

COMPLAINT INVESTIGATION REPORT
v. Wells-Ogunquit Consolidated School District
Complaint 20.082C
Complaint Investigator: Rebekah J. Smith, Esq.
June 18, 2020

INVESTIGATION PROCEDURE

Complainants: _____, Parents and Legal Guardians of

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

Student: _____, age _____

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 #37 and Appendices A through F. The Parents submitted Parent Exhibit #1. On June 16, 2020, in response to an inquiry from the Investigator, the School District provided School District Exhibit #38, a transcript credit summary.

The Complaint Investigator reviewed all documents, information, and responses from the parties. Both parties identified witnesses that they requested be interviewed. Additional witnesses identified by the Complaint Investigator were also interviewed. Interviews with _____ (“the Parents”) and the Student were conducted on May 19, 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 Betsy Morrison, Transitional Services Program Manager at the _____ program, was conducted on June 2, 2020. An interview with Melanie Laverriere, LSW, was conducted on June 17, 2020. All witnesses identified by the parties were interviewed.

PRELIMINARY STATEMENT

The Student is 18 years old. _____ has just completed _____ year at _____ School.
The Student resides with _____ parents in _____.

ALLEGATIONS

1. Whether the School District's decision to graduate the Student with a regular high school diploma in June 2020 is 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 Section 300.503) and in violation of the Student's right to receive a free and appropriate public education by terminating special education eligibility before the Student has aged out of services in violation of 34 C.F.R. 300.102(a) and MUSER I (requiring that students with disabilities have available to them a free appropriate public education).
2. Whether the School District failed to conduct a sufficiently comprehensive evaluation of the Student by denying multiple necessary and requested assessments, in violation of MUSER V(1)(B)(1)(stating that a school district must ensure that a reevaluation of a child with a disability is conducted if the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the student warrant a reevaluation or if the student's parent or teacher requests a reevaluation).

FACTUAL FINDINGS

1. The Student was born on August 28, 2000. (S-1.) is years old.
2. The Student entered high school in the fall of 2015. (S-1.) On November 3, 2015, the Student's IEP Team met for annual review and discussion of post-secondary goals and transition services. (S-1.) The Team reiterated the Student's identification for special education and related services based on diagnosis of autism spectrum disorder accompanied by intellectual and language impairment. (S-4.) The Student's standardized achievement results indicated that reading, writing, and conceptual math skills generally fell within the early elementary level and overall academic skills were at a level with cognitive potential, best captured by nonverbal intellect. (S-4.) It was noted that relative to prior evaluations, the Student demonstrated a sustained rate of progress in spontaneous communication, social interaction, and reciprocity. (S-4.) The Team noted that in order for the Student to complete functional living tasks and routines, followed daily visual schedule and step-by-step instructions with gesture prompts and reduced verbal prompting. (S-4.) The Student regressed in academic and functional life skills over a long break and long breaks also impacted emerging skills, rendering eligible for ESY services. (S-4.) The Written Notice stated that the Student would be eligible for a fifth year of high school, during which it was anticipated that would continue to work on academic skills and functional/vocational skills. (S-3 & S-7.) The Student's transition plan was to be continuously monitored and would be supported by parents to pursue options for continuing education and vocational experiences. (S-7.)

3. The corresponding IEP, effective November 18, 2015, identified the Student's disability category as multiple disabilities, including autism and intellectual disability. (S-11.) The Student was designated to receive the following special education and related services: specially designed instruction in English language arts, math, science, and social studies for 54 minutes five times per week; specially designed instruction in functional life skills for 54 minutes twice per week; special educator consultation for 120 minutes monthly; occupational therapist consultation 30 minutes per week; speech-language consultation 30 minutes per week; psychological services 30 minutes per term; speech language therapy 30 minutes twice per week; and ESY services. (S-22 to S-23.) The Student's projected date of graduation was identified as June 20, 2019, although planned course of study included courses for the 2019-2020 school year. (S-24.) The Student's transition services were intended to allow to access the community and receive functional academics and life skills through current program and continue to receive speech and language services. (S-25.) It was recommended that the Parents continue to access these services for the Student after graduation. (S-25.) The Student was to continue to explore in-school vocational jobs as well as vocational jobs within the community. (S-25.) The Student was completing chores and participating in the school store and would continue to expand skills to other vocational skills through the school year to determine areas of interest. (S-25.)
4. The Student earned grades of Satisfactory in most courses for the 2015-2016 school year, with the exception of letter grades given in three trimester-long art courses, in all of which the Student earned a high A. (S-26.) The Student earned nine credits during the 2015-2016 school year. (Sch. Dist. Exh. #38.)
5. On December 20, 2016, Myra Richard, the Student's Special Education Teacher and Case Manager, met with the Parents to discuss their concern that the Student was struggling with reading comprehension skills. (S-46.)
6. The Student's next IEP, effective November 1, 2016, determined the following special education and related services: specially designed instruction in English language arts, math, and functional life skills each for 54 minutes per day four times a week and 44 minutes per day once per week; speech language services 30 minutes three times per week; vocational training services 54 minutes four times per week and 44 minutes once per week; special educator behavioral consultation 120 minutes per month; speech-language therapist consultation 30 minutes once per week; occupational therapist consultation 60 minutes once per month; psychological services provider consultation 60 minutes once per month and ESY services. (S-29 & S-40 to S-41.)¹ Again, the Student's projected date of graduation was identified as June 20, 2019. (S-41.) planned course of study included 2016-2017 and three additional years. (S-42.) The 2018-2019 school year was skipped in sequence, however, which resulted in the fourth year being identified as the 2020-2021 school year. (S-42.) The IEP indicated that the Student's post-secondary education and training goal was to work with a job coach to

¹ The record does not contain a Written Notice corresponding to an IEP Team meeting held on October 18, 2016, to generate the November 1, 2016, IEP. (S-29.)

participate in local job environments within community. (S-42.) After graduation, the Student would look for opportunities as an adult to build upon self-determination with living options with guidance and support of parents and social service agencies. (S-42.) The Student's transition services were indicated to be readiness for a career through completion of in-school vocational tasks that target job skills and exploration of adult living options with parental support. (S-43.) It was noted that the Student demonstrated self-help skills by dressing , preparing snack, and cleaning up area. (S-43.)

7. A Written Notice issued on February 17, 2017, indicated that the Student's IEP goal related to reading comprehension was being altered as a result of the December 20, 2016, conversation between the Case Manager and the Parents. (S-45.)
8. On April 2, 2017, Ms. Richard issued a Career and Interest Evaluation Report for the Student. (S-64.) She also issued an Academic Evaluation Report. (S-98.) The Student's overall reading, writing, and math skills were significantly below the average range for peers, word reading was equivalent to third grade skills in the presence of reading comprehension and reading fluency skills falling in the first-grade level. (S-105.) In math, the Student performed at a 4.5 grade equivalence on computation skills although math concepts and applications fell to a first-grade level. (S-105.) Ms. Richard provided a set of recommendations for the Student's reading, writing, and math academic and functional/vocational programs. (S-105 to S-106.)
9. In March and April 2017, Courtney Hale, Ph.D., conducted a psychological reevaluation of the Student. (S-66.) Dr. Hale concluded that the Student's diagnostic profile was consistent with autism spectrum disorder with accompanying intellectual and language impairment. (S-70.) She observed that the Student's school-based adaptive functioning had declined across all domains, suggesting that was not maintaining previously demonstrated skills. (S-70.) Only at school, the Student was exhibiting greater distractibility, hyperactivity, and social withdrawal. (S-70.) These findings suggested increased and widely varying areas of challenge for the Student across school day. (S-70.) Dr. Hale opined that it was critical to revisit how to best address the Student's multi-faceted learning, adaptive, and social-emotional needs. (S-71.) Dr. Hale recommended increased intervention in adaptive socialization settings; building the Student's academic skills in reading, writing and math; interventions geared toward personal safety; and the use of visual schedules, visual supports, routines, and work systems to clarify expectations, among other suggestions. (S-71.)
10. In April 2017, Candice Bray, Sc.D., conducted a literacy evaluation of the Student. (S-75.) She provided a set of recommendations regarding teaching the Student literacy skills and noted that it would be important to consider the Student's next steps after school and what written and oral literacy skills would be needed, suggesting a focus on these skills in the Student's fourth and fifth years in high school. (S-86.)
11. Also in April 2017, Robin Reidy, OT/L, conducted an occupational therapy evaluation of the Student, concluding that the Student's sensory profile had shown consistency over the prior evaluations. (S-96.) Ms. Reidy recommended continued participation in the

functional life skills classroom with an emphasis on safety and problem solving in novel situations. (S-97.)

12. On May 1, 2017, Janet Mayo Parent, BS, BCBA, issued a Functional Behavioral Assessment concluding that consistent with prior evaluations, the Student exhibited interfering behaviors maintained by automatic reinforcement. (S-108 & S-119.) She recommended programming that maintained engagement; a self-management plan to increase self-monitoring and delivery of reinforcement; functional tasks that followed a familiar sequence; and visual models and visual supports, among other recommendations. (S-120.)
13. Also on May 1, 2017, Darcy Ramsdell, M.S., CCC-SLP, issued a Speech-Language Evaluation concluding that the Student presented with severely impaired receptive and expressive language skills in the presence of autism spectrum disorder, with expressive language skills being significantly stronger than receptive language skills. (S-122 & S-132.) Ms. Ramsdell noted that the Student was a functional communicator who could effectively use language to meet needs while continued to demonstrate difficulty with communication in context. (S-132.)
14. The Student received grades of Satisfactory in all courses for the 2016-2017 school year, with the exception of a 98 in a one-trimester ceramics course. (S-134.) The Student earned 9.5 credits during the 2016-2017 school year. (School Dist. Exh. #38.)
15. An IEP was issued effective May 15, 2018, that called for the following services: specially designed instruction in safety and technology skills 54 minutes four times per week and 44 minutes once per week; specially designed instruction in English language arts and math each 54 minutes four times per week and 44 minutes once per week; special educator behavioral consultation 90 minutes once per month; occupational therapist consultation 30 minutes once per month; speech language consultation services 30 minutes twice per month and 30 minutes once per week. (S-135 & S-150 to S-151.)²
16. The IEP included a vocational goal as follows: by May 14, 2019, given special designed instruction, consultation with the Student and interests checklists, vocational summary logs and job training sight matches, the Student would identify whether jobs were a good match for as measured by three out of five opportunities. (S-146.) was noted as making adequate progress towards this vocational placement goal on December 7, 2018, and March 22, 2019. (S-146.) The Student's projected graduation date continued to be listed as June 20, 2019. (S-152.) The course of study portion of the IEP was altered from prior IEPs to end with the 2018-2019 school year. (S-153.) The Student's post-secondary transition plan included receiving vocational training in restaurant services with a goal of working in a local café and taking orders after graduation. (S-153.) transitional services were identified as continued use of a behavioral protocol to ensure safety and attention; speech-language services addressing language and social skills; academic and social skills accommodations; assessment modifications; an

² The record also does not contain a Written Notice corresponding to an IEP Team meeting held to generate this IEP, which was held on May 1, 2018. (S-135.)

integrated academic program targeting reading comprehension and vocabulary that pertained to the Student's experiences; a variety of writing modalities to strengthen written expressive skills; and match language supported by accommodations and review of learned material. (S-153.) career/employment and other post-secondary living objectives were to participate in employment opportunities during senior year of high school and during post-secondary transition services. (S-153.)

17. The Student received grades of Satisfactory for all courses during the 2017-2018 school year. (S-257.) received nine credits during the 2017-2018 school year. (Sch. Dist. Exh. #38.)
18. On February 4, 2019, by agreement with the Parents and the School District, without an IEP Team meeting, the Student's IEP was amended to remove the functional IEP goal of safety skills/technology skills to allow the Student more time in academic schedule to focus on reading comprehension and writing skills. (S-160 to S-161.)
19. On April 26, 2019, the Student's IEP Team met for an annual review and discussion of the Student's post-secondary goals and transition services. (S-163.) It was determined that the Student would have goals in the areas of math (fractions, operations, measurement, and functional math), literacy (reading comprehension and vocabulary), safety, and functional life skills (vocational readiness). (S-164.) The Student's Father explained that was requesting a cognitive evaluation due to the Student's increased aggression and some regression in reading comprehension. (S-166.) The Team determined that the evaluations for the Student's triennial review, due by May 5, 2020, would include the areas of: functional living skills, adaptive behavior, cognition, classroom observation, and speech-language evaluation. (S-164.) The Team discussed the possibility of the Student attending the program for half a day during summer 2019 ESY services to determine if would be a good program for in the fall. (S-166.) There was no indication that the Team discussed the Student's graduation date at this meeting. (S-163 to S-167.)
20. The corresponding IEP, effective May 1, 2019, called for the following special education and related services for the Student: specially designed instruction in functional life skills 88 minutes once per week and 108 minutes four times per week; specially designed instruction in English language arts and math each for 54 minutes four times per week and 44 minutes once per week; special educator behavioral consultation 90 minutes once per month; speech language therapist consultation 30 minutes three times per week; and ESY services. (S-168 & S-178 to S-180.) In this IEP, the Student's graduation date was altered to June 9, 2020, and the course of study was extended through the 2019-2020 school year, although no discussion about this alteration was indicated in the Written Notice. (S-180 & S-181.)
21. The IEP contained a career interest goal of developing a transition passport as measured by completing portfolio transition components with 100% accuracy by May 9, 2020, given specialized instruction, career interest inventories, job dislikes and likes, resume, and jobs that relate to hobbies and/or leisure activities. (S-177.) The Student's post-

secondary goal was to participate in a community-based program focusing on daily living skills, vocational skills, and leisure activities. (S-180.) employment goal was to work in a local retail shop. (S-180.) independent living skills goal was to live in an apartment. (S-180.) Under transitional services and activities, it was noted that the Student needed continued use of a behavioral protocol to ensure safety and attention and speech-language consultation services addressing language and social skills. (S-181.) It was also indicated that needed functional life skills opportunities to support generalization of skills. (S-181.) In order for the Student to be career ready, the Student would participate in a functional life skills program with adult support that targeted safety, communication, problem solving skills, and vocational training. (S-181.) The Student would also receive speech and language consultation services that focused on carry-over of strange danger, asking questions to gain information about day, and social skills with peers. (S-181.) The Student would develop transition portfolio that would include a job interests inventory, personal likes and dislikes of leisure activities, vocational summary logs, and job training sight matches that reflect work environment preferences. (S-181.)

22. The Student received scores of Satisfactory in all courses for the 2018-2019 school year. (S-188.) The Student received 12.5 credits during the 2018-2019 school year. (Sch. Dist. Exh. #38)
23. At the end of the 2018-2019 school year, the Student participated in graduation ceremonies at School. (Interview with Parents.) Instead of receiving a diploma, however, the Student was given a certificate of attendance. (Interview with Parents.) The Parents felt it was appropriate for the Student to participate in the ceremony with peers in school and from the cross-country team. (Interview with Parents.) At that time, the Parents anticipated that the Student had two more years of eligibility to attend school or school-based programs. (Interview with Parents.)
24. 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 the Student since 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.)
25. 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 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.)

26. 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.)
27. 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 fifth or sixth year even if they had already obtained the necessary credits. (Interview with Breton.)
28. 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.)
29. On August 27, 2019, the Student's IEP was amended to focus on functional goals, by agreement of the Parents and the School District without an IEP Team meeting to reflect attendance at for the 2019-2020 school year. (S-191 & S-194 to S-210.) A variety of related information in the Student's IEP was also amended. (S-191.) The Student would no longer receive specially designed instruction in math, reading, and writing or targeting behaviors, career interest, and safety. (S-191.) Instead, in the program, the Student would attend functional life skills programming focused on functional reading, writing, math, personal safety, independence, and social/emotional needs. (S-191.) graduation date remained June 17, 2020, although course of study was shortened to end in 2019, presumably reflecting that was no longer attending programming at School that corresponded to the original course of study. (S-218.)
30. During attendance at School, the Student's programming focused more on academic skills than functional skills at the request of Parents. (Interview with Schatzabel.) Ms. Schatzabel felt it was appropriate to agree to provide the Student a fifth year of programming in order to focus on functional life skills. (Interview with Schatzabel.)

31. The Student attended the _____ Program (“_____”) program for the 2019-2020 school year, having successfully attended summer camp there in 2019. (Interview with Morrison.) _____ is a community-based program focused on supporting students to develop independent living skills, which are put into practical application in the community. (Interview with Morrison.) Money management, safety on public transportation, and conducting oneself in public are all areas of skill development. (Interview with Morrison.) _____ offers morning, afternoon, or full day programs. (Interview with Morrison.) Although the Student was originally identified for the half-day program, the Parents advocated for a full-day program, which the Student attended. (Interview with Morrison.) The Parents were primarily concerned that two half-day programs in different locations would require significantly daily travel for the Student. (Interview with Parents.)
32. In late October 2019, the Parents contacted Ms. Schatzabel expressing concern about information they had received indicating that the Student would be graduating at the end of the school year. (Interview with Schatzabel.)
33. On November 1, 2019, the Parents met with Ms. Schatzabel to discuss the Student’s graduation date. (June 16, 2020, Email from Schatzabel.) Ms. Schatzabel informed the Parents that the School District had made a mistake by allowing the Student a fifth year of education and that the Department of Education had wanted the Student to receive a diploma when _____ participated in the graduation ceremonies at the end of the 2018-2019 school year. (Interview with Parents.) Ms. Schatzabel told the Parents that the Department of Education was coming down on the School District and they were required to graduate the Student at the end of the 2019-2020 school year. (Interview with Parents.) The Parents believe that Ms. Schatzabel indicated that the School District should not have allowed _____ to participate in graduation ceremonies without giving a diploma. (Interview with Parents.) The Parents explained to Ms. Schatzabel that they wanted the Student to remain in school for the 2020-2021 school year and they did not want _____ to receive a diploma, regardless of when _____ stopped attending school. (Interview with Schatzabel.)
34. Melanie Laverriere, LSW, the Student’s Targeted Case Manager at Milestones Family Services, was surprised to learn from the Parents that the School District had decided to graduate the Student in June 2020. (Interview with Laverriere.) As conveyed to her, the Parents had understood up until that point that the Team agreed that the Student would attend school through the 2020-2021 school year. (Interview with Laverriere.) She noted that the vast majority of the students she works with who have disabilities as significant as the Student’s continue in school through the year that they turn 20. (Interview with Laverriere.)
35. In mid-November 2019, Ms. Schatzabel discussed the graduation date for the Student with the School District Superintendent and other administrative staff members, as well as with the School District’s counsel. (June 16, 2020, Email from Schatzabel.) She concluded that no student in the School District had ever received a sixth year of high school. (June 16, 2020, Email from Schatzabel.) The IEP Team was not involved in the

discussion regarding the Student's graduation date nor was the Student's progress towards goals a factor in determining graduation date. (Interview with Schatzabel.)

36. Ms. Schatzabel also contacted Betsy Morrison at _____ to inquire as to whether another year of programming in the _____ program would be appropriate for the Student. (Interview with Schatzabel.) Ms. Morrison told Ms. Schatzabel that she did not feel it would be beneficial to the Student to participate in _____ programming for another year although she felt that the adult programming available at _____ would be a good fit for the Student. (Interview with Schatzabel.)
37. Following the Student's in-patient hospitalization in late 2019, during which time _____ was not enrolled in the School District, the Student's Team met on January 3, 2020, to reinstate the Student's IEP and review _____ post-secondary goals and transition services. (S-220 to S-221.) The Parents expressed concern about the Student's programming at _____ and noted that _____ behavior had been escalating. (S-222.)
38. By then, the Parents felt it was a foregone conclusion that the Student would be graduating in June 2020 even though the Team had not discussed it or made an independent determination about the Student's status. (Interview with Parents.) There was no discussion of the Student's progress towards goals as it may have related to the administrative determination that the Student would graduate at any Team meeting. (Interview with Parents.) When the Parents reiterated their disagreement with the decision to graduate the Student in June 2020, Ms. Schatzabel indicated that the Student was definitely graduating and the decision was not up for discussion. (Interview with Parents.) The Parents felt they had a good working relationship with School District staff and Ms. Schatzabel until that point, but that the relationship became adversarial after Ms. Schatzabel unilaterally determined that the Student would graduate in June 2020. (Interview with Parents.)
39. On January 12, 2020, the Parents sent a letter to the School District requesting several evaluations as part of the Student's triennial review. (S-238.)
40. On February 14, 2020, the Student's IEP Team met to discuss evaluations since the Student was due for _____ triennial review. (S-236.) The Student's triennial date was in May 2020 and _____ annual was due April 25, 2020. (S-237.) The Team agreed to hold a meeting in April to serve as both the annual and triennial reviews. (S-237.) The IEP Team agreed that vocational and assistive technology evaluations would be beneficial to the Student as _____ transitioned from high school to adult services. (S-237.) The Written Notice indicated that the Student had met graduation requirements, had marched the prior year in graduation ceremonies, and would be receiving a diploma in the mail at the end of the school year. (S-237.) The Parents requested a neuropsychological evaluation, academic evaluation, speech and language evaluation, occupational therapy evaluation, and functional behavior assessment. (S-237.) The Team discussed that the evaluations were not needed as part of a reevaluation since the purpose of a reevaluation was to determine eligibility. (S-237.) The Written Notice indicates that the School District did not conduct neuropsychological evaluations as a general rule and it concluded that a

psychoeducational evaluation, which it did conduct, was not necessary. (S-237.) The Written Notice indicated that the Student's evaluations had been consistent since entry into the School District and confirmed that the Team considered [redacted] eligible for special education and related services as a student with multiple disabilities (autism and intellectual disability). (S-237.) The Written Notice stated that the Team did not feel that the requested evaluations would help the Team plan the Student's programming for the remainder of the school year. (S-237.) The Parents expressed a belief that the School District had not conducted sufficient transition planning for the Student. (S-238.) The Parents also reiterated that they did not agree with the School District's determination to graduate the Student in June 2020. (S-239.)

41. Ms. Schatzabel felt that most of the evaluations requested by the Parents would not be useful because the Student's profile had not changed and [redacted] clearly remained eligible for special education. (Interview with Schatzabel.) Ms. Schatzabel felt that an assistive technology evaluation made sense to support the Student's community programming and potential employment and home-based services. (Interview with Schatzabel.) She also felt that a vocational evaluation would be useful. (Interview with Schatzabel.)
42. Although the Student's vocational evaluation was started, it was not completed. (Interview with Parents.) Ms. Schatzabel reports that the evaluation was not completed due to the pandemic. (June 17, 2020, Email of Schatzabel.)
43. After the closure of schools in mid-March due to the coronavirus pandemic, the Student was an active participant in the morning virtual [redacted] program and was also provided paper packets by School District special education staff. (Interview with Morrison.)
44. On April 6, 2020, a Written Notice was issued indicating that although an annual review was due, the Team was not able to meet due to the closure of schools. (S-241 & S-243.) The Written Notice indicated that a new IEP, reflecting the current IEP, would be drafted to go through the date of the Student's graduation. (S-242.) The Parents reported, through an email exchange with Ms. Richard, that they did not feel that the Student was able to demonstrate any noticeable progress and/or functional change since attending [redacted] (S-243.) The Parents also expressed surprise that the School District could not hold a virtual IEP to review the Student's IEP, expressly concerned that it was altered without the agreement of the Team. (S-243.) The Written Notice indicated that the Parents were informed that the IEP was not changing since all goals and services remained the same as in the current IEP. (S-243.)
45. The IEP, also issued on April 6, 2020, for the period April 28, 2020, to June 7, 2020, retained the same goals and services as the Student's prior IEP. (S-245.) The IEP removed ESY services since the Student was expected to graduate in June 2020. (S-245.)
46. On April 23, 2020, the Parents filed a complaint investigation request, resulting in the Student remaining in [redacted] stay put placement until the matter is finalized. (Administrative Record.)

47. The Student received no credits for _____ time at _____ during the 2019-2020 school year. (S-259; Sch. Dist. Exh. #38.)
48. The Parents did not feel that the Student was fully able to access the programming at _____ because it was too difficult for _____. (Interview with Parents.) They were concerned that _____ felt asleep frequently during programming because the material was not accessible to _____. (Interview with Parents.) The Parents feel that the Student has capacity to continue to build on _____ academic skills. (Interview with Parents.) They also feel _____ needs more transition programming before graduating. (Interview with Parents.) If the Student were to have another year of programming, the Parents would like to see the Student attend a half-day program focused on functional life skills with objective measurable goals. (Interview with Parents.) They are particularly interested in the Student accessing vocational rehabilitation services. (Interview with Parents.)
49. The Parents contend that they would have advocated for a six-year plan from the start of the Student's high school career and would have wanted more information as to why the School District felt _____ should graduate in five years, before _____ eligibility ended. (Interview with Parents.) The Parents do not want the Student to receive a regular diploma. (Interview with Parents.) They do not feel the Student will benefit from having a regular diploma. (Interview with Parents.) They also point out that the Student's academic achievement is well below _____ peers and are concerned that at some point in the future, services could be withheld from the Student if it is assumed that _____ is able to obtain gainful employment by virtue of having a high school diploma. (Interview with Parents.)
50. The School District felt that the Student was very successful in the _____ program. (Interview with Schatzabel.) Ms. Richard believed that while the Student had gained functional skills while in high school, the _____ program had allowed _____ to generalize those skills to real life settings and that _____ was ready for adult services, to include employment and money/budgeting, caring for _____ personal hygiene, working with co-workers, remaining safe in the community, and accessing public transportation. (Interview with Richard.)
51. The Student is on a wait list for adult services. (Interview with Parents.) _____ application was submitted in mid-November 2019. (Interview with Laverriere.) Ms. Laverriere would have submitted _____ application much sooner if she had realized that the School District was graduating the Student prior to the expiration of _____ eligibility. (Interview with Laverriere.) The wait list for services generally takes approximately a year. (Interview with Laverriere.)
52. 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 fifth 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 fifth year, it can be discussed. (Interview

with Schatzabel.) Although a student being provided a fifth 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 education, for which they remained eligible, for special education services is terminated, consistent with statutory and regulatory guidance. (Interview with Schatzabel.)

53. 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.)
54. Ms. Schatzabel explained that the School District graduated two students with severe disabilities in June 2020 after each had attended 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 fifth year of eligibility and was not aware of whether the students' IEP Teams discussed the possibility. (Interview with Schatzabel.)
55. Mr. Gould reported that whether a student would receive a fifth 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 fifth 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 fifth 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.)
56. Eileen Sheehy, School Principal, 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.)
57. 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.)
58. 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 twenty-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 fifth 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 20. (Interview with Daly.)

59. Ms. Ramsdell, who provided the Student with speech-language services and provided consultation to service providers, felt she would to review the data on progress more carefully before offering an opinion regarding readiness to graduate. (Interview with Ramsdell.)
60. Ms. Laverriere, the Student's Targeted Case Manager, believes that the Student would benefit from an additional year of special education and related services. (Interview with Laverriere.) She noted that has a lot of challenging behaviors, which another year of educational services would be help address. (Interview with Laverriere.)
61. Ms. Richard, the Student's special education teacher for many years, reported her understanding that special education students would graduate in four years if they met the graduation requirements and if they were ready for the transition to adult services. (Interview with Richard.) She believed that it was an IEP Team decision as to whether the Student returned for a fifth year of education after meeting the graduation requirements in four years. (Interview with Richard.) She noted that a student in her program would never fail a course but might receive an incomplete, which would allow them to revisit programming to better meet the student's needs. (Interview with Richard.)
62. If staff had been aware that the Student was not going to be concluding school in the current year, could have attended the half-day program over the course of two years. (Interview with Morrison.) Betsy Morrison, the Transition Services Program Manager at , does not believe that another year of programming at the program would be beneficial to the Student at this point on the basis that has obtained what can from the program and would miss peer group. (Interview with Morrison.) does offer adult community support programs that the Student would transition into. (Interview with Morrison.) The adult program is also an independent living program but is designed to be community and home-based. (Interview with Morrison.) In addition, has a program called which is a transitional program between a school-based approach and adult services, which might be available to the Student. (Interview with Morrison.)

DETERMINATIONS

1. 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, and a violation of the Student's right 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), 34 C.F.R. 300.102(a)(3)(iii), and MUSER I.

2. The School District failed to adequately evaluate the need for multiple evaluations requested by the Parents as part of the Student's triennial evaluation in February 2020 because the School District's inappropriate determination to graduate the Student in June 2020 narrowed the Team's inquiry, in violation of MUSER V.1.B(1). Further, the School District adopted too narrow a standard by disregarding several of the criteria for determining whether reevaluations should be undertaken, in violation of MUSER V.3.A(2).

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.

Regarding evaluations, a school district must ensure the reevaluation of a student with a disability if the school district determines that the educational or related services needs, including improved academic achievement and functional performance, of the child warrant a reevaluation or if the child's parent or teacher requests a reevaluation. MUSER V.1.B(1). A reevaluation should occur not more frequently than once a year unless the parent and the school district agree otherwise but at least once every three years unless the parent and the school district agree that a reevaluation is unnecessary. MUSER V.1.B(2).

When conducting a reevaluation, an IEP Team should review existing evaluation data including evaluations and information provided by the parents of the child; current class-room based, local, or State assessments, and classroom-based observations; and observations by teachers and related service providers. MUSER V.3.A(1). Based on that review, and input from the student's parents, the Team should determine what additional data is needed to determine whether the child continues to have a disability and the educational needs previously identified, the present levels of academic achievement and related development needs, whether the child continues to need special education and related services, and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum. MUSER V.3.A(2).

II. Jurisdictional Issue

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 that 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 diploma, but rather how the decision about when to graduate a student receiving special education services should be made.

III. Analysis

Determination of Student's Graduation Date. In late 2019 and early 2020, the Special Education Director, with the input of the School District Superintendent, her administrative team, and legal counsel, made the determination that the Student would graduate in June 2020, at the conclusion of fifth 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

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 requirements for determining the graduation date 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 his or her specially designed instructional coursework. If the Student in the present case is any indication, special education

students would frequently meet the number of credits needed to graduate after three years of high school programming.

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 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

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.

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

In the present case, the Student's initial high school IEP, issued in November 2015, listed graduation date as June 2019 but included a course of study that went through the 2019-2020 school year. The Student's next IEP, issued in November 2016, again listed graduation date as June 2019 but included a course of study that skipped a year and extended to the 2020-2021 school year. The subsequent IEP, generated in May 2018 continued with the June 2019 graduation date but this time curtailed the course of study to end with the 2018-2019 school year. In the next IEP, generated in May 2019, shortly before the Student participated in graduation ceremonies at School, listed a graduation date of June 2020 and included a course of study that went through the 2019-2020 school year.

The Written Notices that are available in the record as related to these IEPs do not have explicit determinations of the Student's expected graduation date or reference discussion regarding this topic even though changes were frequently made to this section of the Student's IEP. The Parents, however, had the impression through the Student's time in high school, until the fall of 2019, that the Student would attend school until eligibility ended under special education laws, which would be through the 2020-2021 school year. Both the Parents and

outside case manager indicated steps they would have taken if they had been informed prior to the fall of 2019 that the School District planned to end the Student's eligibility in June 2020 outside of the IEP Team process. The School District's failure to include the Parents in the discussion and inform them of the administrative determination that had been made in a timely manner had a direct negative result on the Parents' ability to fully participate in the Student's Team during time in high school and to obtain necessary adult services in a manner timed to coincide with the Student's graduation.

In the present case, 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 sixth 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, administrative staff, and the School District's attorney before making the determination that the Student would not be allowed to attend school during the 2020-2021 school year. 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 school district proposes the action; a description of each evaluation procedure, assessment, record, or report the school district 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 school district'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, if not three, years, thus ending their eligibility for education if the School District graduated them in the year in which they obtained 24 credits.

Awarding of Diploma. Although the Parents do not wish for the Student to receive a regular diploma and argue that the Student has not received academic content that is the equivalent of non-disabled peers, 20-A M.R.S. Section 4722(3) requires that 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. The Investigator, as indicated previously, does not review the content of the Student's credits, which the record is clear totaled 27.5 by the end of third year in high school and 40 by the end of fourth year in high school.

Triennial Evaluations. The Written Notice from the February 14, 2020, IEP Team meeting indicates that one reason that the Team rejected the evaluations requested by the Parents was that the purpose of a reevaluation was to determine eligibility. A second reason was that the Team did not feel that the evaluations would help plan programming for the rest of the school year through the Student's June 2020 graduation.

When conducting a reevaluation, however, in addition to assessing whether reevaluations would help the Team determine whether the Student continued to have a disability and continued to need special education and related services, which was evidence in the present case, but also present levels of academic achievement and related development needs and whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general education curriculum. The IEP Team did not fully analyze all the reason that the proposed evaluations could be beneficial, in violation of MUSER V.3.A(2). Furthermore, the full range of areas to be assessed, as determined by the Team at its April 26, 2019, meeting – to include functional life skills, adaptive behavior, cognition, classroom evaluation, and speech-language evaluation – were not considered at the February 14, 2020, IEP Team meeting.

CORRECTIVE ACTION TO BE COMPLETED BY THE DISTRICT

Because violations were 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. There is significant evidence in the record to suggest both that the Parents and the Student's Case Manager feel more progress towards transitional goals should have been made and also that there has not been sufficient data gathering to date to allow to make this analysis absent further information gathering and evaluation. In addition, should the IEP Team determine that the Student would benefit from an additional year of special education and related services to meet goals, the School District should revisit its analysis of what evaluations would be appropriate by applying all of the applicable criteria and its April 2019 determination of what evaluations were necessary.