This report is in response to a complaint filed with our office on behalf of the student by the parents. The student lives with the Halls in their home through a private placement. In the remainder of the report, the student will be referred to as “the student.” The mother will be referred to as “complainant A” and The father will be referred to as “complainant B.” Together, The parents will be referred to as “the complainants”. Chrissy Broadbent is the student’s biological mother and in the remainder of this report will be referred to as, “the mother.”

The complaint is against USD #437, Auburn-Washburn Public Schools. The student is enrolled at Washburn Rural High School and received special education services there. In the remainder of the report, “Washburn Rural High School” and the “district,” shall refer to USD #437.

The Kansas State Department of Education (KSDE) allows for a 30-day timeline to investigate a child complaint and a complaint is considered to be filed on the date it is delivered to both the KSDE and to the school district. In this case, the KSDE initially received the complaint on February 23, 2023 and the 30-day timeline ends on March 27, 2023. The initial complaint contained seven concerns however, it was determined that not all the concerns were addressed by IDEA regulations. Therefore, it was determined that:

Concern 1 alleged discrimination, and/or retaliation and was not investigated. The investigator provided contact information for the Office of Civil Rights to the family.

Concerns 2, 3 and the part of Concern 6 alleged current transportation violations and were investigated as Issue 1 in this report.
Concern 4 alleged sharing personally identifying information and was investigated as Issue 2. The part of Concern 4 alleging retaliation is not covered by IDEA and contact information for the Office of Civil Rights was provided to the family.

Concern 5 was a general education concern rather than a special education concern and not investigated.

The part of Concern 6 concerning transportation for the 18-21 program for the next school year while in the IEP was not investigated as these services have not yet been implemented.

Concern 7 was not investigated as the concern was general and addressed multiple students with the desired resolution beyond the scope of the child complaint investigation process.

Investigation of Complaint

Donna Wickham, Complaint Investigator conducted all interviews by telephone. She interviewed the mother on March 9, 2023, complainant B on March 13, 2023, complainant A on March 14, 2023, and the student’s Social Worker, Ms. Bethany Kuhl, Calm Foster Care on March 16, 2023. Dr. Wickham interviewed Dr. Kevin Raley, Director of Special Services Auburn-Washburn Public Schools and Mr. Ed Raines, Principal, Washburn Rural High School together on March 10, 2023.

The Complaint Investigator also received emails from the complainants, parent and USD #437 staff between February 27, 2023 and March 17, 2023.

In completing this investigation, the Complaint Investigator reviewed documentation provided by the complainants and district. Although additional documentation was provided and reviewed the following materials were used as the basis of the findings and conclusions of the investigation:

- Individualized Education Program dated January 7, 2022
- Student Schedule for all terms for the 2022-2023 school year
- Email from Mrs. The mother, complainant A to Mr. Tyler Ayers, assistant principal dated August 8, 2022 at 8:38 a.m.
- Email from Mr. Ayers to Mrs. Hall, dated August 9, 2022 at 11:13 a.m.
- Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated August 24, 2022
• IEP Amendment between Annual IEP Meetings, dated August 24, 2022
• Auburn Washburn USD 437 Incoming Board of Education Orientation and Training, September 2022
• Notice of Meeting dated November 15, 2022
• Notice of Meeting dated December 1, 2022
• Documented Response Artifacts (Appendices) provided by Mr. The father and Mrs. The mother, the complainants dated December 7, 2023
• Individualized Education Program dated January 5, 2023
• Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated January 5, 2023
• Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated January 7, 2023
• Documented Response to Second Written Complaint (sic) dated January 12, 2023 from Mr. Ed Raines, Principal to Mr. and Mrs. Hall dated January 27, 2023
• Addendum to Complaint to Dr. Scott McWilliams, superintendent by the complainants dated January 12, 2023
• Email from Mr. Raines to Mr. and Mrs. Hall dated January 12, 2023 at 6:57 p.m.
• Email from Mr. Raines to Mr. Hall dated January 12, 2023 at 7:57 p.m.
• Email from Mr. Hall to Mr. Raines dated January 13, 2023 at 8:13 a.m.
• Email from Mr. Raines to Mr. Hall dated January 13, 2023 at 2:52 p.m.
• Email from Mr. Ayers to Mrs. Hall dated January 26, 2023 at 4:57 p.m.
• Email from Mr. Ayers to Mrs. Hall and Ms. Chrissy Broadbent parent dated February 1, 2023 at 4:38 p.m.
• Email from Mr. Ayers to Mrs. Hall and Ms. Broadbent dated February 1, 2023 at 7:36 p.m.
• Email from Ms. Broadbent to Mr. Ayers dated February 1, 2023 at 8:36 p.m.
• In School Suspension for the student dated February 2, 2023
• Prior Written Notice for Identification, Initial Services, Placement, Change in Services, Change of Placement and Request for Consent dated February 2, 2023
• Screenshot of bus schedule for general education high school student dated February 2, 2023 at 10:52 p.m.
• Notarized Durable Power of Attorney for Educational Decisions between student and Mrs. Hall dated February 6, 2023
• Agenda from the February 6, 2023 USD 437 Board of Education Meeting
• Screenshot of text exchange between Mrs. Hall and student's afternoon bus driver dated February 12, 2023 at 4:49 p.m.
• Email from Mrs. Hall to KSDE dated February 12, 2023 at 11:32 p.m.
BACKGROUND INFORMATION

This investigation involved an 18-year-old student who has lived with a family in a private placement for approximately two years through the IDD waiver. He has a case manager who oversees this placement. The student receives special education and related services under the eligibility category of autism with a secondary eligibility category of emotional disturbance. His mother reported he has been medically diagnosed with ADHD, Anxiety, ODD and Bipolar 1.

He just turned 18 and is his own guardian, but his mother reports she is his educational power of attorney and shares it with complainant A who became his educational power of attorney on February 6, 2023. The educational power of attorney for complainant A was provided to the complaint investigator.

The student will meet his graduation requirements at the end of the 2022-2023 school year and begin the transition services through special education. He has a transition plan with goals and anticipates attending technical school and learning independent living and job skills.

ISSUE ONE: The USD #437, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student’s IEP, specifically by shortening his school day.

POSITIONS OF THE PARTIES

The complainant alleged that the student had been pulled out of his last class of the day at the high school to catch his special education bus after his class schedule changed from ending his school day at the technical school. The parents alleged that this has been an ongoing practice in the district, and he often arrived home on the special
education bus before the official school day ended. The student's mythology class ended at 3:02 p.m. daily however the special education bus was scheduled for pickup at 2:42 p.m. To make matters worse, the student had to pack his laptop and walk the entire length of the building to catch the bus early. Complainant A alleged that this resulted in missing 26 minutes of his mythology class each day. Complainant A stated that this practice continued until she told the student not to leave the class early resulting in the bus driver leaving without the student. The family then had to contact the bus company and was called back to pick him up. Finally, Complainant A requested an explanation to explain why he had to leave class early to ride his bus. As a result of all this, the district finally investigated and only then changed their practice.

The complainant and parent also alleged that the student’s class schedule was changed for the convenience of district busing without considering the student's learning style and consent from the student, parent, or complainants. Only when they complained were the planned changes not made.

The district acknowledged that the student missed eighty-eight (88) minutes of IEP service minutes during the 2022-2023 school year. In response to this allegation the district reviewed the Student Activity Report/Bus Logs for this student and identified several dates when this student boarded the bus prior to the bell.

The Bus Logs and Activity Reports show the exact time the student's ID was scanned prior to boarding the bus at the beginning and end of each day. In reviewing the scan times for the student boarding the bus, there were 15 days (totaling 88 minutes) in which the student scanned boarding the bus before the 3:02 p.m. bell schedule at the end of the school day.

The district has now instructed teachers not to dismiss the student early when they see the bus arrive. Further, they have instructed the bus drivers that the students must be allowed to remain in class until 3:02 p.m. when the class ends. Arrival times in the morning were not an issue and in fact, the student’s bus often arrived at least 15-20 minutes before the first bell rang at 7:55 a.m.

The district reported that this student’s bus schedule is unique and did not suspect that other students with special education needs were missing service minutes due to busing. However, they reviewed Student Activity Report/Bus Logs for other students in the district and attending the high school and did not find this error did not extend beyond this student.
The district acknowledged that they asked the student to drop a Positive Behavior Support class he wanted to take because he was doing well to take a class he would benefit from. Knowing his hesitancy, the district asked him to attend the Financial Literacy class to see if he wanted to take it. He was put on the roster to hold a place in the class in the event he wanted to enroll. Since no change in schedule occurred no IEP action was needed.

**Findings of the Investigation**

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

The parents and district agree that the student missed instructional and special education service minutes due to the school bus arriving early and the student leaving class early to board the bus.

The district reported they reviewed the student activity for boarding and disembarking the bus for the 2022-2023 school year using the student's logged activity and prepared the table below to show the student's missed minutes.

<table>
<thead>
<tr>
<th>Date</th>
<th>Scan Time</th>
<th>Minutes of missed services (rounded up)</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>8/15/2022</td>
<td>2:58:16 p.m.</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>8/16/2022</td>
<td>2:46:55 P.M.</td>
<td>15</td>
<td></td>
</tr>
<tr>
<td>1/3/2023</td>
<td>2:51:30 P.M.</td>
<td>11</td>
<td></td>
</tr>
<tr>
<td>1/4/2023</td>
<td>2:28:37 P.M.</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>1/5/2023</td>
<td>2:52:34 p.m.</td>
<td>10</td>
<td>Wednesday Schedule</td>
</tr>
<tr>
<td>1/6/2023</td>
<td>2:53:08 p.m.</td>
<td>9</td>
<td></td>
</tr>
<tr>
<td>1/9/2023</td>
<td>2:52:41 p.m.</td>
<td>10</td>
<td></td>
</tr>
<tr>
<td>1/12/2023</td>
<td>2:59:15 p.m.</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>1/20/2023</td>
<td>2:58:56 p.m.</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>1/27/2023</td>
<td>3:00:31 p.m.</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>2/3/2023</td>
<td>2:59:53 p.m.</td>
<td>3</td>
<td></td>
</tr>
<tr>
<td>2/10/2023</td>
<td>3:01:02 p.m.</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>2/15/2023</td>
<td>2:36:35 p.m.</td>
<td>2</td>
<td>Wednesday schedule</td>
</tr>
<tr>
<td>2/24/2023</td>
<td>3:00:31 p.m.</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3/3/2023</td>
<td>3:01:32 p.m.</td>
<td>2</td>
<td></td>
</tr>
</tbody>
</table>

Total # of missed service minutes: 88
Semester 1 (August 1, 2022 – January 2, 2023) of 2022-2023 class schedule shows that the student attending the technical school Monday through Friday at the end of the school day and enrolled in Positive Behavior Supports for 3rd period. On Wednesday, his class ended at 2:38 p.m. and the remainder of the days of the week his class ended at 3:02 p.m.

Semester 2 (January 3, 2023 – May 30, 2023) of 2022-2023 class schedule shows that the student enrolled in a mythology class at the high school Monday through Friday at the end of the school day and enrolled in Positive Behavior Supports for 6th period. On Wednesday, his class ended at 2:38 p.m. and the remainder of the days of the week his class ended at 3:02 p.m. Early Release days end at 2:17 p.m.

The January 7, 2022 IEP lists 96 minutes of daily direct special education service within the general education setting and 96 minutes of daily direct special education service within the special education setting.

The August 24, 2022 IEP Amendment signed by the parent on August 24, 2022 consenting to the change without a meeting stated, “Current IEP indicates providing Special Education Service within general education setting for 96 minutes (English and Social Studies) and 96 minutes of special education services with the special education setting (PBS). Proposed changes are a decrease of minutes to 48 for SS and PSB respectively.” The August 24, 2022 PWN explanation of why the action is proposed stated, “The student is enrolled in courses at the technical school. He will not be in attendance at the high school during the afternoon classes.”

The January 5, 2023 Prior Written Notice lists 48 minutes of inclusion support for the student’s mythology class, his last class of the school day. It also states, “The related service of special transportation includes an estimated travel time for arrival (home to school) and departure (school to home) that is subject to route changes and is based on the school calendar.”

Both Individual Education Programs in effect during the 2022-2023 school year (January 7, 2022 and January 5, 2023) show that the student receives special transportation to and from home to allow for a smaller number of student riders to provide safer transportation.

Interviews report the district is willing to offer compensatory minutes to make up for the missed 88 minutes of service for the 2022-2023 school year and Complainant A agreed to consider the compensatory minutes on behalf of the student.
Interview and documentation show the student was not enrolled in the Financial Literacy class.

Interviews revealed that the practices of students leaving early were likely unique to the student because his services are unique to his schedule this school year. The district reported that students have a bar or QR code on their student IDs that they scan upon entering and getting off the bus and it is logged as student activity. The district stated that upon receiving this allegation they examined a random group of student's scanning entry and departures from the bus and compared it to their school schedules and did not find aberrations.

Applicable Regulations and Conclusions

The complaint alleged missing special education service minutes due to the scheduling of the related service of transportation. Federal regulations implementing the IDEA at 34 C.F.R. 300.17(d) define FAPE as providing the special education and related services in conformity with the IEP. In addition, state regulations implementing the Kansas Special Education for Exceptional Children Act at K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP.

In this case the district acknowledged that the student left his mythology class at the high school early on fifteen instances between August 15, 2022 and March 3, 2023 for a total of 88 minutes to board his special education bus to go home at the end of the day.

Based on the foregoing, according to IDEA and Kansas special education regulations it is substantiated that the district failed to implement the student’s IEP, specifically by shortening his school day.

It is noted that the complainant alleged that the student missed service minutes due to transportation scheduling during the past three years of the student's attendance at the high school. However, the complaint investigator is only authorized to investigate this allegation for the past twelve months. Further, the complainant alleged that the practice of picking up students early and missing special education minutes occurred for more than one student. In an interview with the district it was disclosed that the district had investigated this in the same manner as used to discover the missed minutes for this student and did not discover this practice to be widespread.
Both the complainants, parent and district acknowledge that the district wanted the student to consider the Financial Literacy class instead of the Positive Behavior Support class. Although the student was put on the Financial Literacy roster it was the district practice to reserve the spot for him if he decided to enroll. The district did not follow through with the change at the request of the student and therefore did not change his IEP without a meeting. Therefore, is it not substantiated that the district changed the student’s IEP without an IEP meeting.

It is noted that the district may make scheduling changes as they would with any district student as long as they do not change the IEP services or goals. It is further recommended that any scheduling changes for the student be weighed against the impact and timing of his medication.

**ISSUE TWO**: 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) for the student when it shared the student’s Individual Education Program with the elected members of the school board as a part of the investigation of their January 12, 2023 formal complaints of harassment, discrimination, and retaliation.

It is noted that the complainants have filed a separate child complaint allegation with the Kansas State Department of Education regarding the release of PII of another child living in their home and some aspects of that allegation overlap with this allegation. This investigation will only be concerned with the student who is the focus of this complaint.

USD #437 acknowledged that Dr. Scott McWilliams, Superintendent of USD #437, shared the student’s PII contained in the student’s IEP with the members of the Board of Education during executive session on February 6, 2023 as artifacts pertaining to the investigation of the January 12, 2023 complaint. However, this disclosure was in accordance with 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 Issue One are incorporated herein by reference.

Interviews and documentation found that Dr. McWilliams shared the Documented Response to the 2nd Formal Written Complaint dated January 12, 2023 along with Cover Page, IEP Team Participant Page, Transition Assessment, Transition Plan and Course of Study from the January 5, 2023 IEP with members of the school board during executive session on February 6, 2023.

USD #437 School Board Policy KN requires that the superintendent discuss personnel issues with school board members in executive session. On January 12, 2023 the complainants verbally made a complaint on behalf of the student for alleged harassment, discrimination, and retaliation by Washburn Rural High School staff member Tyler Ayer, who is a member of the student's IEP team. As the complainants had made a previous complaint on behalf of another child in the family this complaint on behalf of the student was investigated within the same timeframe.

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

The policy defines “school officials” as persons:

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 further 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.
Interview and document review show that the superintendent provided orientation training to new board members (revised on September 2022) related to permissible subjects and issues of confidentiality during executive session between October 4, 2022 and November 23, 2022.

The February 6, 2023 Board Meeting agenda for the executive session lists "8.01 Discuss Personnel Matters Pursuant to the Exception for Non-Elected Personnel under KOMA."

**Applicable Regulations and Conclusions**

The Family Educational Rights and Privacy Act (FERPA) affirms the right of confidentiality of education records for all students in public schools and their parents. In addition, Federal Regulations at 34 C.F.R. 300.612 through 300.624 and at K.A.R. 91-40-50 specifically outline parental access to educational records and confidentiality of those records.

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. As Superintendent of the district, Dr. McWilliams is clearly an official of USD 437.

In this case, the complainants filed a formal complaint against one Washburn Rural High School staff member alleging harassment, discrimination, and retaliation on January 12, 2023. The findings of the investigation were 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 school and district personnel. It is concluded that this is a "legitimate educational interest" under School Board Policy JRB. It is noted that USD #437 School Board Policy JRB specifically includes the board of education operating 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. A violation occurred in the following area:

Federal law at 34 C.F.R. 300.17(d) and K.A.R. 91-40-19(a) require each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP as written.

In this case, the evidence supports the finding that USD #437 did not provide 88 special education services minutes to the student during the 2022-2023 school year due to shortening the school day to provide special education transportation.

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 comply with federal regulations at 34 C.F.R. 300.17(d) and K.A.R. 91-40-19(a) which requires each school district, teacher, and related services provider to provide special education and related services to the child in accordance with the child's IEP as written.

2. Further, by April 15, 2023 USD #437 will offer the student compensatory education for a minimum of 88 minutes for the amount of time missed due to early departure to ride the special education transportation (note the district is offering 90 minutes). The district proposed offering the student 90 minutes (two 45-minute sessions) of compensatory after-school tutoring in mythology. The parent may accept all, or any portion, or none, of the offered compensatory services. The district will provide a Prior Written Notice of a schedule of how and when the minutes are provided, or that the services will not be provided because the parent has declined the offered services, to the parent and to Special Education and Title Services (SETS) by May 30, 2023.

3. The district will continue to monitor the Student Activity Report on a monthly basis through May 30, 2023 to ensure that any future instances of the student boarding the bus prior 3:02 p.m. are not detected. The results of the monitoring will be submitted to Special Education and Title Services (SETS) by June 5, 2023.

4. The district will review the direction/training provided to district staff and bus drivers regarding students receiving special education services early departure for
bussing to ensure that special education transportation is not affecting the delivery of services for any other students and submit those findings to Special Education and Title Services (SETS) by June 5, 2023.

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.

Donna Wickham, Ph.D.
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)