This report is in response to a complaint filed with our office on behalf of the student by his parents, The parents. In the remainder of the report, the student will be referred to as “the student”. The mother will be referred to as “the mother” and the father will be referred to as “the father”. Together, the parents will be referred to as “the parents” or “the complainants”.

The complaint is against USD #437, Auburn / Washburn Public Schools. In the remainder of the report, “USD #437,” “the “school,” the “district”, and the “local education agency (LEA)” shall refer to this responsible public agency.

The Kansas State Department of Education (KSDE) allows approximately 30-days to complete the investigation of a child complaint and issue a report from the date a complaint is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on February 13, 2023 and the final report was issued on March 16, 2023.

Investigation of Complaint

Nancy Thomas, Complaint Investigator, contacted the mother by telephone on February 15, 2023 to clarify the issues of the complaint. The Complaint Investigator interviewed the father by telephone on March 1, 2023. The mother was interviewed by telephone on March 3, 2023 and again on March 7, 2023.

The parents requested and provided written consent for Rebekah Phelps-Davis, the family attorney, to be interviewed during the investigation. Ms. Phelps-Davis was interviewed on March 3, 2023.

USD #437 made the following administrative staff available for telephone interviews on February 28, 2023:

- Kevin Raley, Director of Special Services
- Ed Rains, Principal of Washburn Rural High School
In completing this investigation, the Complaint Investigator relied on the following documentation provided by the complainants and the district in making findings and conclusion:

- Evaluation Team Report dated October 22, 2021
- Prior Written Notice (PWN) for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated October 26, 2021
- Email from Charles Nimz, Assistant Principal at Washburn Rural High School, to the mother dated December 6, 2021 at 7:13 a.m.
- 2022-23 Infinite Campus Records for the student
- Email from the mother to Ed Rains, Principal of Washburn Rural High School, dated February 8, 2023 at 11:58 a.m.
- Letter dated February 10, 2023 written by the parent to the USD #437 Board of Education
- Documented Response to Formal Written Complaint dated January 2, 2023
- District Response to the Allegations dated February 24, 2023
- USD #437 School Board Policy KN: Complaints of Discrimination
- USD #427 School Board Policy JRB: Release of Student Records

Note that the parents and LEA also provided multiple emails and additional documentation related to the allegations. All of this information was reviewed and considered as background information for the investigation.

**Background Information**

This investigation involves a seventeen-year-old student currently enrolled at Washburn Rural High School in the eleventh grade in USD #437. The student has attended this school at this building since entering high school in the ninth grade.

Parents and the school staff noted the student struggled during his freshman year in high school. The mother made an initial referral for a special education evaluation during the spring of 2021. Parents were given prior written notice proposing a special education evaluation and written consent for the evaluation was provided on May 13, 2021. This evaluation was paused during the summer break when school was not in session and resumed at the beginning of the 2021-22 school year.

The initial eligibility meeting was held on October 22, 2021 with the father in attendance. The Evaluation Team Report concluded:

According to medical records, the student has been diagnosed with anxiety and adjustment disorder. Parent report is remarkable for school phobia and panic.
attacks. At times, symptoms of these diagnoses are believed to impact the student's functioning in the school setting; however, at present, he appears to be making good progress towards graduation with low intensity supports/accommodations. . . Based on evaluation data (medical records, observation, rating forms interviews), it is the opinion of the school psychologist that the team consider the student as a student with an exceptionality. However, it is recommended that the team not initiate special education services due to the student's current progress and demonstrated needs. Specifically, it is believed that the student's school-based needs can be met with general education resources and accommodations.

The multidisciplinary team reviewed and considered the Evaluation Team Report at the eligibility determination meeting held on October 22, 2021. At the conclusion of that meeting, the multidisciplinary team determined that the student was a child with a disability due to medical diagnoses of anxiety and adjustment disorder. However, the multidisciplinary team determined student was not in need of specially designed instruction and was not eligible for special education services.

USD #437 provided the parents with prior written notice of this decision on October 26, 2021, describing the action as follows:

The team agreed that the student meets Prong 1 of the eligibility criteria (Emotional Disturbance), and agreed the student is not currently demonstrating a need for specially designed instruction. The team’s determination supports eligibility under Section 504.

Charles Nimz, Assistant Principal at Washburn Rural High School, sent the mother an email on December 6, 2021 which stated:

Wow, what a semester for the student! He has excellent grades heading into the final couple weeks of the semester. At the completion of the student's education evaluation it was recommended a possible 504 Plan be written since he did not qualify for an IEP. If you would like to proceed, we will need to schedule a meeting with the student's team of teachers/counselors/etc. If not, we can continue to monitor the student's progress and intervene when necessary.

The parents and school staff both reported the student was successful during the remainder of the 2021-22 school year and that a 504 plan was never developed for the student.
It should be noted that this investigation will not address any issues related to Section 504 of Rehabilitation Act. The parent has already filed a complaint with the Office of Civil Rights, the agency tasked with the investigation of such allegations.

**Issues**

The Individuals with Disabilities Education Act (IDEA) and Kansas Special Education for Exceptional Children Act give KSDE jurisdiction to investigate allegations of noncompliance with special education laws that occurred not more than one year from the date the complaint is received by KSDE (34 C.F.R. 300.153(c); K.A.R. 91-40-51(b)(1)).

Based upon the written complaint and an interview, the parents raised three issues that were investigated.

**Issue One:** The USD #437, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate child find procedures during the 2022-23 school year by failing to evaluate the student for special education and related services and to discipline the student due to his suspected disability.

**Positions of the Parties**

The complainants alleged USD #437 failed in its child find obligation because the district was aware of the student's disability resulting from the medical diagnoses of anxiety and adjustment disorder but did not take any action when the student exhibited a significant change in behavior during the 2022-23 school year. The parents believe that the student’s disability affecting his education and mental health was “left unaddressed” by USD #437 which resulted in “severe discipline measures including suspending him for 5 days without a due process hearing for minor infractions”. The investigator notes that whether a student is entitled to a disciplinary due process hearing prior to a short-term suspension is a matter of general education law, not special education law. Thus, such matters cannot be addressed in a special education complaint. The parents are upset that the district was not responsive to the student's change in behavior, especially since an initial evaluation had been completed the prior school year and the student identified as a student with a disability.

The parents believe USD #437 already knew the student was a student with a disability and should have suspected the student was in need of special education during the first semester of the 2022-23 school year because of the increase in inappropriate behavior at school. The parents indicated USD #437 should have initiated a referral for a special education evaluation following the mother's October 2022 contact with the school alerting them to their concerns.
and requesting an investigation of the behavior management practices of the student's math teacher, Lydia Byers.

Further, the parents believe the student’s disability and need for special education should have been a factor in the assignment of discipline during the 2022-23 school year because the district was aware of the student’s disability and possible need for special education services as early as the end of October 2022.

The district indicated the student had just been evaluated for special education in October during the prior school year and was not found eligible for special education and related services at that time. The LEA reported the student averaged one incident of disrespect to staff per month prior to the Thanksgiving break. However, after returning from break the student’s behavior escalated resulting in four disciplinary incidents over a three-week period resulting in detention, in-school suspension (ISS), and out-of-school suspension (OSS).

The school staff reported they were implementing supports and interventions during the first semester of the 2022-23 school year including those recommended by Children’s Mercy Hospital which were described in the Evaluation Team Report dated October 22, 2021. The student was suspended out-of-school for five days in December followed by the holiday break. Immediately upon returning from the holiday break, the district indicated the parents made two requests for a 504 plan to be developed and implemented. USD #437 stated that staff are currently working with the parents on developing an individualized 504 accommodation plan for the student.

In February 2023, the parents requested another special education evaluation for the student to determine if specialized instruction was needed because of his disability. The district responded by obtaining written consent for another special education evaluation and is currently within the 60-school-day timeline to complete the evaluation and determine eligibility for special education.

The LEA reported that the student has only been assigned one-day of in-school suspension (ISS) and five days of out-of-school suspension (OSS) during the 2022-23 school year. This amount of disciplinary action does not yet require any specialized disciplinary considerations under the IDEA regulations.

**Findings of the Investigation**

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #437.
The Behavior Detail Report in Infinite Campus and interviews with both parties found the following disciplinary incidents occurred during the 2022-23 school year to-date:

<table>
<thead>
<tr>
<th>Date of Incident</th>
<th>Type of Inappropriate Behavior / Staff member</th>
<th>Consequences</th>
</tr>
</thead>
<tbody>
<tr>
<td>September 12, 2022</td>
<td>Profanity in the classroom Ms. Byers (Math Teacher)</td>
<td>1 demerit point</td>
</tr>
<tr>
<td>October 19, 2022</td>
<td>Class disruption Ms. Byers (Math Teacher)</td>
<td>3 hours detention</td>
</tr>
<tr>
<td>October 24, 2022</td>
<td>Disrespect to staff Ms. Byers (Math Teacher)</td>
<td>3 hours detention</td>
</tr>
<tr>
<td>November 29, 2022</td>
<td>Class disruption Ms. Byers (Math Teacher)</td>
<td>2 demerit points</td>
</tr>
<tr>
<td>December 5, 2022</td>
<td>Class disruption Ms. Byers (Math Teacher)</td>
<td>3 hours detention</td>
</tr>
<tr>
<td>December 9, 2022</td>
<td>Disruptive behavior / Disrespect to a student Andrew Nelson (ISS Teacher)</td>
<td>3 demerit points</td>
</tr>
<tr>
<td>December 12, 2022</td>
<td>Disrespect to staff / Point accumulation Jan Hutley (Assistant Principal)</td>
<td>5 demerit points 5 days of OSS</td>
</tr>
</tbody>
</table>

The parents and district acknowledged that the parents first contact with the district regarding concerns about the student's behavior occurred following the two detentions assigned in October 2022. At that time, the mother shared concerns that all of the disciplinary incidents were occurring in the student's math class and wanted the district to investigate the behavior management practices of the math teacher to be sure the student was not being “targeted.”

The district and parents acknowledge that as a result of a disciplinary incident on December 12, 2022, the father had a phone conversation with Ed Rains, Principal of Washburn Rural High School, regarding the difference between the use of profanity and disrespect toward a student or staff. During this conversation, the father referred to the initial evaluation for special education completed on October 22, 2021 and the Emotional Disturbance resulting from his medical diagnoses of anxiety and adjustment disorder as well as school phobia resulting from ongoing interactions with Ms. Byers and Ms. Hutley.

Infinite Campus Attendance Records document the student was given five-days of OSS beginning on December 12, 2022 through December 16, 2022, which was the last day of school before the holiday break.

Documentation and interviews found the parents filed a formal written complaint with Dr. Scott McWilliams, USD #437 Superintendent, and the USD #437 Board of Education on January 2, 2023 alleging harassment, discrimination, and retaliation. In the formal complaint, the parents wrote:
We want another 504 Plan meeting to look at accommodations and positive behavior supports being implemented by the school in 2023 for our son, who qualifies for such due to his disabilities. The school is well aware of the student’s disabilities and denied him reasonable supports this school year.

In an email written to Mr. Rains on February 8, 2023, the mother stated:

Additionally, you have his grade history, attendance history, behavior history and all the information from his Special Education evaluation to know how his school phobia and other mental health issues manifest both in and out of the classroom while at school. So, I do not understand why Ast. (sic) Principal Jan Hutley was not addressing all of this to get the student the support and services he needed to be successfully (sic), during her oversight of the student. And, when we requested back in December 2022 for his re-evaluation 504 plan meeting, why it was not addressed then, prior to him starting the 2023 school year.

The mother sent an email to the Investigator on March 5, 2023 in regards to the impact of the disciplinary action on the student’s grades and school participation due to it triggering his school phobia. The parent noted,

The student is now flunking ALL of his courses as a direct result of being suspended and among other things, I’ve spelled out to you about his exceptionalities, educational needs, and the schools failure to address them.

Applicable Regulations and Conclusions

Federal regulations implementing the IDEA at 34 C.F.R. 300.111(c)(1) require each state education agency (SEA) to identify, locate, and evaluate all children with disabilities residing in the State and who may need special education and related services, regardless of where the child may live or attend school in the State or even if the child is advancing from grade to grade. Each state then requires every local education agency (LEA) within that State to identify, locate, and evaluate all children with disabilities enrolled within its boundaries, and who may need special education and related services.

Federal regulations implementing the IDEA at 34 C.F.R. 300.8 and state regulations at K.A.R. 91-40-1 (k) define the term “exceptional child” as any child identified with a disability or any child who is identified as gifted, and who needs special education and related services. Each exceptional child with a disability must have been evaluated in accordance with federal regulations implementing the IDEA at 34 C.F.R. 300.304 through 300.311 and be found to meet the eligibility criteria to be identified in at least one of the 14 categories of disability described
in 300.8, which include: (1) autism, (2) deaf-blindness, (3) deafness, (4) emotional disturbance, (5) hearing impairment, (6) intellectual disability, (7) multiple disabilities, (8) orthopedic impairment, (9) other health impairment, (10) specific learning disability, (11) speech or language impairment, (12) traumatic brain injury, (13) visual impairment, and (14) developmental delay.

Federal regulations implementing the IDEA at 34 C.F.R. 300.301(b) allow either a parent or a public agency to initiate a request for an initial evaluation to determine if the child is a child with disability and in need of special education.

Federal regulations implementing the IDEA at 34 C.F.R. 300.534(b)(2) state that a student suspected of having a disability who has not been determined eligible for special education and related services under the IDEA may be subjected to the same disciplinary measures applied to students without disabilities who engage in comparable behaviors so long as the district had no reason to suspect eligibility under the IDEA.

In this case, interviews and documentation show the student was initially evaluated for special education services on October 22, 2021. At that time the student was identified as a student with the exceptionality of Emotional Disturbance but the multidisciplinary team determined the student was not in need of specially designed instruction at that time.

The father participated in that eligibility determination meeting and the LEA provided the parents with appropriate prior written notice on October 26, 2021. Documentation and interviews found that both the parents and school staff considered the student successful with general education supports during the remainder of the 2021-22 school year and the beginning of the 2022-23 school year.

Both the parents and LEA acknowledge that the mother shared concerns with school staff in October 2022 following the assignment of detentions on October 19, 2022 and again on October 24, 2022, and that the father shared concerns with school staff following the assignment of five-days of OSS on December 12, 2022.

The parents contend that sharing these concern should have put the district on notice that because the student had been identified as a child with an Emotional Disturbance, he was now in need of specially designed instruction. The parents believe the district should have understood that a meeting to discuss additional interventions through a 504 plan and an IEP was now necessary in light of the December 6, 2021 email from Mr. Nimz, which stated:

At the completion of the student’s education evaluation it was recommended a possible 504 Plan be written since he did not qualify for an IEP. If you would like to proceed, we will need to schedule a meeting with the student’s team of teachers/counselors/etc. If not, we can continue to monitor the student’s progress and intervene when necessary.
The documentation reviewed during the investigation supports USD #437’s position that the general education supports were successful during the remainder of the 2021-22 school year and the beginning of the 2022-23 school year. Following the assignment of the detentions of October 19, 2022 and again on October 24, 2022 for disciplinary incidents occurring in the classroom of Ms. Byers, the mother shared concerns about the classroom management and possible “targeting”. This did not trigger the district to suspect the need for specially designed instruction under the IDEA but instead triggered school administration to ascertain the instruction in the math class.

There were three disciplinary incidents that occurred in close proximity on December 5, December 9, and December 12, 2022 which resulted in five-days of OSS. The OSS was assigned to run from December 12, 2022 through December 16, 2022, which was the last day of school before the holiday break. Immediately upon returning from the holiday break, the parent filed a formal complaint and specifically requested a meeting to consider a 504 accommodation plan. Again, this did not trigger the district to suspect the need for specially designed instruction under the IDEA but instead triggered school administration to proceed with the development of a 504 accommodation plan.

Moreover, federal regulations at C.F.R. 300.534(c) state that while there are situations where a district may be deemed to have knowledge that a child is a child with a disability, there are three notable exceptions. One of the exceptions says a school district is not deemed to have knowledge that a child is a child with a disability when the child has been evaluated and determined to not be a child with a disability under the IDEA.

Based on the foregoing, a violation of the IDEA requirements for failure to meet child find requirements by not suspecting that this particular student with a disability was in need of specially designed instruction and thus eligible for disciplinary protection under the IDEA is *not* substantiated.

**Issue Two:** The USD #437, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to respond appropriately to the parents’ requests for a special education evaluation for the student during the 2022-23 school year.

**Positions of the Parties**

The parents indicated they first shared concerns about the student’s behavior in the school setting following the assignment of two detentions on October 19 and October 24, 2022. However, USD#437 failed to initiate a special education evaluation. The parents again shared concerns about the student’s behavior being the result of his medical diagnoses of anxiety, adjustment disorder, and school phobia upon the assignment of five-days of out-of-school
suspension (OSS) on December 12, 2022. But again, the district did not initiate a special education evaluation or a meeting to develop a 504 accommodation plan for the student.

The parents report they requested a meeting to develop a 504 accommodation plan for the student on January 2 and again on January 6, 2023. Upon that request, the parents believe the district should have responded by considering whether or not the student needed specialized instruction due to his previously identified disability of Emotional Disturbance. However, it wasn’t until the parents made a specific request for a special education evaluation on February 3, 2023, that the district proceeded with obtaining consent for a second initial evaluation for special education.

The district reported that the mother first contacted the district staff regarding concerns about behavior management in Lydia Byer’s math class following the assignment of two separate detentions at the end of October, 2022. However, the mother’s concerns related to Ms. Byer’s behavior management skills and “targeting” the student.

School staff also reported that the father contacted the district on December 12, 2022 regarding concerns that the student might need a 504 accommodation plan due to his disability of anxiety disorder, adjustment disorder as well as school phobia. This conversation occurred the same day as the student was assigned five-days of OSS which ended on the last day of school before the holiday break. The district reported it did not have time to respond to the father’s concerns because, immediately upon returning to school in January 2023, the parent filed two formal complaints with the Superintendent and USD #437 Board of Education, which also included a request to set up a meeting to discuss the development of a 504 accommodation plan for the student. Currently, the district is working with the parents to develop such a plan for the student.

The parent did not request a second special education evaluation until February 3, 2023 at a meeting with school administrators and the attorneys for both parties. In response to this request, the district obtained written consent to conduct the special education evaluation on February 14, 2023 and is in the process of completing the evaluation at this time.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #437.

The findings of Issue One are incorporated herein by reference.

The parents and district acknowledged that the parent first contacted the district regarding concerns about the student’s discipline occurred following the two detentions assigned in October 2022. At that time, the parent shared concerns that all of the disciplinary incidents were occurring in the student’s math class and wanted the district to investigate the behavior management practices of the math teacher to be sure the student was not being “targeted.”
Again, the district and parents acknowledge that as a result of a disciplinary incident on December 12, 2022, the father had a phone conversation with Ed Rains, Principal of Washburn Rural High School, regarding the difference between the use of profanity and disrespect toward a student or staff. During this conversation, the father referred to the initial evaluation for special education completed on October 22, 2021 and the disability of Emotional Disturbance resulting from his medical diagnoses of anxiety and adjustment disorder as well as school phobia resulting from ongoing interactions with Ms. Byers and Ms. Hutley during the 2022-23 school year.

The parents filed a formal written complaint with Dr. Scott McWilliams, USD #437 Superintendent, and the USD #437 Board of Education on January 2, 2023 alleging harassment, discrimination, and retaliation. In the formal complaint, the parents wrote:

We want another 504 Plan meeting to look at accommodations and positive behavior supports being implemented by the school in 2023 for our son, who qualifies for such due to his disabilities. The school is well aware of the student's disabilities and denied him reasonable supports this school year.

Both the parents and the district staff acknowledge that the parent made a request for another special education evaluation at the February 3, 2023 meeting with school administrators and the attorneys for both the district and family.

Documentation and interviews show that the district responded to this request by providing the parent with a prior written notice proposing a special education evaluation with additional assessment in the areas of social/emotional/behavioral, general intelligence, academic performance, and transition on February 14, 2023. The mother provided written consent for the proposed evaluation on February 15, 2023 and the father provided written consent for the proposed evaluation on February 19, 2023.

USD #437 is currently in the process of conducting this evaluation within the 60-school day timeline to complete the evaluation and determine eligibility, which will end on May 24, 2023.

However, the parents both indicated they were not consulted nor did they participate in any review of existing data to determine the additional areas to be assessed as part of the special education evaluation proposed in the prior written notice dated February 14, 2023.

**Applicable Regulations and Conclusions**

Federal regulations implementing the IDEA at 34 C.F.R. 300.301(b) allow either a parent or a public agency to initiate a request for an initial evaluation to determine if the child is a child with disability and in need of special education.
Federal regulations at 34 C.F.R. 300.304(c)(6) require school districts to ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs and federal regulations implementing the IDEA at 34 C.F.R. 300.305 (a)(1-2) require that an IEP team (which includes the parents) and other qualified professionals, as appropriate, must conduct a review of existing evaluation data on the child including evaluations and information provided by the child's parents; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers in order to identify what additional data, if any, are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual goals described in the IEP; and to participate, as appropriate, in the general education curriculum. The review of existing data may be conducted either with or without holding a meeting and ensures that a comprehensive evaluation can be conducted to address all areas of concern.

Following the review of existing data, federal regulations implementing the IDEA at 34 C.F.R. 300.503(a) require school districts to provide parents with prior written notice a reasonable time before they propose or refuse to initiate an evaluation of a child who has or is suspected of having a disability under the IDEA.

In this case, documentation and interviews support a finding that the parents' made a request for a second initial special education evaluation on February 3, 2023. However, the parents reported and there is no documentation to show the parents were conferred with or participated in a meeting to review existing data to determine what additional areas of assessment, if any, were needed to determine eligibility for special education under the IDEA. USD #437 did respond appropriately by providing the parent with prior written notice seeking consent to conduct a special education evaluation with additional assessment on February 14, 2023. The mother provided written consent for the proposed evaluation on February 15, 2023 and the father provided written consent for the proposed evaluation on February 19, 2023. This evaluation is currently being conducted within the 60-school day timeline which will end on May 24, 2023.

Based on the foregoing, a violation of special education statutes and regulations is substantiated for failing to respond appropriately to the parent request for a special education evaluation, specifically not including the parent in the review of existing data to determine what additional areas of assessment, if any, were needed to determine eligibility for special education under the IDEA during the 2022-23 school year.
ISSUE THREE: The USD #437, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), released the student's personally identifiable information without written parent consent during the 2022-23 school year.

Positions of the Parties

The complainants alleged that USD #437 released personally identifiable information (PII) related to this student and a sibling when it shared educational records, specifically the student's October 22, 2021 special education evaluation report along with “other educational records”, with the elected members of the school board following the investigation of their January 2, 2023 and January 12, 2023 formal complaints of harassment, discrimination, and retaliation.

It is noted that the second formal complaint dated January 12, 2023 involves another student with an IEP who lives with the family as well as issues not related to the IDEA for the student who is the subject of this investigation. The parents have filed a separate child complaint allegation in regards to releasing the PII of the other student living in their home; therefore, this investigation will only be concerned with the student who is the focus of this complaint and the IDEA allegation of failure to obtain consent prior to releasing the student's PII.

USD #437 acknowledged that Scott McWilliams, Superintendent of USD #437, shared the student’s PII with the members of the Board of Education on February 6, 2023. However, this disclosure was in accordance to USD #437 Board Policy KN and JRB.

Findings of the Investigation

The following findings are based upon a review of documentation and interviews with the parent and staff in USD #437.

The findings of Issues One and Two are incorporated herein by reference.

Interviews and documentation found that Dr. McWilliams shared the Documented Response to the Formal Written Complaint dated January 2, 2023 along with supporting documents with members of the school board during executive session on February 6, 2023. The supporting documentation did include the Evaluation Team Report dated October 22, 2021, which describes the initial special education evaluation and the determination of eligibility for special education.

USD #437 School Board Policy KN requires the superintendent to discuss personnel issues with members of the school board in executive session. The LEA indicated the formal complaints filed by the parents’ on January 2, 2023 alleged harassment, discrimination, and
retaliation by Washburn Rural High School staff members Jan Hurley, Assistant Principal, and Ed Rains, Principal.

USD #437 School Board Policy JRB allows the release of PII without the consent of the parent or eligible student to “school officials” with a “legitimate educational interest”.

The policy defines persons who are considered “school officials” as:

A school official is a person employed by the school as an administrator, supervisor, instructor, or support-staff member (including health or medical staff and law enforcement unit personnel); the board of education (in executive session); a person or company with whom the school has contracted to perform a special task (such as an attorney, auditor, medical consultant, or therapist); or a parent or student serving on an official committee such as a disciplinary or grievance committee; or assisting another school official in performing his or her tasks.

The policy states that a school official has a “legitimate educational interest” when the official needs to review an education record in order to fulfill his or her professional responsibility.

**Applicable Regulations and Conclusions**

Federal regulations implementing IDEA at 34 C.F.R. 300.622 require that parent consent must be obtained before personally identifiable information is disclosed to any other parties, other than officials of the public agency.

In this case, the parents filed a formal complaint against two Washburn Rural High School staff members alleging harassment, discrimination, and retaliation. The results of the investigation into the formal complaint was shared during the executive session of the February 6, 2023 School Board Meeting by Dr. McWilliams, Superintendent of USD #437.

USD #437 School Board Policy KN requires the superintendent to share personnel matters with members of the Board of Education in executive session as the school board is tasked with oversight of the employment of school and district personnel, which would be considered a “legitimate educational interest” under School Board Policy JRB. It is further noted that USD #437 School Board Policy JRB specifically includes the board of education (in executive session) under the definition of “school officials”.

Based on the foregoing, a violation of special education statutes and regulations is not substantiated for failing to obtain written parent consent prior to releasing the student’s personally identifiable information to school board members during the February 6, 2023 USD #437 School Board’s executive session.
Corrective Action

Information gathered in the course of this investigation has substantiated noncompliance with special education statutes and regulations. Violations have occurred in the following area:

A. Federal regulations at 34 C.F.R. 300.304(c)(6) which require school districts to ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs and federal regulations implementing the IDEA at 34 C.F.R. 300.305 (a)(1-2) which require that the IEP team (which includes the parents) and other qualified professionals, as appropriate, must conduct a review of existing evaluation data on the child including evaluations and information provided by the child's parents; current classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers in order to identify what additional data, if any, are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual goals described in the IEP; and to participate, as appropriate, in the general education curriculum. The review of existing data may be conducted either with or without holding a meeting and ensures that a comprehensive evaluation can be conducted to address all areas of concern.

In this case, the USD #437 did not include the parent in the review of existing data prior to providing the parents with prior written notice for an evaluation and request for consent. Because the parents did not participate in the review of existing data, it is unclear if the proposed initial special education evaluation is comprehensive enough to identify all of the student's special education and related service needs.

Based on the foregoing, USD #437 is directed to take the following actions:

1) Within 15 calendar days of the date of this report, USD #437 shall submit a written statement of assurance to Special Education and Title Services (SETS) stating that it will:
   a) Comply with federal regulations at 34 C.F.R. 300.304(c)(6) which require school districts to ensure that the evaluation is sufficiently comprehensive to identify all of the child's special education and related service needs and federal regulations implementing the IDEA at 34 C.F.R. 300.305 (a)(1-2) which require that the IEP team (which includes the parents) and other qualified professionals, as appropriate, must conduct a review of existing evaluation data on the child including evaluations and information provided by the child's parents; current
classroom-based, local, or State assessments, and classroom-based observations; and observations by teachers and related services providers in order to identify what additional data, if any, are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual goals described in the IEP; and to participate, as appropriate, in the general education curriculum. This review of existing data can be conducted with or without a meeting.

2) USD #437 shall review its procedures and practices with regards to conducting the required review of existing data. Based upon that review, USD #437 shall develop written procedures which will include a method to document that all relevant IEP team members, including the parents, participated in the review of existing evaluation data, either with or without a meeting, for the child in order to identify what additional data, if any, are needed to determine whether the child is a child with a disability; the present levels of academic achievement and related developmental needs of the child; whether the child needs special education and related service; and whether any special education and related services are needed to enable the child to meet the measurable annual goals described in the IEP; and to participate, as appropriate, in the general education curriculum. No later than April 15, 2023, USD #437 will provide SETS with a copy of this written plan for approval and a plan to disseminate this new procedure to all special education staff and administrators. Once the written plan has been approved by SETS, USD #437 shall implement the dissemination plan and provide documentation that all special education staff and administrators is the district have received a copy no later than 30 days following the approval date.

3) Within 15 calendar days of the date of this report, USD #437 shall contact the parents to schedule a time to conduct a review of existing data with the parents, which shall include evaluations and information provided by the parents to identify what additional data, if any, that are needed to determine eligibility and the educational needs of the child. The parents may accept or not accept the invitation to review existing data. If the invitation to review existing data is accepted, the review may be conducted by e-mail or by telephone contact, without the need for a physical meeting. Within 5 days of either completion of this review or the parent’s rejection of the invitation to review existing data, USD #437 shall notify SETS that the review of existing data with the parents has been completed or rejected by the parents.

4) Further, USD #437 shall, within 10 calendar days of the date of this report, submit to Special Education and Title Services one of the following:
a) a statement verifying acceptance of the corrective action or actions specified in this report;
b) a written request for an extension of time within which to complete one or more of the corrective actions specified in the report together with justification for the request; or
c) a written notice of appeal. Any such appeal shall be in accordance with K.A.R. 91-40-51(f) as described below.

Right to Appeal

Either party may appeal the findings or conclusions in this report by filing a written notice of appeal with the State Commissioner of Education, ATTN: Special Education and Title Services, Landon State Office Building, 900 SW Jackson Street, Suite 620, Topeka, KS 66612-1212. The notice of appeal may also be filed by email to formalcomplaints@ksde.org. The notice of appeal must be delivered within 10 calendar days from the date of this report.

For further description of the appeals process, see Kansas Administrative Regulations 91-40-51(f), which can be found at the end of this report.

Nancy Thomas, M.Ed., Complaint Investigator
K.A.R. 91-40-51(f) Appeals.

(1) Any agency or complainant may appeal any of the findings or conclusions of a compliance report prepared by the special education section of the department by filing a written notice of appeal with the state commissioner of education. Each notice shall be filed within 10 days from the date of the report. Each notice shall provide a detailed statement of the basis for alleging that the report is incorrect.

Upon receiving an appeal, an appeal committee of at least three department of education members shall be appointed by the commissioner to review the report and to consider the information provided by the local education agency, the complainant, or others. The appeal process, including any hearing conducted by the appeal committee, shall be completed within 15 days from the date of receipt of the notice of appeal, and a decision shall be rendered within five days after the appeal process is completed unless the appeal committee determines that exceptional circumstances exist with respect to the particular complaint. In this event, the decision shall be rendered as soon as possible by the appeal committee.

(2) If an appeal committee affirms a compliance report that requires corrective action by an agency, that agency shall initiate the required corrective action immediately. If, after five days, no required corrective action has been initiated, the agency shall be notified of the action that will be taken to assure compliance as determined by the department. This action may include any of the following:

(A) The issuance of an accreditation deficiency advisement;
(B) the withholding of state or federal funds otherwise available to the agency;
(C) the award of monetary reimbursement to the complainant; or
(D) any combination of the actions specified in paragraph (f)(2)