

**SYSTEMIC COMPLAINT INVESTIGATION REPORT**  
**Disability Rights Maine v. Wells-Ogunquit Consolidated School District**  
**Complaint 20.083CS**  
**Complaint Investigator: Rebekah J. Smith, Esq.**  
**June 23, 2020**

**INVESTIGATION PROCEDURE**

Complainant: Disability Rights Maine  
24 Stone Street, Suite 204  
Augusta, Maine 04330

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

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 A through E.

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

**PRELIMINARY STATEMENT**

This systemic complaint was filed on behalf of students with disabilities who are being graduated with a regular high school diploma from \_\_\_\_\_ School before the end of their eligibility for special education and related services. At the same time that this systemic complaint was filed, two students with disabilities, represented by Disability Rights Maine, who

the School District planned to graduate in June 2020, filed individual complaints against the School District.

## **ALLEGATION**

Whether the School District has a pattern and practice of changing the placement of students through graduation with a regular high school diploma when some students with disabilities have not met the requirements for a regular high school diploma and have not been given the opportunity to meet those requirements, constituting 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 a violation of the right of students to receive a free and appropriate public education by terminating their special education eligibility before the students have 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. The School District administratively determined to graduate with a regular diploma in June 2020 two students with significant disabilities, \_\_\_\_\_ and \_\_\_\_\_, who had taken part in the \_\_\_\_\_ program during most of their high school careers. (Interview with Schatzabel.) The \_\_\_\_\_ program encompasses academic, employment, and functional skills and also focuses on behavior. (Interview with Richard.)
2. \_\_\_\_\_ is \_\_\_\_\_ years old. (S-8 in 20.081C.) \_\_\_\_\_ has been identified as a student eligible for special education services as a student with multiple disabilities (autism and intellectual disability). (S-30 in 20.081C.) On October 23, 2015, just after \_\_\_\_\_ began attending the \_\_\_\_\_ School \_\_\_\_\_ Program, \_\_\_\_\_'s IEP Team met for the purpose of conducting an annual review and determining post-secondary goals and transition planning. (S-1 in 20.081C.) \_\_\_\_\_'s adaptive functioning was well below age-level across settings. (S-3 in 20.081C.) Compared with same age peers, \_\_\_\_\_'s academic skills, \_\_\_\_\_ ability to apply those skills, and \_\_\_\_\_ fluency with academic tasks were in the low and very low range. (S-3 in 20.081C.) \_\_\_\_\_ was noted to be performing several years below grade level in all academics. (S-3 in 20.081C.) \_\_\_\_\_'s IEP called for almost an hour daily of specially designed instruction in each of the areas of math skills, language arts, functional life skills, and organizational skills, as well as multiple related services. (S-3 in 20.081C.) At that meeting, \_\_\_\_\_'s Team agreed that \_\_\_\_\_ was eligible for a sixth year of high school (2020-2021), during which \_\_\_\_\_ would turn 20. (S-2 in 20.081C.) The corresponding IEP, effective November 6, 2015, lists \_\_\_\_\_'s graduation date as June 15, 2021. (S-20 in 20.081C.)
3. \_\_\_\_\_ is \_\_\_\_\_ years old. (S-1 in 20.082C.) \_\_\_\_\_ is eligible for special education and related services as a student with multiple disabilities (autism and intellectual disability). (S-237 in 20.082C.) \_\_\_\_\_ entered high school in the fall of 2015, participating in the \_\_\_\_\_ Program. (S-1 in 20.082C.) On November 3, 2015, in the fall of \_\_\_\_\_'s ninth

grade year, \_\_\_\_\_'s IEP Team met for \_\_\_\_\_ annual review and discussion of post-secondary goals and transition services. (S-1 in 20.082C.) \_\_\_\_\_'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 in 20.082C.) The Written Notice stated that \_\_\_\_\_ 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 in 20.082C.) The corresponding IEP, effective November 18, 2015, determined that \_\_\_\_\_ required specially designed instruction in English language arts, math, science, social studies, and functional life skills as well as many related services. (S-22 to S-23 in 20.082C.) \_\_\_\_\_'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 in 20.082C.) \_\_\_\_\_'s transition services were intended to allow \_\_\_\_\_ to access the community and receive functional academics and life skills through \_\_\_\_\_ current program. (S-25.)

4. On September 27, 2016, just after the start of the \_\_\_\_\_'s tenth grade year, \_\_\_\_\_'s IEP Team agreed that \_\_\_\_\_ should continue to receive academic instruction primarily through specially designed instruction as well as several related services. (S-30 to S-31 in 20.081C.) \_\_\_\_\_'s program was focused on \_\_\_\_\_ adaptive daily living skills, safety, and problem solving. (S-31 in 20.081C.) The Meeting Notice reiterated that \_\_\_\_\_'s overall cognitive problem solving was substantially compromised relative to \_\_\_\_\_ same-age peers. (S-32 in 20.081C.)
5. \_\_\_\_\_'s tenth grade IEP, effective November 1, 2016, determined that \_\_\_\_\_ would receive specially designed instruction in English language arts, math, and functional life skills, vocational training services, and multiple related services. (S-29 & S-40 to S-41 in 20.082C.) Again, \_\_\_\_\_'s projected date of graduation was identified as June 20, 2019. (S-41 in 20.082C.) \_\_\_\_\_ planned course of study included 2016-2017 and three additional years. (S-42 in 20.082C.) 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 in 20.082C.) The IEP indicated that \_\_\_\_\_'s post-secondary education and training goal was to work with a job coach to participate in local job environments within \_\_\_\_\_ community. (S-42 in 20.082C.) After graduation, \_\_\_\_\_ 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 in 20.082C.) \_\_\_\_\_'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 in 20.082C.)
6. \_\_\_\_\_'s IEP Team met on May 16, 2017, to conduct an annual review of \_\_\_\_\_'s plan, to review \_\_\_\_\_'s post-secondary goals and transition services, and to discuss evaluations. (S-53 in 20.081C.) \_\_\_\_\_'s stepmother asked about \_\_\_\_\_'s post-secondary transition goals. (S-57 in 20.081C.) The IEP Team discussed the possibility that after graduation<sup>1</sup>

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<sup>1</sup> 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.

\_\_\_\_\_ could participate in a functional day program such as the \_\_\_\_\_ 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 in 20.081C.) The corresponding IEP, effective May 31, 2017, continued to include academic and functional life skills instruction primarily through specially designed instruction with multiple related services. (S-38 & S-48 to S-49 in 20.081C.) \_\_\_\_\_'s education/training goal was to work with a job coach to participate in local job environments within \_\_\_\_\_ community. (S-50 in 20.081C.) \_\_\_\_\_'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 in 20.081C.)

7. \_\_\_\_\_'s IEP Team met on March 6 and again on April 6, 2018, to review \_\_\_\_\_'s triennial evaluations, conduct an annual review of \_\_\_\_\_ IEP, and plan for post-secondary goals and transition services. (S-122 & S-134 to S-135 in 20.081C.) Reviewing the evaluations, the Team determined that \_\_\_\_\_ continued to require comprehensive and intensive programming that placed emphasis on \_\_\_\_\_ safety, functional life skills, and transition to adulthood. (S-124 in 20.081C.) \_\_\_\_\_'s Parents requested that the Team review the recommendations of evaluators and develop goals focused on safety, generalizing of skills, and preparing \_\_\_\_\_ for adulthood. (S-124 in 20.081C.) \_\_\_\_\_'s evaluations indicated that \_\_\_\_\_ continued to be significantly below grade level and had severe receptive, expressive, and pragmatic language impairment. (S-138 in 20.081C.) School and community-based instruction and support for learning new academic skills, maintenance, and generalization of academic skills were required for \_\_\_\_\_ to build daily living and vocational skills within \_\_\_\_\_ environments. (S-138 in 20.081C.) \_\_\_\_\_'s goals were focused on academic skills, functional life skills, and vocational training. (S-136 in 20.081C.) \_\_\_\_\_ continued to require specially designed instruction in community outings/daily living skills, functional life skills, and math as well as vocational training and related services. (S-168 in 20.081C.) The Team discussed \_\_\_\_\_'s participation in graduation activities and determined that senior photo and graduation information would be provided to \_\_\_\_\_'s Parents. (S-143 & S-144 in 20.081C.) \_\_\_\_\_'s IEP, effective April 2, 2018, left blank \_\_\_\_\_ graduation date. (S-162 in 20.081C.)
8. \_\_\_\_\_'s IEP Team met on March 28, 2019, for an annual review and to discuss \_\_\_\_\_'s post-secondary goals and transition services. (S-183 in 20.081C.) The Team determined that \_\_\_\_\_'s time in vocational placements during the 2019-2020 school year would increase. (S-184 in 20.081C.) The Team determined that \_\_\_\_\_ should receive specially designed instruction in academics and functional skills as well as several related services. (S-204 in 20.081C.) \_\_\_\_\_'s Father believes that \_\_\_\_\_ indicated during the meeting that the graduation date on the draft IEP was incorrect because it stated June 2020 – a change from the prior IEP that left the graduation date blank - and was told that a correction would be made when the final IEP was generated. (Interview with \_\_\_\_\_'s Parents.) \_\_\_\_\_'s IEP, effective April 11, 2019, altered the language regarding \_\_\_\_\_'s graduation again, this time inserting June 20, 2020. (S-188 & S-200 in 20.081C.) The IEP indicated

that after graduation, \_\_\_\_\_ would participate in a community-based program focusing on daily living skills, vocational skills, and leisure activities. (S-200 in 20.081C.)

9. At the end of the 2018-2019 school year, \_\_\_\_\_ had obtained 40 credits and \_\_\_\_\_ had obtained 36.5 credits. (June 16, 2020, Email from Schatzabel.) \_\_\_\_\_ and \_\_\_\_\_ participated in graduation ceremonies at \_\_\_\_\_ School in June 2019. (Interview with \_\_\_\_\_'s Parents; Interview with \_\_\_\_\_'s Parents.) Instead of receiving a diploma, however, \_\_\_\_\_ and \_\_\_\_\_ were given a certificate of attendance. (Interview with \_\_\_\_\_'s Parents; Interview with \_\_\_\_\_'s Parents.) It was understood that despite participating in graduation ceremonies, \_\_\_\_\_ and \_\_\_\_\_ would continue with their education as provided by the School District. (Interview with \_\_\_\_\_'s Parents; Interview with \_\_\_\_\_'s Parents; Interview with Schatzabel.)
10. 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 \_\_\_\_\_, who 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.)
11. 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 \_\_\_\_\_ and \_\_\_\_\_ 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.)
12. In discussing with Ms. Schatzabel her conversation with Ms. Breton in the fall of 2019, \_\_\_\_\_ School Vice Principal Josh Gould believed that Ms. Schatzabel was told that because \_\_\_\_\_ met the credit requirements after four years, \_\_\_\_\_ should have been graduated at the end of four years. (Interview with Gould.)
13. 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 \_\_\_\_\_ 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.)

14. 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-B-11.) Ms. Breton responded that the policy looked fine. (S-B-11.)
15. Early in the school year, in the fall of 2019, \_\_\_\_\_'s parents met with Ms. Schatzabel because she wanted to introduce herself to them. (Interview with \_\_\_\_\_'s Parents.) They discussed the fact that \_\_\_\_\_ had participated in graduation exercises at the end of the prior school year. (Interview with \_\_\_\_\_'s Parents.) \_\_\_\_\_'s Father recalls indicating to Ms. Schatzabel that they anticipated that \_\_\_\_\_ would attend \_\_\_\_\_ School for two additional years and that Ms. Schatzabel did not respond directly to \_\_\_\_\_ statement. (Interview with \_\_\_\_\_'s Parents.)
16. On November 1, 2019, \_\_\_\_\_'s parents met with Ms. Schatzabel to discuss \_\_\_\_\_'s graduation date. (June 16, 2020, Email from Schatzabel.) Ms. Schatzabel informed \_\_\_\_\_'s parents that the School District had made a mistake by allowing \_\_\_\_\_ a fifth year of education and that the Department of Education had wanted \_\_\_\_\_ to receive a diploma when \_\_\_\_\_ participated in the graduation ceremonies in June 2019. (Interview with Parents.) Ms. Schatzabel told \_\_\_\_\_'s parents that the Department of Education was coming down on the School District and they were required to graduate \_\_\_\_\_ at the end of the 2019-2020 school year. (Interview with Parents.) \_\_\_\_\_'s parents believed that Ms. Schatzabel indicated that the School District should not have allowed \_\_\_\_\_ to participate in graduation ceremonies without giving \_\_\_\_\_ a diploma. (Interview with Parents.) \_\_\_\_\_'s parents explained to Ms. Schatzabel that they wanted \_\_\_\_\_ to remain in school for the 2020-2021 school year and also that they did not want \_\_\_\_\_ to receive a diploma, regardless of when \_\_\_\_\_ stopped attending school. (Interview with Schatzabel.)
17. Melanie Laverriere, LSW, \_\_\_\_\_'s Targeted Case Manager at Services, was surprised to learn from \_\_\_\_\_'s parents that the School District had decided to graduate \_\_\_\_\_ in June 2020. (Interview with Laverriere.) As conveyed to her, \_\_\_\_\_'s parents had understood up until that point that the Team agreed that \_\_\_\_\_ would attend school through the 2020-2021 school year. (Interview with Laverriere.) She noted that the vast majority of students she works with who have disabilities as significant as \_\_\_\_\_'s continue in school through the year that they turn 20. (Interview with Laverriere.)
18. In early November 2019, communications were sent from the \_\_\_\_\_ School Secretary to \_\_\_\_\_'s family regarding various graduation documents. (June 16, 2020, Email from Schatzabel.) On November 18, 2019, \_\_\_\_\_'s Father contacted Ms. Schatzabel to express concern about the suggestion that \_\_\_\_\_ would be graduating at the end of the school year. (June 16, 2020, Email from Schatzabel.) Ms. Schatzabel told

\_\_\_\_\_’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 \_\_\_\_\_’s eligibility for special education. (Interview with Schatzabel.) Ms. Schatzabel agreed to look into the possibility of a sixth year. (June 16, 2020, Email from Schatzabel.)

19. In mid-November 2019, Ms. Schatzabel discussed the graduation date for \_\_\_\_\_ and \_\_\_\_\_ 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 Students’ graduation date nor was the Students’ progress towards goals a factor in determining the Students’ graduation date. (Interview with Schatzabel.)
20. Ms. Schatzabel called \_\_\_\_\_’s Father to relay that \_\_\_\_\_ 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.)
21. By the next IEP Team meeting for \_\_\_\_\_ on January 3, 2020, \_\_\_\_\_’s parents felt it was a foregone conclusion that \_\_\_\_\_ would be graduating in June 2020 even though the Team had not discussed it or made an independent determination about \_\_\_\_\_’s status. (Interview with Parents.) There was no discussion of \_\_\_\_\_’s progress towards goals as it may have related to the administrative determination that \_\_\_\_\_ would graduate at any Team meeting. (Interview with Parents.) When \_\_\_\_\_’s parents reiterated their disagreement with the decision to graduate \_\_\_\_\_ in June 2020, Ms. Schatzabel indicated that \_\_\_\_\_ was definitely graduating and the decision was not up for discussion. (Interview with Parents.) \_\_\_\_\_’s 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 \_\_\_\_\_ would graduate in June 2020. (Interview with Parents.)
22. On January 23, 2020, Ms. Schatzabel, Mr. Gould, and Eileen Sheehy ( \_\_\_\_\_ School Principal), as well as several of \_\_\_\_\_’s special education providers, met with \_\_\_\_\_’s Parents to inform that \_\_\_\_\_ would not receive any programming from the School District after the conclusion of \_\_\_\_\_ fifth 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 \_\_\_\_\_’s Parents that \_\_\_\_\_ had met the graduation requirement of 24 credits, and would not be entitled to a sixth year. (Interview with Schatzabel.) Ms. Schatzabel told \_\_\_\_\_’s Parents during the meeting that \_\_\_\_\_ had met graduation requirements in terms of credits within four years, and had been granted a fifth year, but could not receive a sixth year. (Interview with Schatzabel.) In fact, \_\_\_\_\_ and \_\_\_\_\_ had actually obtained 24 credits by the end of the 2017-2018 school year, their third year in high school. (June 16, 2020, Email from Schatzabel.) Mr. Gould recalled

that Ms. Schatzabel convened the meeting for the purpose of informing the Parents that the decision had been made that \_\_\_\_\_'s eligibility would be ended at the conclusion of the school year by virtue of \_\_\_\_\_ graduation. (Interview with Gould.)

23. \_\_\_\_\_'s Father became upset when school administrators indicated that \_\_\_\_\_ would be deemed ineligible for a sixth year, leaving the meeting in frustration but returning after a few minutes. (Interview with \_\_\_\_\_'s Parents.) \_\_\_\_\_'s 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 \_\_\_\_\_ (Interview with \_\_\_\_\_'s Parents.) \_\_\_\_\_'s Parents got the impression that they were being told that the School District was in violation of a rule by keeping \_\_\_\_\_ in school for \_\_\_\_\_ fifth year. (Interview with \_\_\_\_\_'s Parents.)
24. On January 31, 2020, Ms. Schatzabel emailed \_\_\_\_\_'s Parents to follow up on the prior week's meeting. (Parent Exh. #5 in 20.081C.) She reiterated that at the meeting, School District administrative staff had explained that \_\_\_\_\_ met \_\_\_\_\_ School graduation requirements in June 2019 after four years of high school but that \_\_\_\_\_ Team felt \_\_\_\_\_ would benefit from a fifth year of high school. (Parent Exh. #5 in 20.081C.) She recapped that after a couple of conversations regarding \_\_\_\_\_'s eligibility for a sixth year of high school, and because the Parents had the understanding that \_\_\_\_\_ could stay in school until \_\_\_\_\_ turned 20, the high school administration wanted to meet "to convey that [\_\_\_\_\_] will graduate in June of 2020." (Parent Exh. #5 in 20.081C.) The email went on to describe Ms. Schatzabel's research into \_\_\_\_\_'s options for adult services. (Parent Exh. #5 in 20.081C.) She noted that \_\_\_\_\_'s Parents would be responsible for paying for such services until \_\_\_\_\_ received a state waiver, at which time MaineCare would cover adult services, but the School District was not responsible for any services in the meantime. (Parent Exh. #5 in 20.081C.)
25. On February 14, 2020, \_\_\_\_\_'s IEP Team met. (S-236 in 20.082C.) The Written Notice indicated that \_\_\_\_\_ 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 in 20.082C.) \_\_\_\_\_'s parents expressed a belief that the School District had not conducted sufficient transition planning for \_\_\_\_\_ (S-238 in 20.082C.) \_\_\_\_\_'s parents also reiterated that they did not agree with the School District's determination to graduate \_\_\_\_\_ in June 2020. (S-239 in 20.082C.)
26. On March 28, 2020, \_\_\_\_\_'s IEP Team agreed to amend \_\_\_\_\_ IEP without a meeting given the closure of school buildings due to the pandemic. (S-216 in 20.081C.) The Written Notice indicated that a new IEP would be issued through \_\_\_\_\_'s graduation date of June 7, 2020. (S-216 in 20.081C.) The Written Notice also stated that \_\_\_\_\_ would be provided special education services in a distance-learning format while the pandemic guidelines were being implemented. (S-216 in 20.081C.) The Written Notice indicated that \_\_\_\_\_ had met graduation requirements as of June 2019. (S-216 in 20.081C.) The Written Notice stated that the School District was aware that \_\_\_\_\_'s parents did not want \_\_\_\_\_ to graduate in June but that the issue was being addressed outside the IEP



process. (S-217 in 20.081C.) On April 3, 2020, an IEP was issued for the period of April 10, 2020, through June 7, 2020, which indicated that \_\_\_\_\_ would graduate on June 7, 2020. (S-219 & S-230 in 20.081C.)

27. On April 6, 2020, a Written Notice was issued indicating that although an annual review was due, \_\_\_\_\_'s Team was not able to meet due to the closure of schools. (S-241 & S-243 in 20.082C.) The Written Notice indicated that a new IEP, reflecting the current IEP, would be drafted to go through the date of \_\_\_\_\_'s graduation. (S-242 in 20.082C.) \_\_\_\_\_'s parents stated, through an email exchange with Ms. Richard, that they did not feel that \_\_\_\_\_ was able to demonstrate any noticeable progress and/or functional change since \_\_\_\_\_ had begun attending \_\_\_\_\_. (S-243 in 20.082C.) \_\_\_\_\_'s parents also expressed surprise that the School District could not hold a virtual IEP to review \_\_\_\_\_'s IEP, expressly indicating concern that the IEP was altered without the agreement of the Team. (S-243 in 20.082C.) The Written Notice indicated that \_\_\_\_\_'s parents were informed that the IEP was not changing since all goals and services remained the same as in the current IEP. (S-243 in 20.082C.) \_\_\_\_\_'s IEP, also issued on April 6, 2020, for the period April 28, 2020, to June 7, 2020, retained the same goals and services as \_\_\_\_\_'s prior IEP. (S-245 in 20.082C.) The IEP removed ESY services, however, since \_\_\_\_\_ was expected to graduate in June 2020. (S-245 in 20.082C.)
28. On April 23, 2020, \_\_\_\_\_ and \_\_\_\_\_ each filed a complaint investigation request, resulting in stay put placements for each student until the matter was finalized. (Administrative Record.)
29. \_\_\_\_\_ participated in the \_\_\_\_\_ Program throughout \_\_\_\_\_ time in high school. (Interview with Richard.) \_\_\_\_\_ obtained scores of Satisfactory in all \_\_\_\_\_ courses throughout high school. (S-25, S-60, S-178 S-208 & S-232 in 20.081C.) \_\_\_\_\_ earned 9 credits each year of high school other than 2016-2017, when \_\_\_\_\_ earned 9.5 credits. (June 16, 2020, Email from Schatzabel.)
30. \_\_\_\_\_ participated in the \_\_\_\_\_ Program for four years, earning grades of Satisfactory in most courses throughout high school, with the exception of number grades given in certain art courses, for which \_\_\_\_\_ received grades in the high 90s. (S-26, S-134 S-257 and S-188 in 20.082C.) \_\_\_\_\_ earned 9 credits during the 2015-2016 school year, 9.5 credits during the 2016-2017 school year, 9 credits during the 2017-2018 school year, and 12.5 credits during the 2018-2019 school year. (Sch. Dist. Exh. #38 in 20.082C.) \_\_\_\_\_ did not receive any grades or earn any credits for \_\_\_\_\_ programming in \_\_\_\_\_ during the 2019-2020 school year. (S-259; Sch. Dist. Exh. #38 in 20.082C.)
31. \_\_\_\_\_'s parents did not feel that \_\_\_\_\_ was fully able to access the programming at \_\_\_\_\_ because it was too difficult for \_\_\_\_\_. (Interview with \_\_\_\_\_'s Parents.) They were concerned that \_\_\_\_\_ fell asleep frequently during programming because the material was not accessible to \_\_\_\_\_. (Interview with \_\_\_\_\_'s Parents.) \_\_\_\_\_'s parents feel that \_\_\_\_\_ has capacity to continue to build on \_\_\_\_\_ academic skills. (Interview with \_\_\_\_\_'s Parents.) They also feel \_\_\_\_\_ needs more transition programming before graduating. (Interview with \_\_\_\_\_'s Parents.) If \_\_\_\_\_ were to have another year of

programming, \_\_\_\_\_'s parents would like to see \_\_\_\_\_ attend a half-day program focused on functional life skills with objective measurable goals. (Interview with \_\_\_\_\_'s Parents.) They are particularly interested in \_\_\_\_\_ accessing vocational rehabilitation services. (Interview with \_\_\_\_\_'s Parents.)

32. \_\_\_\_\_'s parents contend that they would have advocated for a six-year plan from the start of \_\_\_\_\_'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 \_\_\_\_\_'s Parents.) \_\_\_\_\_'s parents do not want \_\_\_\_\_ to receive a regular diploma. (Interview with \_\_\_\_\_'s Parents.) They do not feel \_\_\_\_\_ will benefit from having a regular diploma. (Interview with \_\_\_\_\_'s Parents.) They also point out that \_\_\_\_\_'s academic achievement is well below \_\_\_\_\_ peers and are concerned that at some point in the future, services could be withheld from \_\_\_\_\_ if it is assumed that \_\_\_\_\_ is able to obtain gainful employment by virtue of having a high school diploma. (Interview with \_\_\_\_\_'s Parents.)
33. The School District felt that \_\_\_\_\_ was very successful in the \_\_\_\_\_ program. (Interview with Schatzabel.) Ms. Richard believed that although \_\_\_\_\_ had gained functional skills while in high school, the \_\_\_\_\_ program allowed \_\_\_\_\_ to generalize those skills to real life settings and to prepare \_\_\_\_\_ 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.)
34. \_\_\_\_\_ 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 \_\_\_\_\_ prior to the expiration of \_\_\_\_\_ eligibility. (Interview with Laverriere.) The wait list for services generally takes approximately a year. (Interview with Laverriere.)
35. 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 a 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 his 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. (Interview with Schatzabel.)
36. \_\_\_\_\_ 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.)

37. Ms. Schatzabel explained that the School District graduated two students with severe disabilities in June 2020 (other than \_\_\_\_\_ and \_\_\_\_\_) 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 student would benefit from a fifth year of eligibility and was not aware of whether the student's IEP Teams discussed the possibility of education through the year that the students turned 20. (Interview with Schatzabel.)
38. 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 could not confirm any process by which the School District established that families were aware that eligibility for FAPE goes to age 20. (Interview with Gould.)
39. 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.)
40. 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.)
41. 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.)
42. Darcy Ramsdell, who provided \_\_\_\_\_ with speech-language services and provided consultation to \_\_\_\_\_ service providers, felt she would like to review the data on \_\_\_\_\_ progress more carefully before offering an opinion regarding \_\_\_\_\_ readiness to graduate. (Interview with Ramsdell.)

43. Ms. Laverriere, \_\_\_\_\_'s Targeted Case Manager, believes that \_\_\_\_\_ 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.)
44. Ms. Richard, \_\_\_\_\_'s and \_\_\_\_\_'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 \_\_\_\_\_ and \_\_\_\_\_ returned for a fifth year of education after meeting the graduation requirements in four years. (Interview with Richard.)
45. 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.)
46. If \_\_\_\_\_ staff had been aware that \_\_\_\_\_ might not be graduating this 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 \_\_\_\_\_ 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 \_\_\_\_\_ could 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 that might be available to \_\_\_\_\_ (Interview with Morrison.)
47. \_\_\_\_\_'s Father recalled that he ended all IEP Team meetings during \_\_\_\_\_'s high school years by verbally confirming that \_\_\_\_\_ would be attending school through the year that he turned 20. (Interview with Parents.) \_\_\_\_\_'s Parents do not feel that \_\_\_\_\_ has adequately met transition goals, noting that \_\_\_\_\_ continues to be unable to manage basic safety skills such as crossing the street. (Interview with Parents.) \_\_\_\_\_ is on a waiting list for adult services. (Interview with Parents.)
48. Katherine Blouin, formerly of Saco River Health Services, worked with \_\_\_\_\_ for many years, including prior to and during most of \_\_\_\_\_ time in high school, as \_\_\_\_\_'s Case Manager and Section 28 Program Supervisor. (Interview with Blouin.) As a member of \_\_\_\_\_'s IEP Team, Ms. Blouin recalled that throughout \_\_\_\_\_'s academic career, the Team envisioned the \_\_\_\_\_ would attend school through the year that \_\_\_\_\_ turned 20, 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 \_\_\_\_\_'s eligibility was

regularly referred to as being through the 2020-2021 school year. (Interview with Blouin.)

49. Ms. Blouin believes that \_\_\_\_\_ 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, as provided in a school setting, would be helpful for \_\_\_\_\_. (Interview with Blouin.) In addition, she noted the high levels of repetition necessary for \_\_\_\_\_ 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 \_\_\_\_\_ as educational services. (Interview with Blouin.) She believed that the School District had historically painted a picture of \_\_\_\_\_ 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.)

## **DETERMINATIONS**

The School District's policy and practice to graduate students with disabilities with a regular high school diploma, made as an administrative decision separate from each student's IEP Team decision-making process, constitutes an improper change of placement under the IDEA without appropriate notice to families and a violation of each student's right to receive a free and appropriate public education by terminating his or her 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.

## **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 (1<sup>st</sup> 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**

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 students appropriately earned the credits they were 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, a written complaint may be filed with the Department alleging that a public agency has violated a requirement of Part B or Part C of the IDEA or Chapter 101 of MUSER and such violation is or has the potential to be applicable to a group of students, named or

unnamed. MUSER XVI.1.B(1) & XVI.4.B(2); see also Systemic Complaint Investigation Handbook: A Guide for Parents and Educators (Maine Department of Education, April 2019).

Here, Disability Rights Maine raises assertions that the School District has failed to comply with federal and state education statutes and regulations with regard to the students' placement and the termination of the students' eligibility for services, issues that fall squarely within the jurisdiction of the Investigator and the Department. The central issue addressed in this report is not whether the District should award special education students a regular diploma, but rather how the decision about when to graduate a student receiving special education services should be made.

### **III. Analysis**

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 \_\_\_\_\_ and \_\_\_\_\_ would graduate in June 2020, at the conclusion of their fifth year of high school programming. The provision of a regular diploma through graduation would permanently end the students' eligibility for special education and related services. This decision was made without parental or IEP Team input and was conveyed to the students' parents as a final decision, without any analysis of the progress the students had made or their readiness to graduate. Instead, it was based upon the fact that the students had obtained 24 credits as of the previous June, 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 students' IEP Teams.

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 a 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 credits obtained by \_\_\_\_\_ and \_\_\_\_\_ are 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. Transition goals are especially important in this

analysis.<sup>2</sup> 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 student's 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.

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<sup>2</sup> 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.

In \_\_\_\_\_'s case, \_\_\_\_\_ first 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. \_\_\_\_\_'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 \_\_\_\_\_ 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 \_\_\_\_\_'s IEPs do not have explicit determinations of \_\_\_\_\_'s expected graduation date or reference discussion regarding this topic even though changes were frequently made to this section of \_\_\_\_\_'s IEP. \_\_\_\_\_'s parents, however, had the impression through \_\_\_\_\_'s time in high school, until the fall of 2019, that \_\_\_\_\_ would attend school until \_\_\_\_\_ eligibility ended under special education laws, which would be through the 2020-2021 school year. Both \_\_\_\_\_'s 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 \_\_\_\_\_'s eligibility in June 2020 outside of the IEP Team process. The School District's failure to include \_\_\_\_\_'s 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 \_\_\_\_\_'s parents' ability to fully participate in \_\_\_\_\_'s Team during \_\_\_\_\_ time in high school and to obtain necessary adult services in a manner timed to coincide with \_\_\_\_\_'s graduation.

In \_\_\_\_\_'s 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 20, 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 fifth year of \_\_\_\_\_'s high school career, specifically the second half of \_\_\_\_\_'s fifth year, that the School District had conclusively changed this assessment unilaterally without the input of \_\_\_\_\_'s IEP Team and over the objection of \_\_\_\_\_'s Parents.

In both cases, 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. 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.

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 \_\_\_\_\_'s Parents and \_\_\_\_\_'s Parents, violated \_\_\_\_\_'s and \_\_\_\_\_'s rights 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 Students would not be allowed to attend school during the 2020-2021 school year. The Students' IEP Teams, and their parents in particular, had no input into the determination; the Student's IEP Teams had no opportunity to discuss the Students' progress toward goals, particularly transitional goals, and their readiness for graduation and adult services.

The Special Education Director's decision to graduate \_\_\_\_\_ and \_\_\_\_\_ 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 \_\_\_\_\_ and \_\_\_\_\_ 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.

#### **CORRECTIVE ACTION TO BE COMPLETED BY THE DISTRICT**

Because violations were found, the School District must notify each student with significant disabilities who graduated with a regular diploma in June 2020 as soon as possible, but no later than within 30 days, to inform each student that they have a right to special education and related services through the school year that they turn 20 and that they also have a right to an IEP Team determination regarding their eligibility. Each student must be notified that they have the right to request an IEP Team meeting to make a determination regarding the student's readiness to graduate and whether they would benefit from additional years of special education and related services. In addition, following any IEP Team determination regarding a student's ineligibility to receive special education and related services prior to the school year in which the student turns 20, the School District must provide notice consistent with 34 C.F.R. Section 300.503(b).

Furthermore, going forward, the School District must ensure that all students with disabilities are aware of their rights to special education and related services through the school

year in which they turn 20 as well as an IEP Team decision regarding their readiness for graduation. In addition, all such determinations must be made exclusively by a student's IEP Team, not by School District administrators, and must be made without regard to the resources required to provide the student with a free appropriate public education. For the next five school years, the School District must report to the Department of Education at the conclusion of each school year how many students with significant disabilities were graduated prior to the expiration of their eligibility and must provide the IEP Team determinations, including proof that appropriate notice was provided, regarding each student's readiness to graduate and the rationale for ending their eligibility prior to the school year in which they turn 20.