decision³ on the Shawnee Mission School District.

As set forth above, a stay would significantly harm the District in that it would leave it (together with other government entities and the courts) unprotected from the unconstitutional enforcement provisions in SB 40 and uncertain how to respond to hearing requests filed under the law. This Court has not yet had the opportunity to evaluate the constitutionality of SB 40 or consider its continued viability. Additional constitutional violations against the Shawnee Mission School District or any other political subdivisions of the State should not be risked by entering a stay.

C. An expedited appeal, as requested by the Attorney General, obviates any need for a stay.

The Attorney General has filed a motion seeking an expedited briefing schedule for this appeal, with 14 days for each party to file briefs, and 7 days for reply briefs. The District does not object to this request. While the District disagrees with the reasons that the Attorney General identified in support of expediting these appeal proceedings, it does agree that a timely resolution of these matters is in the best interest of both parties. Schools in Kansas are facing another challenging season in the COVID-19 pandemic. Finality to the issue of whether SB 40 passes constitutional muster will allow school boards and other governmental entities to make critical

³ Of course, had a post-judgment motion to alter/amend and convinced the District Court to narrow the scope of its ruling by providing some arguments and authorities in support of severing portions of SB 40, there would be less to criticize about the District Court's Order during an appeal.

safety and public health decisions with certainty as to whether the law can be enforced against them or not.

D. Conclusion

The District Court's decision denying the Attorney General's first motion for a stay was well-reasoned and well-supported. The Court should deny the Attorney General's present motion for a stay for those same reasons. The relative harm to the parties supports leaving the District Court's order, which took the form of a declaratory judgment, in place during this appeal. The Court should not grant a stay pending this appeal, particularly given the unopposed motion for an expedited appeal.

Respectfully submitted,

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Attorneys for Defendant/Appellee
Shawnee Mission School District Board of Education

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on the 9th day of August, 2021, the above and foregoing was electronically filed with the Clerk of the court using the Court's electronic filing system and a served upon the following by e-mail:

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Shawnee Mission School District Board of Education

Exhibit A

210805-007

JOHNSON COUNTY BOARD OF HEALTH ORDER NO. 001-21

Applicable within the entirety of Johnson County, Kansas

This Public Health Order is issued by the Board of County Commissioners of Johnson County, Kansas, sitting as the County Board of Health, on August 5, 2021 and is effective the 9th day of August 2021, at 12:01 A.M. to ensure elementary level schools in Johnson County can safely provide in-person learning and to slow the spread of COVID-19 in Johnson County elementary level schools, pursuant to the authority provided in K.S.A. 65-119 and other applicable laws or regulations.

The Board, sitting and acting as the County Board of Health, upon a motion duly made, seconded, and carried adopted the following Order, to-wit:

WHEREAS, COVID-19 is a respiratory disease that spreads easily from person to person and may result in serious illness or death among some who are infected; and

WHEREAS, the United States Department of Health and Human Services declared a public health emergency for COVID-19 beginning January 27, 2020, with now more than 34,722,631 cases of the illness and more than 609,853 deaths as a result of the illness across the United States; and

WHEREAS, on March 19, 2020, the Board of County Commissioners of Johnson County issued a state of local disaster emergency declaration, which was renewed and extended on May 28, 2020, and which remains in place at the time of this Order; and

WHEREAS, as of this date, in Kansas there have been 330,932 reported positive cases of COVID-19 spread among all 105 counties, including 5,247 deaths; and

WHEREAS, COVID-19 has resulted in 48,983 reported positive cases of COVID-19 in Johnson County and the deaths of 679 Johnson County residents; and

WHEREAS, the highly transmissible Delta variant of COVID-19 is now the dominant strain in Johnson County, resulting in a rapid increase in new cases and numerous outbreaks associated with summer camps and school-age programs; and

WHEREAS, children under the age of 12 are not currently eligible for vaccines and approximately less than forty percent (40%) of children aged 12-17 years in Johnson County have been fully vaccinated against COVID-19; and

WHEREAS, K-12 students benefit from in-person learning and interactions with others; and

WHEREAS, under state law, children between the ages of 7 and 18 are required to attend school; and

WHEREAS, safely returning to in-person classes and keeping public and private K-12 schools open in Johnson County is of the highest priority for students, parents, schools, and the entire community; and

WHEREAS, Centers for Disease Control and Prevention ("CDC") now recommends universal indoor masking for all teachers, staff, students, and visitors to K-12 schools regardless of vaccination status; and

WHEREAS, wearing face masks while indoors at school will protect the health of Johnson County elementary level students while they are awaiting vaccinations; and

WHEREAS, wearing a mask or other face covering in school gets and keeps children in school and is an effective means to protect students and mitigate the spread of COVID-19 while in school; and

WHEREAS, the intent of this Order is not to deprive any person or entity of any rights protected by the United States Constitution, the Kansas Constitution, or any other law, but merely to set forth restrictions which would best protect Johnson County schools, students, faculty, and staff against the community spread of COVID-19; and

WHEREAS, the Board of County Commissioners of Johnson County, as the County Board of Health, and the Local Health Officer are authorized and required, pursuant to K.S.A. 65-119, to immediately exercise and maintain supervision over known or suspected cases of any infectious or contagious disease during its continuance and to see that all such cases are properly handled, and the Local Health Officer is to use all known measures to prevent the spread of any infectious, contagious, or communicable disease;

WHEREAS, the Local Health Officer is appointed by the Board of County Commissioners of Johnson County pursuant to K.S.A. 65-201, and the Local Health Officer proposes and recommends that masks or other face coverings be worn by students through and including 6th grade while inside school buildings to slow the spread of COVID-19 in Johnson County schools; and

WHEREAS, Johnson County Department of Health and Environment (JCDHE) works in partnership with Johnson County public and private schools to keep our schools open so that our children can learn and benefit from interactions with others. JCDHE will collaborate with and provide guidance to schools on the wearing of masks while in school; and

WHEREAS, for the aforementioned and other reasons, and in recognition and furtherance of the County's responsibility to provide for and ensure the health, safety, security, and welfare of the people of Johnson County, requiring that masks or other face coverings be worn by students through and including 6th grade while inside school buildings is a highly effective measure that can be taken to slow and reduce the spread of COVID-19 in our schools and community; and

NOW, THEREFORE, BE IT ORDERED by the Board of County Commissioners of Johnson County, Kansas, sitting and acting as the County Board of Health, that:

Section I. Maintaining Healthy School Environments for Elementary Level Students

1. To ensure that schools may operate as safely as possible, public and private schools for students up to and including 6th grade shall require the following:
 - a. Masks or other face coverings are required for all children while inside a school building where any students through and including 6th grade attend class, unless actively eating or drinking. This requirement includes children in higher grades who attend school in buildings where children in 6th or lower grades also attend school unless 6th graders are physically separated from higher grades throughout the school day.
 - b. Masks or other face coverings are required for all faculty, staff, and visitors while inside a school building where any students through and including 6th grade attend class, unless actively eating or drinking.
 - c. Unless otherwise required by the school, children, faculty, staff, and visitors do not need to wear masks when outdoors on school property. This includes students, faculty and staff participating in elementary level recess.
 - d. All bus riders must wear a mask when riding on a school bus unless documentation has been submitted to the school for a medical mask exemption.

2. The following individuals are exempt from wearing masks or other face coverings while inside school buildings:

- a. Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.
 - i. For students, faculty and staff, documentation of the above condition should be provided to the appropriate school officials pursuant to school guidelines.
- b. Persons communicating with a person who is deaf or hard of hearing, where the ability to see the mouth is essential for communication.
- c. Persons engaged in religious services, ceremonies or activities.
- d. Persons engaged in activities and athletics inside school buildings, who should follow KSHSAA and/or school guidelines.

3. "Mask or other face covering" means a covering of the nose and mouth that is secured to the head with ties, straps, or loops over the ears or is simply wrapped around the lower face. A mask or other face covering can be made of a variety of synthetic and natural fabrics, including cotton, silk, or linen. A mask or other face covering may be factory-made, sewn by hand, or can be improvised from household items such as scarfs, bandanas, t-shirts, sweatshirts, or towels.

Section II. Lawful Order. This Order is a lawfully issued order pursuant to K.S.A. 65-202 and K.S.A. 65-119(a) and is also a "public health directive" as identified in KSA 60-5502. This Order shall apply to all public and private K-12 schools within Johnson County. The Board of Education for each unified school district within Johnson County and the respective governing

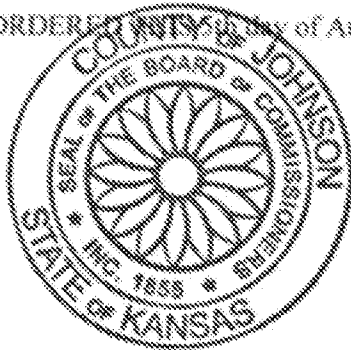
body of each K-12 private school within Johnson County shall be responsible for enforcement of this Order.

Section III. Review by Board of County Commissioners. The Board of County Commissioners may review, amend, or revoke this Order at any time.


Section IV. Severability. If any portion of this Order is found or determined to be invalid, such finding, or determination shall only affect the portion of the Order that is at issue and shall not affect the validity of the remainder of the Order.

Section V. Effective Date; Conclusion. This Order is effective at 12:01 A.M. on Monday, the 9th day of August 2021, and shall remain in effect through 11:59 P.M. on May 31, 2022, unless it is amended, revoked, or replaced.

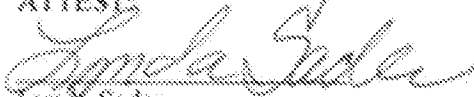
IT IS SO ORDERED this 9th day of August, 2021.



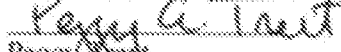
BOARD OF COUNTY COMMISSIONERS
OF JOHNSON COUNTY, KANSAS


Ed Eilert, Chairman

ATTEST:


Lynda Sader
Deputy County Clerk

APPROVED AS TO FORM:


Peggy A. Trent
Chief Counsel

Approved 5-2 (CO MA)

FILED

AUG 05 2021

DEPUTY COUNTY CLERK
JOHNSON COUNTY KANSAS

Exhibit B

Shawnee Mission Schools Updated COVID-19 Mitigating Measures 2021-2022



Due to high community transmission rates of COVID-19 in the county and lack of vaccine availability for all individuals, the Shawnee Mission School District (SMSD) will require masking of all children and adults in grades PreK-12 and in all district facilities until further notice.

General Information

- As an education community, we believe our shared, primary goal remains to keep schools open so that our children can learn and benefit from interactions from others. We understand that this goal requires the collective effort of our educators, families, public health and county officials, as well as support from the medical community.
- The Shawnee Mission School District recognizes the strongest mitigating measure may be found in the immunity gained from vaccines.
- The Shawnee Mission School District reserves the right to change mitigation protocols at any point by action of the Board of Education or superintendent.

Learning Opportunities

- SMSD will provide in-person learning for the 21-22 school year based on guidance from the Kansas State Department of Education (KSDE). As a result of Kansas House Bill 2134, remote learning is no longer a universal option for school districts to provide.
- SMSD does not have an accredited virtual school; therefore, if SMSD students request a virtual option, the district will refer them to the approved KSDE list of Accredited Virtual Schools.
- All students will continue to have one-to-one devices.
- Wireless hotspots will be available for student checkout to support those without connectivity in the home.
- Elementary specials will resume ABCD daily rotations.
- Student Individual Education Plan (IEP) services will continue to be implemented as determined by the IEP team.
- Field trip guidance will be provided based on community transmission data and/or additional guidance offered from public health officials.
- The decision to allow external building visitors (including volunteers) will be determined based on community transmission data and/or additional guidance offered from public health officials. All visitors must wear a mask.

Vaccination and Testing

- It is recommended all eligible individuals receive the COVID-19 vaccine.
- Vaccination clinics will be facilitated by SMSD in conjunction with community partners for staff, students, and community.
- SMSD will continue to offer testing for symptomatic, exposed asymptomatic, and optional participation in surveillance testing.

Maintaining Healthy School Environments

- **Masks are required for all children and adults** until such a time as all students have the opportunity to be fully vaccinated and community transmission levels decrease.
- **Individuals do not need to mask when outdoors.** This includes students participating in elementary recess.
- ALL bus riders must wear a mask when riding on a school bus unless there is documentation presented to the school for a medical mask exemption.
- Individuals are encouraged to self-monitor for symptoms of illness. Individuals who are ill should stay home.
- External building visitors must wear masks.

Cleaning and Ventilation

- Air handling enhancements implemented in the 2020-21 plans will continue for the 2021-22 school year.
- Cleaning and sanitization protocols implemented in the 2020-21 plans will continue for the 2021-22 school year

Johnson County Department of Health and Environment (JCDHE) Contact Tracing

- Individuals providing a COVID-19 vaccination record who have been exposed to a positive case of COVID-19 will not be required to quarantine as long as they are asymptomatic.
- SMSD will notify JCDHE of positive cases and positivity rates in class, group, school, etc.
 - SMSD will cooperate with JCDHE for contact tracing purposes.
 - Contact tracing and follow up instructions to be provided by JCDHE to exposed individuals
 - Elementary - SMSD will provide grade level notification of exposure to a positive case and general COVID-19 information.
 - Secondary, CAA, O&M, Office Staff - SMSD will not provide notification of exposure to a positive case as most at the secondary level and administrative offices have had the opportunity to be vaccinated and/or participate in surveillance testing.
 - Collaborate with JCDHE to determine necessary action in the case of increased positivity rates in a class, group, school, etc.

Exclusion from School

- Anyone testing positive for COVID-19 will be excluded for 10 days (excused absence) from the onset of symptoms or a positive test per JCDHE exclusion guidelines and K.S.A. 65-122.
- Anyone experiencing COVID like illness will be excluded from school/work as follows:
 - Excluded for 10 days (excused absence) OR
 - Providing documentation of a negative PCR test OR
 - Alternative diagnosis from a physician per JCDHE exclusion guidelines and K.S.A. 65-122.
- SMSD will maintain a COVID-19 dashboard for positive cases located on the district's website.

Cohorting, Social Distancing, and Group Sizes

Elementary	Secondary
During breakfast/lunch elementary students will sit in assigned seats in an effort to maintain class cohorts to the extent possible.	It is strongly recommended that secondary schools cohort and social distance (3ft) to the extent possible, and limit large group assemblies from gathering during the instructional day while community transmission is high.
During outdoor recess, cohorting will not be required.	

Activities/Athletics

All KSHSAA and district guidelines must be followed at all times. SMSD will use the following prevention strategies:

- Optional surveillance testing available for student athletes and coaches.
- Cohort to the extent possible with large groups.
- The Shawnee Mission School District reserves the right to require masks or implement other mitigating measures at any point.

Performing Arts

- Utilizing outdoor spaces whenever possible is strongly recommended.
- Bell covers are strongly recommended to reduce aerosolized material.
- Social distancing to 3ft in rehearsal spaces.

Mask Exemption

- The following individuals may be exempt from wearing masks while inside school buildings:
 - Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.
 - For students, faculty and staff, documentation of the above condition should be provided to the school nurse pursuant to school guidelines using the [District Mask Exemption Form](#).
 - Persons communicating with a person who is deaf or hard of hearing, where the ability to see the mouth is essential for communication.
 - Persons engaged in activities and athletics inside school buildings, who should follow KSHSAA and/or school guidelines.

Shawnee Mission School District Employees

Return to Work

- All positions in the SMSD are "in-person" positions.
- Any staff members who may have concerns about their work conditions because of their health, should contact the Human Resource Office and access the [ADA form](#).

Exclusion

- Asymptomatic staff will not be required by JCDHE to quarantine if they show proof of vaccination. Therefore, staff are encouraged to share their positive vaccination status with their school nurse. This information will be kept in strict confidence in a separate medical file by the Human Resource Team.
- SMSD employees are responsible for notifying their supervisor of their orders to exclude from work.
- If a staff member is required by a government agency to quarantine or isolate, they will need to use their own accumulated leave and/or access an available leave option.

The Shawnee Mission School District will continue to monitor the CDC guidelines and will remain in weekly communication with the Johnson County Department of Health and Environment. As a result, these safety mitigation protocols may change by action of the Board of Education or superintendent in response to community transmission data and/or additional guidance offered from public health officials with short notice.