

KANSAS STATE DEPARTMENT OF EDUCATION  
SPECIAL EDUCATION AND TITLE SERVICES  
REPORT OF COMPLAINT  
FILED AGAINST  
UNIFIED SCHOOL DISTRICT #385, ANDOVER PUBLIC SCHOOLS  
ON SEPTEMBER 10, 2025  
DATE OF REPORT: OCTOBER 23, 2025

This report is in response to a complaint with the Kansas State Department of Education against USD #385 (Andover Public Schools) on behalf of ----- by his parents, ----- and ----- . In the remainder of the report, ----- will be referred to as “the student” and ----- will be referred as “parent 1” or “complainant 1”; ----- will be referred to as “parent 2” or complainant 2”; and both of them together will be referred to as “the parents” or the “complainants”.

When a special education complaint is filed against a school district that is a member of a special education cooperative or interlocal, or that uses any other state recognized public agency to serve children with disabilities, the term “ local education agency (LEA)” in this report will include the school district, the special education cooperative or interlocal, and any other agency that is recognized by the state as an administrative agency for public elementary or secondary schools and is serving the educational needs of this student.”

In this case, the complaint is against USD #385 (Andover Public Schools) who contracts with the Butler County Special Education Interlocal to provide special education and related services to students enrolled in the district. In the remainder of the report, both of these responsible public agencies will be referred to as “the Local Education Agency”. In the remainder of the report, the LEA staff will be referred to as follows:

- April Hilyard, Special Education Director, Butler County Special Education Interlocal
- Shelley Jonas, Special Education Assistant Director, Butler County Special Education Interlocal
- Elton Armbruster, Principal, Wheatland Elementary School
- Marissa Vargas, School Psychologist
- Jennifer Thomas, Third Grade Teacher
- Jennifer Clausing, Special Education Teacher
- Rene Moses, Afternoon Paraprofessional
- Patti Scales, Morning Paraprofessional

The Kansas State Department of Education (KSDE) allows for a 60-day timeline to investigate a complaint and issue a final decision from the date on which it was filed. A complaint is considered filed on the date on which it was received by KSDE. In this case, the KSDE initially received the complaint on September 10, 2025.

## **Evidence Reviewed**

During the investigation, the Complaint Investigator reviewed all evidence and documentation provided by the LEA and the parents.

The investigator interviewed parent 1 by telephone on September 12 and 30, 2025 and parent 2 by telephone on October 1, 2025.

The LEA made the following staff available for telephone interview on October 6, 2025 as part of this investigation:

- Principal
- Special Education Teacher
- Butler County Special Education Interlocal Assistant Director
- Afternoon Paraprofessional
- Morning Paraprofessional

Written documentation was provided by both the LEA and the complainant. The following written documentation was used in consideration of the issue:

1. Psychological Evaluation dated August 22, 2022 written by Dr. James Wright, Licensed Psychologist, Prairie View, Inc.
2. Student Based Support Team (SBST) Notes dated August 29, 2022
3. Individualized Education Program (IEP) dated September 25, 2024 and amended on May 5, 2025
4. Behavior Intervention Plan (BIP)
5. Prior Written Notice (PWN) for Identification, Special Education and Related Services, Educational Placement, Change in Services, Change in Placement, and/or Request for Consent dated May 5, 2025
6. Email dated August 11, 2025 at 2:16 p.m. written by the Special Education Teacher to the parents
7. Special Education Teacher Service Logs dated August 11 through September 16, 2025
8. Email dated August 29, 2025 at 8:50 p.m. written by the Special Education Teacher to the parents
9. Video of student (August 29, 2025), 47 seconds
10. Email dated August 30, 2025 at 11:04 a.m. written by the parent 1 to the Special Education Teacher
11. Email dated September 1, 2025 at 6:38 p.m. written by the Special Education Teacher to the parent 1
12. Email dated September 1, 2025 at 7:45 p.m. written by the parent 2 to the Special Education Teacher
13. Email dated September 1, 2025 at 8:05 p.m. written by the parent 1 to the Special Education Teacher

14. Email dated September 2, 2025 at 7:00 p.m. written by the Special Education Teacher to the parents
15. Email dated September 3, 2025 at 8:48 p.m. written by the School Psychologist to the parents and the Special Education Teacher
16. IEP dated September 22, 2025
17. LEA's Response to the Allegations dated October 1, 2025
18. Student's Daily Schedule (2025-26 school year)
19. Student's Attendance Record (2025-26 school year)
20. Student's Behavioral Episodes (2025-26 school year)
21. School Board Policy KGE: Concealed Observations
22. School Board Policy JRB: Release of Student Records

### **Background Information**

The subject of this complaint is an eight-year-old boy currently enrolled in the third grade at Wheatland Elementary School in USD #385 during the 2025-2026 school year. The student began exhibiting behavioral concerns as a preschooler and was evaluated by the LEA during the first quarter of kindergarten and initially found eligible for special education services on October 25, 2022. The most recent special education reevaluation was completed on September 25, 2024 and, at that time, the IEP team determined the student continued to be eligible for special education services under the exceptionality category of Emotional Disturbance.

### **Issues Investigated**

Based on the written complaint, three issues were identified and investigated.

#### **Issue One**

USD #385, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically by not providing the required special education services in the general education classroom during the 2025-26 school year.

#### **Applicable Law**

Federal regulations at 34 C.F.R. §300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP. K.A.R. §91-40-16(b)(2) further specifies those services for which written consent has been granted as specified by law are implemented not later than 10 school days after parental consent is granted unless reasonable justification for a delay can be shown.

State regulations at K.A.R. §91-40-1(kkk)(2) defines "special education", among other things, as paraeducator [paraprofessional] services, speech-language pathology services and any other

related service, if the service consists of specially designed instruction to meet the needs of a child with a disability.

Section A in Chapter 5 – Special Education and Related Services of The Kansas Special Education Process Manual states, “A Paraeducators (paras) cannot be given responsibility for designing or be the primary person in charge of delivering classroom content”.

### **Analysis: Findings of Fact**

The following findings of fact are based upon interviews and record review.

The parents reported that the student has not been in the general education classroom during the 2025-26 school year despite the IEP stating that he would receive instruction and be with his peers for part of the school day. Instead, the student has been in isolation with only a paraprofessional providing the third grade curriculum instruction and only allowed to be with his peers for recess, lunch, and Art, Music, or PE. The parents indicated that the student was sometimes not even allowed to participate with peers during those nonacademic times because of behavior that was exacerbated because of his isolation. The parents stated the student was frustrated and angry that he was being kept away from his peers and expressed that he was a “bad kid” and “hates himself”.

The LEA reported the student was suspended for greater than 10 days during the 2024-25 school year and a manifestation determination meeting was conducted on May 5, 2025. At that time, the LEA and parent agreed to amend the September 25, 2024 IEP to increase the level of special education support due to the student’s ongoing challenges with emotional regulation and the resulting behaviors. LEA staff reported and documentation show the parents were provided with prior written notice proposing a material change of services and a significant change of placement on May 5, 2025 and that the parents provided written consent for these changes on May 6, 2025.

The May 5, 2025 amendment of the September 25, 2024 IEP was the IEP in effect between August 13, 2025, the first day of the 2025-26 school year, until the IEP team met again on September 22, 2025. This IEP required direct special education services in a dedicated special education setting for 275 minutes per day, five days every week. The student would also receive 115 minutes per day, five days per week of direct special education support in the general education setting as well as 30 minutes per day, five days per week of attendant care. The student had special education support 100% of his school day both in the general education and special education settings.

A copy of the student’s daily schedule shows the student was scheduled to receive 30 minutes of attendant care during mid-day transitions, recess, and lunch. The student was scheduled to be with his grade-level peers in the general education setting to receive special education support/instruction for 60 minutes each day for transitions, bathroom breaks, and two recesses as well as for 55 minutes each day for transitions and Art, Music, or PE class. The schedule also

shows the student was scheduled to be in the special education setting for 120 minutes per day of English language arts; 60 minutes per day of Math; 20 minutes per day of Science or Social Studies; 30 minutes per day of independent Reading or homework; and 45 minutes per day of "Morning Routine" and "Warrior Workshop". This schedule provided special education support services for 100% of the school day in both general and special education settings.

The LEA reported and documentation showed the only school days the student missed receiving the 115 minutes per day in the general education setting with special education support were as follows:

- 8/19/25: Late 2 hours due to medical appointment
- 8/27/25: In-school suspension (a.m.) / Absent - medical appointment (p.m.)
- 9/2/25: OSS
- 9/3/25: OSS
- 9/4/25: OSS
- 9/5/25: ESI (a.m.) / ISS (p.m.)
- 9/8/25: ISS
- 9/9/25: Absent - medical (p.m.)
- 9/10/25: OSS
- 9/11/25: OSS
- 9/12/25: OSS
- 9/16/25: OSS
- 9/19/25: Absent – medical (a.m.)

The student's IEP included only one social/emotional goal and a behavior intervention plan (BIP) to address the behavioral concerns described in the present level of academic and functional performance. The IEP goal is for the student to control explosive outbursts when frustrated by using appropriate coping strategies.

LEA staff reported the student's Third Grade Teacher provided lesson plans and teaching materials for the student based on the general education curriculum provided to the student's peers each school day. The Morning Paraprofessional reported that she would pick up these materials each morning and check-in with the Third Grade Teacher and the Special Education Teacher for any special instructions or any review assignments for the student.

The Special Education Teacher noted that the student is working at grade-level on most academic skills. She and the Third Grade Teacher consult and monitor the student's progress through grading his completed work and checking his progress on the iReady Learning Path for any necessary re-teaching of concepts.

Both Paraprofessionals reported using these materials and information from the Special Education Teacher and the Third Grade Teacher to work with the student throughout the

school day when he was in the special education setting. In addition, both Paraprofessionals stated they collected data on IEP goals and implemented the BIP when the student began to become dysregulated. The Special Education Teacher would check-in periodically throughout the school day to monitor student progress and would spend the last 30 minutes of each school day working 1-1 with the student. All the LEA staff interviewed indicated that, if there were behaviors that needed to be addressed, the Special Education Teacher would come to the classroom to support both the student and the Paraprofessionals.

### **Conclusion**

In this case, interviews and documentation show the student's IEP required a total of 30 minutes per day of attendant care, 275 minutes per day of special education instruction in the special education setting, and 115 minutes per day of special education support in the general education setting. The student's schedule indicates the student is scheduled to receive 30 minutes per day of attendant care, 275 minutes per day of special education instruction in the special education setting, and 115 minutes per day of special education support in the general education setting. Based on this information, the LEA did provide the amount of special education support/instruction in the general education setting as required in the May 5, 2025 amendment to the September 25, 2024 IEP.

It is noted that the special education services provided by the Special Education Teacher and the Paraprofessionals were to enable the student to progress towards meeting the IEP goal related to his behavior and to implement the BIP. As such, the Paraprofessionals were not providing the initial instruction for the focus of the special education instruction and were not given the responsibility for designing or being primary person in charge of delivering classroom content.

Based on the foregoing, *USD #385 is determined to be IN compliance* with federal regulations at 34 C.F.R. §300.323(c)(2) and state regulations at K.A.R. §91-40-1(kkk)(2) which require IEPs to be implemented as written and that paraprofessionals not be in charge of designing instructional lessons or providing initial instruction of concepts. However, the LEA is encouraged to examine their procedures for providing the grade-level general education instruction as it appears that the student had very little contact with his third grade teacher for direct instruction during the 2025-26 school year.

## Issue Two

USD #385, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to implement the student's IEP, specifically the behavior intervention plan (BIP) during the 2025-2026 school year.

### Applicable Law

Federal regulations at 34 C.F.R. §300.300.324(a)(2)(i) require the IEP team to consider the use of positive behavioral interventions and supports, and other strategies, to address any behavior that impedes the learning of the student or that of others.

Federal regulations at 34 C.F.R. §300.323(c)(2) require school districts to ensure that as soon as possible following the development of the IEP, special education and related services are made available to the child in accordance with the child's IEP.

### Analysis: Findings of Fact

The following findings of fact are based upon interviews and record review. Note that the findings from ISSUE ONE are incorporated herein by reference.

The complainants reported they received a video in an email from the Special Education Teacher on August 29, 2025 that documented a behavioral incident with the student which clearly showed the Special Education Teacher provoking the student while his behavior was escalated instead of implementing the student's behavior intervention plan by not conversing with him while he is an escalated state. The complainants stated that they questioned the special education teacher about engaging with the student when the IEP clearly states, "do not initiate conversation for at least 10 minutes" and the Special Education Teacher told them that, because it was past ten minutes, she could engage with the student again.

The May 5, 2025 amendment of the September 25, 2024 IEP indicates that the student's behavior impacts his learning and the learning of others. The IEP includes both an IEP goal and a Behavior Intervention Plan (BIP) to address behavioral concerns in the school setting.

The BIP in effect on August 29, 2025 describes the student's dysregulated behaviors as removing himself from the group; refusing to participate; yelling, primarily at adults; knocking chairs and desks over; pulling items off the wall; creating holes in sheetrock; destroying anything that is within reach, and kicking adults. When these behaviors occur the following steps should be taken:

1. Ignore and Allow Time to Calm Down:  
Give student space and time; he will typically calm down on his own. Avoid talking to him during this time to prevent further escalation.
2. Use Short, Directive Statements:  
When student is elevated, use clear and brief statements. Do not engage in discussions until he is fully calm.

3. Remove Student from the Classroom:  
Remove him from the classroom immediately if student displays destructive or aggressive behaviors. If he is too elevated to be safely removed, evacuate the rest of the class to a safe location.
4. Transition to a Quiet Room:  
Move student to a quiet room to allow him time to de-escalate.
5. Allow Time to Regulate:  
Do not initiate a conversation with student for at least 10 minutes to give him a chance to regulate. If he becomes physically aggressive, staff should leave the room and wait until he calms down before re-entering.
6. Debrief After Calming Down:  
Once student is calm, discuss the incident and remind him of appropriate replacement behaviors he could have used.
7. Complete Missing Work:  
Have student complete any work he missed during the behavioral incident.
8. Transition Back to the Classroom:  
After the debrief and completing missing work, guide student back to the classroom setting.
9. Address Consequences:  
Address the negative implications of his unsafe behavior by having student repair or clean up any damage he caused. Ensure Student apologizes to anyone affected by his actions. Inform his parents about the incident.

The LEA reported that the student had demonstrated 32 instances of dysregulated behavior that were successfully resolved by following the behavior plan since the beginning of the 2025-26 school year. The LEA indicated that the video was recorded and sent to the parents to show them that the student was being offered multiple choices because the student was telling the parents that school staff were only offering him one choice. The LEA further explained that the recording was taken in the midst of a behavioral incident when the BIP was being implemented and the teacher was engaging with the student after the ten-minute timeframe had passed.

An email dated September 2, 2025 at 7:00 p.m. written by the Special Education Teacher to the parents stated:

*The student's behavior plan allows for a ten-minute de-escalation period. At the time of the video, he had already been in an escalating cycle for 40 minutes. I explained to him that the video was intended to show that he had been offered multiple choices, as he had mentioned in a prior situation that he was only given one option. For the team to work together effectively, both staff documentation and witness reports must be considered alongside student's perspective.*

The 47-second video shows the student sitting quietly on the carpeted floor with his back next to the wall. A large square beanbag cushion and two legless padded “gaming” chairs are against the walls near the student. After several seconds the Special Education Teacher speaks very quietly, slowly, and in a monotone to the student and says she is sending his work home. The student loudly tells her that she is not sending his homework home and he hits the beanbag cushion with his arm and hand. The Special Education Teacher then states, “I will send it through email because you will need to get it done”. The student calmly responds, “At home?” and the Special Education Teacher replies, “Either here or at home”. The student again loudly states that he is not doing homework at home and the Special Education Teacher asks him, “Why?”. The student then loudly explains that he's not going to waste any more time doing homework and it's the weekend and he's not going to do any more homework. The Special Education Teacher indicates that other third grade students also have homework and the student loudly states, “They do not because there is no more homework today!” The Special Education Teacher indicates that some got it done today and the student then tells her to stop talking to him and shut up.

### **Conclusion**

In this case, the issue of whether the LEA implemented the BIP as written surrounds a video of an interaction between the student and the Special Education Teacher that occurred on August 29, 2025. The Special Education Teacher reported that this video was taken after four instances of allowing the student a 10-minute regulation period for a total of 40 minutes and was recorded after the student had calmed down to demonstrate to the parents that the student is being given options. The Special Education Teacher indicated that she explained this to the student prior to her taking the video. The video shows Step 7 in the BIP where the Special Education Teacher is working with the student to have him complete any work he missed during the behavioral incident.

It is noted that the student was calm when the video started and was not physically aggressive towards the Special Education Teacher at any time during the video which would have triggered another 10-minute regulation period per Step 5 of the BIP.

Based on the foregoing, it appears that the LEA implemented the student's BIP as written on August 29, 2025. As such, the *LEA is found to be IN compliance* with federal regulations at 34 C.F.R. §300.300.324(a)(2)(i) require the IEP team to consider the use of positive behavioral interventions and supports, and other strategies, to address any behavior that impedes the learning of the student or that of others as well as federal regulations at 34 C.F.R. §300.323(c)(2) which require the LEA to implement the BIP as written.

### **Issue Three**

USD #385, in violation of state and federal regulations implementing the Individuals with Disabilities Education Act (IDEA), failed to follow appropriate policies and procedures to protect personally identifiable information of the student during the 2025-26 school year, specifically by recording videos and taking pictures of the student on personal devices.

### **Applicable Law**

Federal regulations at 34 C.F.R. §300.123 which require public agencies in the State to protect the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the IDEA.

Confidentiality of personally identifiable information is governed by 34 C.F.R. §99, the Family Educational Privacy Act (FERPA) which requires a parent's written consent to share educational records with others. As defined at 34 C.F.R. §99(3), an educational record can be a photo or video when the photo or video is: (1) directly related to a student; and (2) maintained by an educational agency or institution or by a party acting for the agency or institution.

Federal regulations at 34 C.F.R. §99.31(a)(3)(iv) allow for an exception to the requirement for parental written consent to release educational records when the record is being released to authorized representatives of state and local educational authorities.

### **Analysis: Findings of Fact**

The following findings of fact are based upon interviews and record review. Note that the findings from ISSUE TWO are incorporated herein by reference.

The complainants stated that the August 29, 2025 video sent by the Special Education Teacher was recorded on the Special Education Teacher's personal device without obtaining their consent. They are concerned that this video may have been shared with other teachers, friends, and/or family members to embarrass the student when he is dysregulated because of his disability. However, the parents acknowledged they have no direct knowledge of the video being shared inappropriately with anyone by the Special Education Teacher.

In addition, the parents are concerned about where the video is stored or if it has been deleted. They indicated the LEA has not responded to their concerns regarding the video.

The LEA responded that the video was taken at approximately 3:00 p.m. on August 29, 2025, which is the same day the video was shared via email at 8:20 p.m. with both parents by the Special Education Teacher. The email stated, "I've attached the homework, along with the link to the student's reaction to it. We had the book to read or the science writing response to finish today. He wasn't having either . . .".

The Local Education Agency indicated that there was no attempt to hide the video or to use it to share with others outside of the “need to know” team members. The Special Education Teacher indicated that she would never share a student’s personally identifiable information with family members or friends and the only teachers who would be able to see the video were those on the student’s IEP team.

The Special Education Teacher acknowledged that the video was initially recorded on her personal device; however, it was then transferred and “saved” on her District-assigned Google drive and immediately deleted from her phone. The Principal confirmed this information. The LEA reported the video was subsequently released to the investigator as part of this complaint investigation.

The LEA stated that parent 1 expressed concern about the student’s feelings of isolation and feeling like “the bad kid” at school on August 30, 2025. At that time, parent 1 did not share any concerns in regard to the recording, intent, or storage of the video.

On September 1, 2025, parent 2 also expressed concerns about the social isolation, the student’s mental health and the current IEP services and placement. Parent 2 stated, “He already struggles with mental health and this is flat out not supporting him in this area. And in return is actually making it worse when we have made alot of improvement in that area. We no longer as parents agree to this isolation in this extreme format for the student”. Again, no concerns were raised in regard to the recording, intent, or storage of the video.

School Board Policy JGB – Release of Student Records require the LEA to follow appropriate policies and procedures to protect personally identifiable information of the student, specifically by requiring parental consent prior to releasing any educational record to a third party. There is no LEA school board policy which specifically addresses staff using their personal devices for taking photographs or recording videos of students and this is also not addressed in the IDEA.

### **Conclusion**

In this case, the video recording of the student on August 29, 2025 did contain personally identifiable information (PII) of the student, specifically his likeness and his participation in the special education program due to a disability. The IDEA requires LEAs to follow appropriate policies and procedures to protect personally identifiable information of the student including obtaining written consent to release educational records, except in certain circumstances.

The Special Education Teacher recorded the August 29, 2025 video on her personal device and was then transferred to the District-assigned Google drive belonging to the Special Education Teacher. The video was then deleted from the personal device as reported by both the Special Education Teacher and the Principal and was never shared with any other party from the personal device. The video was maintained by the LEA on the Google drive and subsequently shared with the investigator, who was acting as an authorized representative of the Kansas State Department of Education, during this investigation.

Based on the foregoing, the *LEA is determined to be IN of compliance* with federal regulations at 34 C.F.R. 300.123 which require public agencies in the State to protect the confidentiality of any personally identifiable information collected, used, or maintained under Part B of the IDEA.

### **Summary of Conclusions/Corrective Action**

1. ISSUE ONE: A violation of 34 C.F.R. §300.323(c)(2) and K.A.R. §91-40-1(kkk)(2) was not found. Corrective action is not required.
2. ISSUE TWO: A violation of 34 C.F.R. §300.300.324(a)(2)(i) and 34 C.F.R. §300.323(c)(2) was not found. Corrective action is not required.
3. ISSUE THREE: A violation of 34 C.F.R. §300.123 was not found. Corrective action is not required.

***Nancy Thomas***

Nancy Thomas, M.Ed., Complaint Investigator

## **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.gov](mailto:formalcomplaints@ksde.gov). 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).

### **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)