

COMPLAINT INVESTIGATION REPORT
v. Wells-Ogunquit Consolidated School District
Complaint 20.081C
Complaint Investigator: Rebekah J. Smith, Esq.
June 17, 2020

INVESTIGATION PROCEDURE

Complainants: Parents & Legal Guardians of

Respondent: Wells-Ogunquit Community School District
James Daly, Superintendent
Stacey Schatzabel, Special Education Director
1460 Post Road
Wells, Maine 04090

Student:

The Department of Education received this complaint on April 23, 2020. A Draft Allegations Report was issued on April 28, 2020. A telephonic conference was held on April 28, 2020. On May 2, 2020, an Amended Draft Allegations Report was issued. The School District submitted School District Exhibits #1 to #34 and Appendices A through F. The Parents submitted Parent Exhibits #1 to #4 as well as an April 17, 2020, letter from Disability Rights Maine to Superintendent James Daly, identified as Parents Exhibit #5. Following their interview, the Parents submitted emails between themselves and Special Education Director Stacey Schatzabel dated January 31, 2020, identified as Parents Exhibit #6. On June 16, 2020, in response to an inquiry from the Investigator, the School District provided Exhibits #35 through #38.

The Complaint Investigator reviewed all documents, information, and responses from the parties. Both parties identified witnesses that they requested be interviewed. Interviews with (“the Parents”) and the Student were conducted on May 26, 2020. Interviews with RSU 14 staff members were conducted on June 1, 2020. School District interviewees were: James Daly, Superintendent; Josh Gould, Vice Principal at School; Darcy Ramsdell, Speech Language Pathologist; Robin Reidy, Occupational Therapist; Myra Richard, Special Education Teacher and Case Manager; Stacey Schatzabel, Special Education Director; and Eileen Sheehy, Principal at School. An Interview with Jan Breton of the Department of Education was conducted on June 5, 2020. An interview with Katherine Blouin, formerly of Saco River Health Services, was conducted on June 11, 2020. All witnesses identified by the parties were interviewed.

PRELIMINARY STATEMENT

The Student is 19 years old. has just completed at School.
The Student resides primarily with father, and stepmother,

ALLEGATION

The School District's decision to graduate the Student with a regular high school diploma in June 2020 was an improper change of placement under the IDEA, in violation of 34 C.F.R. 300.102(a)(3)(iii) (stating that graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with § 300.503) and a violation of the right of the Student to receive a free appropriate public education by terminating special education eligibility before the Student has aged out of services in violation of 34 C.F.R. 300.1(a) and MUSER I (requiring that students with disabilities have available to them a free appropriate public education).

FACTUAL FINDINGS

1. , was born on 2001. (S-8.) is now 19 years old.
2. The Student entered School as a ninth grader in the fall of 2015. (S-1). On October 23, 2015, an IEP Team meeting was held for the purpose of conducting an annual review and determining post-secondary goals and transition planning. (S-1.) The Written Notice from the meeting indicated that the Student had been diagnosed with autism spectrum disorder and intellectual disabilities and overall cognitive problem solving was substantially compromised relative to same-aged peers. (S-3.) The Student's adaptive functioning was well below age-level across settings. (S-3.) Compared with same age peers, the Student's academic skills, ability to apply those skills, and fluency with academic tasks were in the low and very low range. (S-3.) The Student was noted to be performing several years below grade level in all academics. (S-3.) The Student's difficulties with generalizing academics across situations and significant language weakness and weak problem-solving skills contributed to academic weakness. (S-3.) The Student was noted to be challenged by severe receptive, expressive, and pragmatic language disorders. (S-3.) The Student completed functional living tasks and routines by following daily visual schedule and step-by-step instructions with gesture prompts and reduced verbal prompting. (S-3.) continued to be identified of a Student eligible for special education services as a student with an intellectual disability. (S-3.) The Student's IEP called for almost an hour daily of specially designed instruction in each of the following areas: math skills, language arts, functional life skills, and organizational skills. (S-3.) The Student's IEP also called for related services in speech and language, occupational therapy, occupational therapy consultation, and psychological examiner consultation. (S-3.)

3. The Team agreed that the Student was eligible for a _____ year of high school, during which the Student would turn _____. (S-2.) The corresponding IEP, effective November 6, 2015, lists the Student's graduation date as June 15, 2021. (S-20.)
4. During the 2015-2016 school year, _____ ninth-grade year, the Student received scores of Satisfactory in all of _____ courses. (S-25; Interview with Schatzabel.) _____ earned 9 credits. (June 16, 2020, Email from Schatzabel.)
5. On September 27, 2016, just after the start of the Student's tenth grade year, the Student's IEP met for an annual review of _____ IEP, to review post-secondary goals and transition services, and to discuss moving the Student's annual review and post-secondary transition meeting to spring 2017. (S-29 & S-30.) The Student's disability category was changed to multiple disabilities (autism and an intellectual disability). (S-30.) The Team agreed that the Student continued to have behavioral needs, communication needs, functional needs, academic needs, and developmental needs to be addressed in _____ present levels of performance, goals and objectives, supplementary aids, transition services and activities, and post-secondary goals. (S-30.) The Team also agreed that the student should receive the following special education and related services: special education consultation services 30 minutes per week, ESY services for 180 minutes four times a week; ESY speech-language services 30 minutes twice a week; specially designed instruction in functional life skills 54 minutes five times a week; specially designed instruction in math 54 minutes five times a week; specially designed instruction in reading 54 minutes five times a week; specially designed instruction in reading 54 minutes five times a week; behavioral consultation 120 minutes once per month; occupational therapy consultation 30 minutes once a week; psychological service provider consultation 30 minutes per month; speech and languages services 30 minutes three times per week; and vocational training services 54 minutes five times a week. (S-30 to S-31.) _____ program was to be focused on _____ adaptive daily living skills, safety, and problem solving. (S-31.) The Meeting Notice reiterated that the Student's overall cognitive problem solving was substantially compromised relative to _____ same-age peers. (S-32.) It was noted that the Student required opportunities to apply reading, writing, and math skills in _____ functional settings on a daily basis, including through reading recipes, using cooking measurements, observing safety signs, and creating personal information journals. (S-32.) The Meeting Notice indicated that vocational rehabilitation services would be contacted during the Student's junior year. (S-31.) The Team determined that the Student's annual and transition meeting would be moved from the fall of 2017 to the spring of 2017. (S-30.)
6. The Student's IEP Team met on May 16, 2017, to conduct an annual review of the Student's plan, to review the Student's post-secondary goals and transition services, and to discuss evaluations. (S-53.) The Team also identified the evaluations that would be completed during the winter of 2017-2018 to be reviewed at the Student's triennial evaluation in March 2018, including a classroom observation, a speech and language assessment, an occupational therapy evaluation, an academic evaluation, and a psychological evaluation. (S-54.) The Student's stepmother, _____, asked about the Student's post-secondary transition goals. (S-57.) The IEP Team discussed the

possibility that after graduation¹ the Student could participate in a functional day program such as the STRIVE TOPS program, while still being a student at _____ School, or a functional based program could be created at school with an increased opportunity for longer periods of holding a job. (S-57.)

7. The resulting IEP, effective May 31, 2017, included the following services: psychological services provider consultation 30 minutes once per month; special educator consultation 30 minutes per week; ESY services 180 minutes four times per week; specially designed instruction in functional life skills 108 minutes four times per week in special, regular, community and vocational settings; specially designed instruction in functional life skills 44 minutes once per week in special, regular, community settings; specially designed instruction in math 54 minutes four times per week; specially designed instruction in reading (44 minutes once per week and 54 minutes four times per week); behavioral consultation for 30 minutes once per month; occupational therapist consultation 30 minutes once per month; speech-language therapist consultation once per month; special language services 30 minutes twice per week; and vocational training services (88 minutes once per week and 108 minutes four times per week). (S-38 & S-48 to S-49.) The Student's education/training goal was to work with a job coach to participate in local job environments within _____ community. (S-50.) The Student's projected graduation date was adjusted to June 20, 2019, which would have been after four years of high school, although there was no discussion about this change documented in the Written Notice. (S-50.)
8. The Student received Satisfactory grades in all of _____ tenth-grade classes during the 2016-2017 academic year. (S-60.) _____ earned 9.5 credits. (June 16, 2020, Email from Schatzabel.)
9. An academic evaluation report was issued on January 24, 2018, by Myra Richard, the Student's special educator and case manager. (S-62.) The report made several recommendations regarding the Student's programming, to include budgeting personal money and reading that targeted environmental signs, cooking directions/recipes, and job-related vocabulary words, instructions, safety words, and rules. (S-69.) Ms. Richard also conducted an assessment of the Student's functional living skills. (S-70 to S-84.) Finally, Ms. Richard conducted a career and interest evaluation for which the Student completed a job interest survey. (S-85.) She recommended that the Student tour several local restaurants to determine a new placement for the third trimester of the year; explore job placements that included working inside and outside, heavy lifting, sitting and standing, with many people and opportunities to move around; develop a resume of jobs _____ had held; and tour jobs that _____ found interesting during ESY including lumber yards, automotive shops, landscaping businesses, and food services. (S-87.) A classroom observation report was conducted. (S-88 to S-94.)
10. A psychological reevaluation was also conducted by Courtney Hale, Ph.D., in January and February 2018. (S-95 to S-101.) Ms. Hale had conducted an evaluation of the

¹ The meaning of "graduation" in this context is unclear but may have been a reference to participation in graduation ceremonies as opposed to actually graduating.

Student in 2012 which was consistent with diagnosis of autism disorder and also determined that met the criteria for mild mental retardation. (S-95.) Ms. Hale's follow-up evaluation of the Student in 2014 concluded that had the diagnosis of autism spectrum disorder and intellectual disability. (S-95.) Ms. Hale's 2018 evaluation concluded that the Student had the diagnoses of autism spectrum disorder with accompanying language and intellectual impairment. (S-99.) She found that the Student's adaptive and intellectual functioning were significantly below age-expectations, indicating that the diagnosis of intellectual disability, moderate range, remained an impactful, co-occurring condition. (S-99.) The Student clearly maintained multiple and substantial areas of need and would continue to require comprehensive and intensive programming that placed priority on safety, functional life skills, and transition to adulthood. (S-99.) Ms. Hale noted that in planning for post-high school services, it was critical that providers be aware of the high level of immediate adult supervision and continued accommodations and interventions needed to maintain the Student's safety. (S-100.)

11. Finally, speech-language and occupational therapy evaluations were performed in early 2018. (S-102 to S-121.) The speech-language evaluation concluded that the Student demonstrated a severe receptive, expressive, and pragmatic language disorder, while noting that had made significant gains in pragmatic language skills since previous evaluation in 2015. (S-111.) The occupational therapy evaluation concluded that without supervision and guided practice for new tasks and monitoring and revisiting achieved skills, the Student declined in functional skills. (S-119.) The Student was noted to do well with structure, clear and consistent expectations, written directions, and consistency but struggled with some sensory needs and functional communication as well as problem solving skills in novel situations. (S-119.) The evaluator noted that the Student's sensory regulation had improved significantly over the years although sensory needs fluctuated and was challenged with motor planning and speed and time predictions. (S-119.)
12. An IEP Team meeting as held on March 6, 2018, to review the Student's triennial evaluations, conduct an annual review of IEP, and plan for post-secondary goals and transition services. (S-122.) Reviewing the evaluations, the Team determined that the Student continued to require comprehensive and intensive programming that placed emphasis on safety, functional life skills, and transition to adulthood. (S-124.) The Parents requested that the Team review the recommendations of evaluators and develop goals focused on safety, generalizing of skills, and preparing the Student for adulthood. (S-124.) The Team agreed to reconvene at a later date to review the draft IEP and discuss programming, vocational options, and post-secondary transition services. (S-123.)
13. The Team met again on April 6, 2018, to review the Student's draft IEP, review vocational programming, and determine ESY services. (S-134 & S-135.) The Student's evaluations indicated that continued to be significantly below grade level and had severe receptive, expressive, and pragmatic language impairment. (S-138.) School and community-based instruction and support for learning new academic skills, maintenance, and generalization of academic skills were required for the Student to build daily living

and vocational skills within environments. (S-138.) The Student's goals were focused on academic skills, functional life skills, and vocational training. (S-136.) The Student's services were determined to be: ESY for 180 minutes four times a week; consultation with a psychology service provider 30 minutes once per month; consultation with a special educator 30 minutes once per month; specially designed instruction in community outings/daily living skills 264 minutes one session per day (from April 20, 2018, to June 20, 2018); specially designed instruction in functional life skills 180 minutes four sessions per week; specially designed instruction in functional sight words 54 minutes four sessions per week; specially designed instruction in math 54 minutes four sessions per week; and specially designed instruction in community outings/daily living skills 176 minutes one session per week (from September 9, 2018, to April 19, 2019). (S-168.) The IEP also called for 108 minutes of vocational training four days a week until June 20 and five days a week beginning September 9, 2018. (S-168.) Related services included behavioral consultation; occupational therapist consultation; speech/language therapist consultation; transportation; and vocational training (at an increased amount beginning on September 9, 2018). (S-137.) The Team discussed the Student's participation in graduation activities and determined that senior photo and graduation information would be provided to the Parents. (S-143 & S-144.)

14. The Student's IEP, effective April 2, 2018, identified the services determined by the Team. (S-147 to S-164.) No graduation date was included in the IEP in the box for "[p]rojected date of graduation/program completion." (S-162.)
15. The Student received Satisfactory grades in all of this eleventh grade classes during the 2017-2018 academic year. (S-178.) earned 9 credits. (June 16, 2020, Email from Schatzabel.)
16. On March 28, 2019, the Student's IEP Team met for an annual review and to discuss the Student's post-secondary goals and transition services. (S-183.) The Team determined that the Student's time in vocational placements during the 2019-2020 school year would increase. (S-184.) The Team determined that the Student should receive specially designed instruction for 1,084 minutes once per week for academics and functional skills from April 2019 to June 2019; specially designed instruction for 648 minutes once per week for academics and functional life skills from September 2019 to April 2020; speech/language pathologist consultation with staff 60 minutes per month; and school psychologist consultation with staff 60 minutes per month. (S-204.) The Student's Father believes that indicated during the meeting that the graduation date on the draft IEP was incorrect because it stated June 2020 and was told that a correction would be made when the final IEP was generated. (Interview with Parents.)
17. The Student's IEP, effective April 11, 2019, altered the language regarding the Student's graduation again, this time inserting June 20, 2020. (S-188 & S-200.) The IEP indicated that after graduation, the Student would participate in a community-based program focusing on daily living skills, vocational skills, and leisure activities. (S-200.)

18. The Student received grades of Satisfactory in all twelfth-grade courses for the 2018-2019 school year. (S-208.) received 9 credits for the year. (June 16, 2020, Email from Schatzabel.)
19. In June 2019, the Student participated in graduation ceremonies at School although did not receive a diploma. (Interview with Parents.) The Student was given a certificate of attendance. (Interview with Parents.) It had been determined that the Student should participate in graduation events with the students in the Class of 2019 because they were peers throughout school. (Interview with Parents.) The Parents and School District agreed that participating in these events did not end the Student's eligibility but was instead a symbolic exercise. (Interview with Parents.)
20. In August 2019, School District staff were trained by Department of Education staff on how to utilize a new IEP format. (Interview with Schatzabel.) During that training, two School District staff members were conversing about how to write the IEP for a student who had attended graduation ceremonies in June 2019 but was going to be attending an out of district program for the coming year. (Interview with Schatzabel.) Stacey Schatzabel, Special Education Director and Director of Instruction for the School District, recalled that she was subsequently contacted by Jan Breton of the Department of Education to review the School District's policies around graduating students with disabilities. (Interview with Schatzabel.)
21. Ms. Schatzabel and Ms. Breton have different recollections of the conversation that ensued, most of which occurred over the phone with little written confirmation. (Interview with Schatzabel; Interview with Breton.) Ms. Schatzabel felt that she was reprimanded for allowing the Student and another student to participate in graduation ceremonies in June 2019 but obtain an additional year of programming during the 2019-2020 school year. (Interview with Schatzabel.) She left the conversation believing that Ms. Breton had indicated that if a student had obtained 24 credits the District had to graduate him or her that year. (Interview with Schatzabel.) Ms. Schatzabel recalled that Ms. Breton indicated that the School District should withhold a credit from a student who was not graduating in four years so that the Student would not be attending school after obtaining 24 credits. (Interview with Schatzabel.)
22. In discussing with Ms. Schatzabel her conversation with Jan Breton in the fall of 2019, School Vice Principal Josh Gould believed that Ms. Schatzabel was told that because the Student met the credit requirements after four years, should have been graduated at the end of four years. (Interview with Gould.)
23. Ms. Breton believes the conversation was more focused on whether a student with a disability had to be granted a diploma at some point after receiving 24 credits, not necessarily that the student had to graduate immediately upon obtaining 24 credits. (Interview with Breton.) She recalls that she simply pointed out the law that students who earn the requisite number of credits must be granted a diploma. (Interview with Breton.) Ms. Breton denies that she would have suggested that school districts had to graduate students the year they obtained 24 credits or that school districts were barred

from providing services to students for a or year even if they had already obtained the necessary credits. (Interview with Breton.)

24. Ms. Schatzabel forwarded Ms. Breton the School District's graduation policy, which does not enunciate a standard regarding when to graduate students with disabilities, but does indicate that special education students who successfully meet the content standards of the Learning Results as specified in their IEP goals and objectives, will be awarded diplomas. (S-C-2.) Ms. Breton responded that the policy looked fine. (S-C-11.)
25. For the 2019-2020 school year, the Student participated in the Bridges program at School, which focused on academic skills, employment skills, and functional life skills. (Interview with Richard.)
26. Early in the school year, in the fall of 2019, the Parents met with Ms. Schatzabel because she wanted to introduce herself to them. (Interview with Parents.) They discussed the fact that the Student had participated in graduation exercises at the end of the prior school year. (Interview with Parents.) The Student's Father recalls indicating to Ms. Schatzabel that they anticipated that the Student would attend Wells School High for two additional years and that Ms. Schatzabel did not respond directly to his statement. (Interview with Parents.)
27. In early November 2019, communications were sent from the School Secretary to the family regarding various graduation documents. (June 16, 2020, Email from Schatzabel.) On November 18, 2019, the Student's Father contacted Ms. Schatzabel to express concern about the suggestion that the Student would be graduating at the end of the school year. (June 16, 2020, Email from Schatzabel.) Ms. Schatzabel told the Student's Father that she had been told by the Department of Education that if a student met graduation requirements the School District was not allowed to provide them with any further special education and related services. (June 16, 2020, Email from Schatzabel; Interview with Parents.) The Parents expressed concern about the financial implications of ending the Student's eligibility for special education. (Interview with Schatzabel.) Ms. Schatzabel agreed to look into the possibility of a sixth year and found that no student in the School District had ever attended a sixth year. (June 16, 2020, Email from Schatzabel.) Ms. Schatzabel also consulted with the School District administrative team, the Superintendent, and legal counsel. (June 16, 2020, Email from Schatzabel.) Ms. Schatzabel called the Student's Father to relay that the Student would not be eligible for a sixth year based on her research into the District's policies and practices. (June 16, 2020, Email from Schatzabel.)
28. On January 23, 2020, Ms. Schatzabel, Mr. Gould and Eileen Sheehy (School Principal), as well as several of the Student's special education providers, met with the Parents to inform that they the Student would not receive any programming from the School District after the conclusion of year. (Interview with Parents; June 16, 2020, Email from Schatzabel.) The meeting was not an IEP meeting but was intended to allow school administrators to inform the Parents that the Student had met graduation requirements and would not be entitled to a sixth year. (Interview with Schatzabel.) Ms.

Schatzabel told the Parents during the meeting that the Student had met graduation requirements in terms of credits within four years, and had been granted a year, but could not receive a sixth year. (Interview with Schatzabel.) Mr. Gould recalled that Ms. Schatzabel convened the meeting for the purpose of informing the Parents that the decision had been made that the Student's eligibility would be ended at the conclusion of the school year by virtue of graduation. (Interview with Gould.)

29. The Student's Father became upset when school administrators indicated that the Student would be deemed ineligible for a sixth year, leaving the meeting in frustration but returning after a few minutes. (Interview with Parents.) The Parents recall that Ms. Schatzabel indicated that the change was due to an audit that had been performed by the Department of Education and she reported that it would cost too much for the School District to provide an additional year of programming for the Student. (Interview with Parents.) The Parents got the impression that they were being told that the School District was in violation of a rule by keeping the Student in school for year. (Interview with Parents.)
30. On January 31, 2020, Ms. Schatzabel emailed the Parents to follow up on the prior week's meeting. (Parent Exh. #5.) She reiterated that at the meeting, School District administrative staff had explained that the Student met School graduation requirements in June 2019 after four years of high school but that Team felt would benefit from a year of school. (Parent Exh. #5.) She recapped that after a couple of conversations regarding the Student's eligibility for a sixth year of high school, and because the Parents had the understanding that the Student could stay in school until turned , the high school administration wanted to meet "to convey that will graduate in June of 2020." (Parent Exh. #5.) The email went on to describe Ms. Schatzabel's research into the Student's options for adult services. (Parent Exh. #5.) She noted that the Parents would be responsible for paying for such services until the Student received a state waiver, at which time MaineCare would cover adult services, but the School District was not responsible in the meantime. (Parent Exh. #5.)
31. On March 28, 2020, the Student's IEP Team agreed to amend IEP without a meeting given the closure of school buildings due to the pandemic. (S-216.) The Written Notice indicated that a new IEP would be issued through the Student's a graduation date of June 7, 2020. (S-216.) The Written Notice also stated that the Student would be provided special education services in a distance-learning format while the pandemic guidelines were being implemented. (S-216.) The Written Notice indicated that the Student had met graduation requirements as of June 2019. (S-216.) The Written Notice stated that the School District was aware that the Parents did not want the Student to graduate in June but that the issue was being addressed outside the IEP process. (S-217.)
32. On April 3, 2020, an IEP was issued for the period of April 10, 2020, through June 7, 2020, which indicated that the Student would graduate on June 7, 2020. (S-219 & S-230.)²

² The Parents indicated that they have requested an IEP Team meeting but the most recent Written Notice indicates that no annual IEP Team meetings are being held due to the pandemic. (Interview with Parents; S-216.)

33. The Student received grades of Satisfactory for trimesters 1 and 2 of the 2019-2020 school year. (S-232.) No grades were entered for the third trimester. (S-232.) earned 9 credits. (June 16, 2020, Email from Schatzabel.)
34. Students must receive 24 credits to meet the graduation requirements at School. (S-B-6 & S-C-1.) The credits must include 6 in English/Language Arts, 3 in Mathematics, 4.5 in Social Studies, 3 in Science, 1 in Visual and Performing Arts, .5 in Health, 1 in Physical Education, and 5 in Electives. (S-C-1.)
35. On April 23, 2020, the Parents filed a complaint investigation request, resulting in the Student remaining in stay put placement until the matter is finalized. (Administrative Record.)
36. The Student's Father recalled that he ended all IEP Team meetings during the Student's high school years by verbally confirming that the Student would be attending school through the year that turned . (Interview with Parents.)
37. The Parents do not feel that the Student has adequately met transition goals, noting that the Student continues to be unable to manage basic safety skills such as crossing the street. (Interview with Parents.) The Student is on a waiting list for adult services. (Interview with Parents.)
38. Katherine Blouin, formerly of Saco River Health Services, worked with the Student for many years, including prior to and during most of time in school, as the Student's case manager and Section 28 program supervisor. (Interview with Blouin.) As a member of the Student's IEP Team, Ms. Blouin recalled that throughout the Student's academic career, the Team envisioned the would attend school through the year that turned , the 2020-2021 school year. (Interview with Blouin.) She had the impression that all members of the Team agreed with that plan and recalled that the Student's eligibility was regularly referred to as being through the 2020-2021 school year. (Interview with Blouin.)
39. Ms. Blouin believes that the Student would benefit from another year of education, citing opportunities for to interact with other special education students as well as non-special education peers. (Interview with Blouin.) She believes that would benefit from having structure, routine, and consistency, such as provided in a school setting, would be helpful for . (Interview with Blouin.) In addition, she noted the high levels of repetition necessary for the Student to obtain a skill, observing that academic progress had been very slow. (Interview with Blouin.) Ms. Blouin opined that adult services would not be as beneficial to the Student as educational services. (Interview with Blouin.) She believed that the School District had historically painted a picture of the Student as being much more independent than actually was, agreeing that could be successful in very controlled settings but noting that was not able to generalize skills or succeed when every variable was not controlled. (Interview with Blouin.)

40. Ms. Richard, who has been the Student's special education teacher and case manager since 2015, believes that the Student's IEP Team never discussed a sixth year of eligibility for the Student. (Interview with Richard.) She believes that the School District's policy is that special education students should graduate in four years if they have met the graduation requirements and are ready for the transition. (Interview with Richard.)
41. As to whether special education students receive credits for their specially designed instruction coursework, Ms. Richard explained that a special education student would never fail a course although occasionally an incomplete would be given, which would include follow up for how the student could complete the credit. (Interview with Richard.) The Student in the present case never received a failing or incomplete grade. (Interview with Richard.) Ms. Richard believes that the Student is ready for adult programming, noting the focus during year on employment-related skills. (Interview with Richard.)
42. Darcy Ramsdell, speech language therapist, indicated that without more data review, she was not able to say whether the Student was academically ready to graduate. (Interview with Ramsdell.)
43. Ms. Schatzabel explained that her goal is to try to get every special education student to graduate in four years, although some students need a year to transition to adult services. (Interview with Schatzabel.) She clarified that the School District's current policy is that students with multiple disabilities or an intellectual disability should graduate after they obtain 24 credits, with the caveat that if the Team or the family believes that the student would benefit from a year, it can be discussed. (Interview with Schatzabel.) Although a student being provided a year may participate in graduation ceremonies at the end of or her fourth year, and receive a certificate of attendance, once a diploma has been provided, the student's eligibility for special education services is terminated, consistent with statutory and regulatory guidance. (Interview with Schatzabel.)
44. School has never allowed a student a sixth year of eligibility to the best recollections of Ms. Schatzabel, Mr. Gould, and Superintendent James Daly. (Interview with Schatzabel; Interview with Gould; Interview with Daly.)
45. Ms. Schatzabel explained that the School District graduated two students with severe disabilities in June 2020 after four years of high school. (Interview with Schatzabel.) She could not recall having a conversation with those families regarding whether the students would benefit from a year of eligibility and was not aware whether the students' IEP Teams discussed the possibility. (Interview with Schatzabel.)
46. Mr. Gould reported that whether a student would receive a year of education would be an IEP Team decision. (Interview with Gould.) He indicated that he was not aware of any student who requested a year of education who did not receive it. (Interview with Gould.) He believed that the families of the two special education students

graduating in 2020 were aware of the possibility of a year but was not aware of any process by which the School District established that families were aware that eligibility for FAPE goes to age 20. (Interview with Gould.)

47. Ms. Sheehy indicated that the School District would never give a student a sixth year of eligibility if the student had obtained the necessary credits in an earlier year. (Interview with Sheehy.)
48. Mr. Gould noted that the School District tries hard to provide an excellent program for all special education students, including by beginning with the needs of special education programs when building the annual master high school calendar. (Interview with Gould.) He agreed with Ms. Richard that students receiving special education programming do not fail courses because if something is not working, the program is adjusted to meet the student's needs. (Interview with Gould.)
49. Superintendent Daly explained that he has a lot of reservations about giving any student a sixth year of eligibility due to the possible inappropriateness of having a 20-year-old student in the high school building with younger freshman students. (Interview with Daly.) Superintendent Daily described the School District's policy as being that a student with disabilities should graduate once they obtain 24 credits absent a determination by the Student's IEP Team that more education is needed. (Interview with Daly.) He explained that he received a lot of pushback from community members when a year of education was granted to special education students due to the community's concern about the use of resources. (Interview with Daly.) He expressed concern about the financial impact on the School District if all students with significant special education needs were allowed to continue in school through the school year they turned . (Interview with Daly.)

DETERMINATION

The School District's decision to graduate the Student with a regular high school diploma in June 2020, made as an administrative decision separate from the Student's IEP Team decision-making process, constituted an improper change of placement under the IDEA without appropriate notice in violation of 34 C.F.R. 300.102(a)(3)(iii), and a violation of the right of the Student to receive a free and appropriate public education by terminating special education eligibility without appropriate process and notice in violation of 34 C.F.R. 300.1(a) and MUSER I.

ANALYSIS

I. Governing Statutes and Rules

A student age three to twenty-one who has been identified as eligible for special education is entitled to a free appropriate public education ("FAPE") provided by the school

district in which he or she resides. 20 U.S.C. § 1412(a)(1)(A). A state may limit the age of eligibility beyond eighteen years. 20 U.S.C. § 1412(a)(1)(B)(i). A free appropriate public education includes special education as well as related services. MUSER II.13. The Maine Unified Special Education Regulation (“MUSER”) governs the delivery of a FAPE to eligible children ages three to twenty with disabilities. MUSER I. Children in Maine, birth to twenty who have disabilities, may not be excluded from the benefits of services to which they are entitled under the IDEA. MUSER I.2.

Children with disabilities who have graduated from high school with a regular high school diploma are no longer eligible to receive a free appropriate public education. 34 C.F.R. § 300.102(a)(3)(i). Nevertheless, a child who has graduated from high school but was not awarded a regular high school diploma remains eligible for a free, appropriate public education. 34 C.F.R. § 300.102(a)(3)(ii). Graduation from high school with a regular high school diploma constitutes a change in placement, requiring written prior notice in accordance with 34 C.F.R. Section 300.503. 34 C.F.R. § 300.102(a)(3)(iii). The prior written notice must include the following: the action proposed; an explanation of why the agency proposes the action; a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed action; a statement that the parents of a child with a disability have protection under the procedural safeguards and the means by which a copy of the procedural safeguards can be obtained; a description of other options that the IEP Team considered and the reasons why those options were rejected; and a description of the factors that are relevant to the agency’s proposal or refusal. 34 C.F.R. § 300.503(b). The purpose of this regulatory process is to prevent termination of FAPE services before a student actually demonstrates the level of academic achievement commensurate with receiving a regular high school diploma, furthering “the

IDEA’s remedial purpose of protecting the educational rights of students with disabilities.” K.L. v. Rhode Island Bd. of Educ., 907 F.3d 639, 647 (1st Cir. 2018).

The IDEA defines a “regular high school diploma” to be “the standard high school diploma awarded to the preponderance of students in the State that is fully aligned with State standards, or a higher diploma, except that a regular high school diploma shall be not aligned to the alternate academic achievement standards.” 20 U.S.C. § 7801(43)(A). Furthermore, a “regular high school diploma” does not include “a recognized equivalent of a diploma, such as a general equivalency diploma, certificate of completion, certificate of attendance, or similar lesser credential.” 20 U.S.C. § 7801(43)(B); 34 C.F.R. § 300.102(3)(iv). A child with a disability who satisfies the local diploma requirements in the manner specified by the child’s individualized education plan must be awarded a high school diploma. 20-A M.R.S. § 4722(3).

A school district may grant academic credit towards a high school diploma to a student who successfully completes a course. 20-A M.R.S. § 4774(1). When grades are given for any course of instruction offered by a school, the grade awarded to a student is the grade determined by the teacher of the course and the determination of the student’s grade by that teacher, in the absence of clerical or mechanical mistake, fraud, bad faith or incompetence, is final. 20-A M.R.S. § 4708.

II. Jurisdictional Issue

As a preliminary matter, the School District argues that the Investigator, and the Department, do not have authority to determine whether it appropriately awarded credits to the Student and how many credits are required to graduate. As requested by the School District, the Investigator consulted with the Assistant Attorney General representing the Department of Education regarding this issue. This report does not address whether the Student appropriately

earned the credits [redacted] was awarded nor does it question the number of credits or nature of the credits that the School District has determined are necessary for a student to graduate.

Nevertheless, any parent or adult student may submit a written complaint to the Department alleging that a public agency has failed to comply with MUSER or when there is a dispute regarding the identification, evaluation, placement, or the provision of appropriate services to a child. MUSER XVI.1.B(1). Here, the Parents raise assertions that the School District has failed to comply with federal and state education statutes and regulations with regard to the Student's placement and the termination of the Student's eligibility for services, issues that fall squarely within the jurisdiction of the Investigator, and the Department. The central issue in the complaint investigation is not whether the District should award the Student a regular diploma, but rather how the decision about when to graduate a student receiving special education services should be made.

III. Analysis

In January 2020, the Special Education Director, with the input of the School District Superintendent, the [redacted] School administrative team, and legal counsel, made the determination that the Student would graduate in June 2020, at the conclusion of [redacted] year of high school programming. The provision of a diploma through graduation would permanently end the Student's eligibility for special education and related services. This decision was made without parental or IEP Team input and was conveyed to the Parents as a final decision, without any analysis of the progress the Student had made or [redacted] readiness to graduate. Instead, it was based upon the fact that the Student had obtained 24 credits as of the previous June, which was the necessary number of credits to graduate, in combination with the School District's practice not to allow students to attend school for a sixth year, regardless of their age.

The School District's well-established practice, as indicated in its brief and reported in interviews, is that students with multiple or intellectual disabilities may be permitted to attend school for one additional year after meeting graduation requirements if the family requests an additional year. Interviews with School District staff further confirmed that the District simply does not allow students to attend school for a sixth year, regardless of when they turn 20, their progress in school, or the input of the Student's IEP Team.

The IDEA does not establish necessary requirements for graduation of students with disabilities. Nevertheless, the decision of whether a student with an IEP should graduate is exclusively within the jurisdiction of the Student's IEP Team: "The proper function of the IEP team . . . would be to conduct a review of the child's IEP at an appropriate time before the child receives a diploma to assure that graduation requirements will be met, and that the goals and objectives in the IEP will be completed." Letter to Richards, 17 IDELR 288 (OSERS 1990); see also Black River Falls Sch. Dist., 40 IDELR 163 (SEA WI 2004) ("The District's decision to graduate a student with a disability must be made by an IEP team.")

The baseline criterion is whether the Student has obtained the number of credits necessary to graduate. It was clear from School District staff interviews that it would be rare for a student with a disability not to obtain a grade of Satisfactory in or her specially designed instructional coursework.

A school district, however, cannot make a determination to graduate a student based solely upon completion of the required credits to graduate, without reviewing the Student's goals and objectives to ensure that they were met. See, e.g., Black River Falls Sch. Dist., 40 IDELR 163 (SEA WI 2004). The IEP Team could determine that a student would earn diploma if he met the goals in the IEP, particularly important if the focus of the student's

programming is functional life skills, as this Student's has been. Transition goals are especially important in this analysis.³ Ideally, the IEP Team should begin having these conversations during a student's ninth or tenth grade year.

Some states have developed procedures for determining when disabled students should graduate with a diploma that are based on a student's IEP. 64 Fed. Reg. 12,556 (1999). "When public agencies make the determination as to whether the Part B eligibility of a student with a disability should be terminated because the student has met the requirements for a regular high school diploma or that the student's eligibility should continue until he or she is no longer within the State-mandated age of eligibility, it is important to ensure that the student's rights under the Act are not denied." Id. Furthermore, it is important that parents, participating in the development of a student's IEP, understand the implications of decisions regarding programming and participation in assessments, which could impact the student's future eligibility for graduation with a regular diploma. Id. In order to ensure that parents are appropriately informed of their ability to protect a student's rights, when graduation constituting a change in placement is determined by a student's IEP Team, the IEP should undertake transition planning, report progress to parents, and provide notice regarding proposed graduation. Id. Pursuant to such a process, "the parents would have the option, as with any public agency proposal to challenge the educational program or placement of a child with a disability, to seek to resolve disagreement

³ Although the Department has not issued guidance regarding the interaction of educational laws governing diplomas and special education laws, sample guidance from the Minnesota Department of Education Division of Compliance and Assistance indicates that the parent of a student with a disability may object to the proposed change of placement that awarding a diploma constitutes if the parent does not believe the student has or will meet the necessary state and local requirements for high school graduation by the end of the school year and/or if the parent does not believe that the student has met his or her IEP goals and objectives, including transition goals. Minnesota Department of Education: Q& A: High School Graduation, Diplomas and Aging Out of Special Education Services for Students with Disabilities.

with the proposal to graduate the student through all appropriate means, including mediation and due process hearing proceedings.” Id.

In the present case, the Team did discuss the Student’s expected graduation date at the IEP Team meeting at the start of the Student’s ninth grade year, in October 2015, with the Team explicitly determining that the Student would be eligible for education through the year that turned , resulting in a graduation date of June 15, 2021. In May 2017 IEP, the Student’s graduation date was altered to June 2019, which would have been after four years of high school. Contrary to the Written Notice from ninth-grade year, which explicitly discussed graduation date, the Written Notice issued in May 2017 contains no explicit finding about the accelerated graduation date or indicates that there was any discussion about it. In the Student’s next IEP, effective in April 2018, no graduation date is indicated at all and again the Written Notice provides no indication that the Student’s eligibility for additional years of education beyond four years was discussed. The final IEP in the record, effective April 2019, reflects another change in the graduation date, to June 20, 2020, which again is not reflected in the Written Notice as a topic of discussion. The Parents assert that they inquired about the June 2020 graduation date at the April 2019 Team meeting and were told it would be corrected in the final IEP, although no change was made to the graduation date in the final IEP. It was not evident to the Parents until the year of the Student’s high school career, specifically the second half of the Student’s year, that the School District had conclusively changed this assessment unilaterally without the input of the Parents or the Student’s IEP Team.

The School District did not follow the process it described, of allowing the IEP Team to determine whether an additional year of eligibility would be granted upon a parent request, with regard to the Parents’ interest in this case of a year of eligibility for the Student. School

District staff indicated that they could not recall a student ever obtaining a sixth year, with some suggesting that a sixth year was simply not allowed in the School District, regardless of when a student turns 20. School District staff explained that concern about resources drove the decision-making process in some regards.

In this case, the School District's policy of not allowing a sixth year of eligibility as applied and communicated by the School District outside the IEP Team process, without appropriate written notice to the Parents, violated the Student's right to FAPE. The Special Education Director explained that she spoke with the Superintendent before making the determination that the Student would not be allowed to attend school during the 2020-2021 school year. The meeting at which this determination was conveyed to the Parents was attended by the Special Education Director, the High School Principal, and the High School Vice Principal. The Student's IEP Team, and the Parents in particular, had no input into the determination. The Student's IEP Team had no opportunity to discuss the Student's progress toward goals, particularly transitional goals, and readiness for graduation and adult services.

The Special Education Director's decision to graduate the Student in June 2020 constituted a change in placement subject to written notice requirements under 34 C.F.R. Section 300.053, including the action proposed; an explanation of why the agency proposes the action; a description of each evaluation procedure, assessment, record, or report the agency used as a basis for the proposed action; a statement that the parents of a child with a disability have protection under the procedural safeguards and the means by which a copy of the procedural safeguards can be obtained; a description of other options that the IEP Team considered and the reasons why those options were rejected; and a description of the factors that are relevant to the agency's

proposal or refusal. Appropriate written notice was not provided to the Student and Parents regarding the proposed change of placement by force of graduation in June 2020.

The School District's reliance on the conversation with Jan Breton, which Ms. Breton recalled differently, to suggest that students must graduate as soon as they receive 24 credits, does not alter the outcome. The School District's interpretation of that conversation would appear to result in all special education students who had obtained 24 credits graduating immediately. Given that the vast majority of all special education students receive grades of Satisfactory in specially designed courses, with failing grades not a possibility and incompletes rare, all special education students would appear likely to obtain 24 credits within four years, thus ending their eligibility for education if the School District graduated them in the year in which they obtained 24 credits.

CORRECTIVE ACTION TO BE COMPLETED BY THE DISTRICT

Because a violation was found, the School District must convene the Student's IEP Team as soon as possible, but no later than within 30 days, to make a determination of whether the Student has made sufficient progress in IEP goals, particularly transition goals and met other educational benchmarks sufficient to warrant ending eligibility for special education services a year prior to the year in which would age out of such eligibility.