



# AGENDA REQUEST FORM

THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA

ITEM No.:

EE-19.

<b>MEETING DATE</b>	2020-05-19 10:05 - Regular School Board Meeting
<b>AGENDA ITEM</b>	ITEMS
<b>CATEGORY</b>	EE. OFFICE OF STRATEGY & OPERATIONS
<b>DEPARTMENT</b>	Procurement & Warehousing Services

<b>Special Order Request</b>	
<input type="radio"/> Yes	<input checked="" type="radio"/> No
<b>Time</b>	
<b>Open Agenda</b>	
<input checked="" type="radio"/> Yes	<input type="radio"/> No

**TITLE:**  
 Recommendation of \$500,000 or Less - FY20-224 - Universal Screening Instrument for Gifted

**REQUESTED ACTION:**  
 Approve the recommendation to award the above Agreement. Contract Term: Upon execution through May 30, 2023, Three (3) Years with two (2) optional renewal periods; User Department: Innovative Learning; Award Amount: \$240,850; Awarded Vendor(s): Riverside Assessments, LLC; Small/Minority/Women Business Enterprise Vendor(s): None.

**SUMMARY EXPLANATION AND BACKGROUND:**  
 This Agreement will facilitate student-centered services and includes twenty thousand (20,000) yearly licenses to administer the CogAT 8 online to all 2nd-grade students across the District and for select 2nd-graders in charter schools who opt-in and purchase the assessment. The CogAT 8 is an abilities test that measures students in three (3) areas: Verbal, Non-Verbal, and Quantitative. The scores are used to determine which students should go on for further testing for possible gifted eligibility and to identify individual student strengths and weaknesses so that teachers can adapt and differentiate the classroom instruction to meet individual student needs, learning styles, and abilities.  
 This Agreement has been reviewed and approved as to form and legal content by the Office of the General Counsel.

**SCHOOL BOARD GOALS:**  
 Goal 1: High Quality Instruction     Goal 2: Safe & Supportive Environment     Goal 3: Effective Communication

**FINANCIAL IMPACT:**  
 The estimated financial impact to the District will be \$240,850 and will be funded by the Student Assessment and Research Department. Due to the COVID-19, the spending authority requested covers the estimated amount projected for the first twelve (12) months; therefore, additional spending authority, to cover the remaining term of the Agreement will be requested in a future date. The financial impact amount represents an estimated contract value; however, the amount authorized will not exceed the estimated contract award amount.

**EXHIBITS: (List)**  
 (1) Executive Summary (2) Financial Analysis Worksheet (3) Agreement (4) Exhibit 1 (5) Exhibit 2 (6) Exhibit 3

**BOARD ACTION:**  
APPROVED  
(For Official School Board Records Office Only)

<b>SOURCE OF ADDITIONAL INFORMATION:</b>	
Name: Zuzel Rodriguez	Phone: 754-321-2620
Name: Mary C. Coker	Phone: 754-321-0501

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**  
 Senior Leader & Title

Maurice L. Woods - Chief Strategy & Operations Officer

Signature  
*Maurice Woods*  
5/12/2020, 10:24:59 AM

Approved In Open Board Meeting On: **MAY 19 2020**  
 By:   
 School Board Chair

## EXECUTIVE SUMMARY

### Recommendation of \$500,000 or Less FY20-224 – Universal Screening Instrument for Gifted

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#### **Introduction**

**Responsible: Procurement & Warehousing Services (PWS)**

This request is to approve the agreement between Riverside Assessments, LLC, and The School Board of Broward County, Florida (SBBC), for a period of three (3) years and will commence upon execution of all parties and conclude on May 30, 2023, with two (2) optional one (1) year renewal periods.

Due to the COVID-19 situation, the spending authority being requested is \$240,850, and covers the estimated amount projected for the first twelve (12) months; therefore, additional spending authority to cover the remaining term of the Agreement will be requested in a future date.

#### **Goods/Services Description**

**Responsible: Innovative Learning:**

Broward County Public Schools (BCPS) is dedicated to identifying all gifted students across all SBBC schools and diverse populations. In order to accomplish this, BCPS has invested in universally screening all 2<sup>nd</sup>-graders in Spring to ensure that all potentially gifted students are systematically screened, regardless of teacher or parent nominations or requests. These screenings have resulted in an increase in the number of students from underrepresented groups who have been referred for evaluation to determine eligibility for the gifted program as well as an increase in all gifted populations across the District. The universal screening assessment has also provided valuable ability scores to all general education teachers that can be used in differentiating the instruction in the classroom to better meet the individual needs of all students.

The request is for a three (3) year contract between Riverside Assessments, LLC, and BCPSs for twenty thousand (20,000) yearly licenses to administer the CogAT 8 online to all 2<sup>nd</sup>-grade students across the District and for select 2<sup>nd</sup>-graders in charter schools who opt-in and purchase the assessment. CogAT 8 is an ability test that measures students in three areas: Verbal, Non-Verbal, and Quantitative. The scores are used to determine which students should go on for further testing for possible gifted eligibility and to identify individual student strengths and weaknesses so that teachers can adapt and differentiate the classroom instruction to meet individual student needs, learning styles, and abilities. Using the CogAT 8 online as a universal screening instrument eliminates the need for parental or teacher requests for gifted screenings, allowing all students the chance to be evaluated for possible gifted eligibility, therefore increasing BCSPs underrepresented gifted populations. Parents and teachers also receive an individual student profile score that provides them with a report on characteristics of children with that profile score and instructional strategies that can be applied both at home and at school to help students with that score make learning gains and increase achievement.

#### **Historical Background:**

SBBC has been universally screening all 2<sup>nd</sup>-grade students since the Spring of 2005. The first four (4) years, the District used the Naglieri Non-Verbal Abilities Test (NNAT) as a screening tool. Based on the results of the NNAT, more students were scoring high enough on the gifted screener to go on for further gifted evaluation; however, less than forty-five (45) percent of the students were passing the individualized Intelligence Quotient (IQ) test. This resulted in many students taking the IQ test that ultimately did not meet eligibility for gifted. During the 2010 school year, the District did not administer a universal screening test while a committee chose another instrument that would better identify BCPSs gifted populations.

The committee chose the paper/pencil CogAT 6 and began to administer this test to all 2<sup>nd</sup>-graders in the Spring of 2011 as well as 3<sup>rd</sup>-graders in the Fall of 2010 who had missed the screening at the end of 2<sup>nd</sup>-grade. Using the CogAT 6, fewer students were identified who had passed the screening, but those who did pass had a seventy-five (75) percent or greater pass-rate on the individualized IQ test.

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This screener was better able to identify possible gifted students. Since it included Verbal as well as Non-Verbal items, it allowed students whose strength was in the verbal domain to be identified as well.

**Desired Results**

**When Using as A Gifted Screener:**

The results of universally screening all 2<sup>nd</sup>-graders in BCPS has resulted in an increase of gifted populations across the District as well as an increase in two (2) targeted underrepresented populations, identified as students in low socioeconomic households, who qualify for free/reduced lunch, as well as students who are English Language Learners. The removal of this program would eliminate the possibility of group-screening students and cause a decrease in gifted populations across the District, specifically, in Title I schools. The only other option for schools would be by performing one-on-one screenings to identify students who should go on for further testing. This would put an enormous amount of work on the staff, specifically, the Exceptional Student Education Specialists in BCPS schools to generate the consents for screening and conduct the individual screening assessments, which take anywhere between thirty (30) minutes to an hour for each student.

**When Used to Drive Instruction:**

The CogAT results can also be used to drive instruction in the classroom. In 2016, the Gifted Team (formerly in the Math, Science and Gifted Department) joined staff from Student Assessment and Research in training all elementary principals and a minimum of one (1) 3<sup>rd</sup>-grade teacher from each school on how to use the CogAT scores to inform instruction in the classroom. Student profile scores and individual battery scores were used to predict achievement and customize instruction. The CogAT measures general reasoning abilities indicative of how students learn new tasks, solve problems, critical thinking, infer meaning on an unfamiliar word, and how to detect patterns in information. The scores can also be used to predict student achievement. The students' abstract reasoning skills, which are measured using this test, serve as the foundation for the student's ability to learn information, detect relationships, form concepts, adapt or invent strategies and determine how the students can use previous experiences to solve novel problems. The test can help identify underachieving students as well who score high on some of the batteries but lack the motivation to apply themselves at school, may not have had the appropriate opportunities to learn in school, or may even have a physical (visual/hearing) or learning disability.

Teachers can use the test results to guide their efforts in adapting instruction to the needs and abilities of students. They can use the results to identify students whose predicted levels of achievement are markedly discrepant from their observed levels of achievement. Teachers can also build on students' strengths when differentiating instruction. Students are better able to process information more elaborately and at higher levels when tasks emphasize the type of thinking they do best. As an example: A student who has difficulty learning computation skills but shows strength in verbal reasoning would benefit from group oral recitation rather than silent practice on a computer. The recommendation would be to start with oral recitation and transition to computer practice once the oral practice has been successful. Teachers can also focus on working memory when working with less-able students.

**When Used to Inform Parents:**

Parents receive a score report with the student's individual profile score at the end of their 2<sup>nd</sup>-grade year. Parents can then go to [Cogat.com](http://Cogat.com) and enter their individual student profile score, and the website will generate a report that shows the characteristics of students with that score report as well as instructional strategies that can be applied at school and at home that would help the student increase their achievement and learning gains.

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**Procurement Method**  
**Responsible: PWS**

The Request for Information (RFI) ran from August 26, 2019 through September 17, 2019. Eighty-six (86) vendors were notified, (9) vendors downloaded the RFI, and (3) responses were received. Upon analysis of the responses received, a second assessment of the marketplace was completed via the sole source process, as described below.

After the RFI, a sole source notification was posted for a period of seven (7) calendar days from January 23, 2020 through January 31, 2020, to confirm that Riverside Assessments, LLC is the sole source of the CogAT 8 test.

The agreement was negotiated with the vendor based on Purchasing Policy 3320. Pursuant to Purchasing Policy 3320, Part II (I), permits single source acquisitions upon public electronically posting of such services and/or products for a period of at least seven (7) calendar days, as defined in section 287.057, 3(c), Florida Statutes without competitive solicitations.

**Financial Impact**  
**Responsible: Innovative Learning**

Due to the COVID-19, the spending authority being requested is \$240,850, and covers the estimated amount projected for the first twelve (12) months; therefore, additional spending authority to cover the remaining term of the Agreement will be requested in a future date.

The funding source will be provided by the School Assessment and Research budget. Please see the breakdown for the entire bid term as detailed below:

Year one (1): \$240,850  
 Year two (2): \$240,850  
 Year three (3): \$240,850  
**Total: \$722,550**

**Yearly Price Breakdown:**

<b>Title</b>	<b>Price</b>	<b>Quantity</b>	<b>Extended Amount</b>
CogAT Form 8 Online Testing Levels 5/6-2017/2018	\$11.75	20,000	\$235,000
DataManager Tech Readiness & Data Set-Up Training	\$0	1	\$0
DataManager Set-up & Test Administration 1 Hour Webinar	\$225	1	\$225
DataManager Proctor Training 1 Hour Webinar	\$225	15	\$3375
DataManager System Report Training	\$225	10	\$2250
<b>Total</b>			<b>\$240,850</b>

The financial impact amount represents an estimated contract value; however, the amount authorized will not exceed the estimated contract award amount.

Please see Attachments: Exhibit 1, 2, and 3 – supporting documents.



## AGREEMENT

**THIS AGREEMENT** is made and entered into as of this 19<sup>th</sup> day of May, 2020, by and between

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**  
(hereinafter referred to as "SBBC" or "District"),  
a body corporate and political subdivision of the State of Florida,  
whose principal place of business is  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

and

**RIVERSIDE ASSESSMENTS, LLC d/b/a RIVERSIDE INSIGHTS**  
(hereinafter referred to as "VENDOR"),  
whose principal place of business is  
One Pierce Place, Suite 900W  
Itasca, Illinois 60143

**WHEREAS**, VENDOR develops and licenses educational and clinical testing and assessment products and associated scoring and reporting services; and

**WHEREAS**, VENDOR is the sole source in the United States for Cognitive Abilities Test (CogAT®) forms 6, 7, and 8 and DataManager Scoring and Reporting Platform Services; and

**WHEREAS**, SBBC needs the testing and assessment products and services described above and has selected VENDOR to provide these products and services to SBBC; and

**WHEREAS**, VENDOR is willing to provide these products and services to SBBC under the terms of this Agreement; and

**WHEREAS**, SBBC Policy 3320, Part II (1), permits single source acquisitions upon public or electronic posting of such services and/or products for a period of at least seven (7) calendar days as prescribed by §287.057(3)(c), Florida Statutes without competitive solicitation; and

**WHEREAS**, single source notification was posted for a period of seven (7) calendar days from January 23, 2020 through January 31, 2020, to confirm that VENDOR is the single source.

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

### ARTICLE 1 – RECITALS

1.01 **Recitals.** The parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

## ARTICLE 2 – SPECIAL CONDITIONS

2.01 **Term of Agreement.** Unless terminated earlier pursuant to Section 3.05 of this Agreement, the term of this Agreement commences upon the execution by all parties and concludes on May 31, 2023. The term of the Agreement may, by mutual agreement between SBBC and VENDOR, be extended for two (2) additional one-year periods.

### 2.02 **Description of Goods and Services Provided.**

(a) VENDOR's Responsibilities. Vendor shall provide to SBBC the following products and services:

- 1) CogAT Form 8 Online Tests for 20,000 students
- 2) DataManager Tech Readiness & Data Setup Training consisting of:
  - i. One-hour web-based session
  - ii. Outlines for the system requirements and technical best practices for administering an online test in the DataManager platform.
  - iii. A technical readiness questionnaire for the customer before the call to help facilitate the meeting
  - iv. A session defining the implementation and training process, including an overview of the DataManager site and training on submitting data files
    1. Attendees required: District Administrator(s) involved with Iowa/CogAT Testing; District IT (Information & Technology) for required training for online testing in DataManager.  
Optional attendees: DataManager Account Holder
- 3) DataManager Setup & Test Administration Training consisting of:
  - i. DataManager Set up/Test Administration Webinar.
  - ii. One-hour web-based session
  - iii. System navigation overview
  - iv. Best practices of Test Event Set Up
  - v. Test Assignment, adding users and locations, and adding students.
    1. Attendees required: District Administrator(s) involved with Iowa/CogAT Testing;
  - vi. DataManager Account Holder from the district; District IT. This is a required training for first year online testing in DataManager with no more than twenty (20) participants
- 4) DataManager Proctor Training consisting of:
  - i. DataManager Proctor (Examiner) Training Webinar
  - ii. One-hour web-based session
  - iii. Includes best practices for implementing self-paced sessions, proctor led-sessions, proctoring audio testing and student testing.
  - iv. Attendees required: District Administrator(s) involved in setting up the test events/windows:

1. DataManager Account Holder from the District;
  2. District ITS personnel
  3. District testing coordinators
  4. Building Test Coordinators
  5. District staff who will be administering the online test to the student(s).
  6. This is a required training for first year online testing in DataManager with no more than twenty (20) participants
- 5) DataManager System Report Training: DataManager System Report Training Webinar (POST Testing):
- i. This one-hour live web-based session provides the user with the reporting navigation of the DataManager system to enable users at all levels to access reports.
  - ii. The session will highlight how to generate reports on individual students and groups of students.
  - iii. Required training for online testing in DataManager.

(b) **SBBC's Responsibilities.**

SBBC shall:

- 1) Provide the exact address for delivery of print materials. The shipping address may be a district warehouse or individual school sites.
- 2) Provide a district point of contact including his/her direct contact information (email/phone) for all aspects of the following:
  - i. Print Materials
  - ii. Digital Materials
  - iii. Scheduling Professional Development
- 3) Comply with VENDOR's Statement of Policy Regarding Test Disclosure attached hereto as **Exhibit C** and VENDOR's Terms of Use attached hereto as **Exhibit A**.

2.03 **Cost and Payment.** SBBC will pay VENDOR the annual amount of (Two Hundred Forty Thousand Eight Hundred Fifty Dollars and 00/100 Cents (\$240,850) for goods and services as detailed below:

Material #	Title	Price	Quantity	Extended Amount
2000021	CogAT Form 8 Online Testing Levels 5/6 - 17/18	\$ 11.75	20,000	\$235,000.00
2000082	DataManager Tech Readiness & Data Set-Up Training	\$ -	1	\$0.00
1591195	DataManager Set-up & Test Administration 1 Hour Webinar	\$ 225.00	1	\$225.00
1591196	DataManager Proctor Training 1 Hour Webinar	\$ 225.00	15	\$3,375.00
2000083	DATAMANAGER SYSTEM REPORT TRAINING	\$ 225.00	10	\$2,250.00
<b>TOTAL</b>				<b>\$240,850.00</b>



(a) Each year, after issuance of a Purchase Order by SBBC or its designee and delivery by VENDOR of the above testing licenses and training webinars, VENDOR shall submit to SBBC or its designee a proper and appropriate invoice for goods and services, to be paid within thirty (30) calendar days.

(b) After providing any optional or additional quantities of the services detailed above, VENDOR shall identify and include those items in the invoice submitted to SBBC or its designee to be paid within thirty (30) calendar days after the issuance of the invoice.

(c) If the quantities of students tested or testing licenses purchased decline by more than 5% of the quantities listed in Section 2.03, VENDOR reserves the right to renegotiate the discounted price listed above for online testing licenses.

2.04 **Priority of Documents.** In the event of a conflict between documents, the following priority of documents shall govern.

First: This Agreement, then;  
Second: Exhibit A  
Third: Exhibit B  
Fourth: Exhibit C

2.05 **SBBC Disclosure of Education Records.**

- (a) SBBC will provide VENDOR with the education records listed in this section:
- 1) To roster students into the test
  - 2) To provide students with a log-on code for the online test
  - 3) For VENDOR to score the test
  - 4) For VENDOR to provide results to SBBC, including reports on students' test performance to teachers
- (b) SBBC will provide VENDOR with the following education records:
- 1) Student first and last name
  - 2) Student identification number
  - 3) Student date of birth
  - 4) Student gender
  - 5) Student grade level
  - 6) Name of school, name of classroom, and name of teacher
  - 7) District Location Identification Number (District 6, Broward Schools)
  - 8) Students' responses to test questions
- (c) SBBC shall provide VENDOR with education records through its integration program for the purposes listed in this section.
- (d) VENDOR is considered a "school official" with a legitimate educational interest to receive the aforementioned types of information from SBBC student education records for the purposes listed above. Pursuant to the Family Education Rights and Privacy Act (FERPA), 34 CFR 99.31(a)(1), these records may be provided without prior parental consent. Prior written consent of the parent or student age eighteen

(18) years or over is needed for any types or purposes of disclosures of education records beyond those listed above.

- (e) Parents have the right to opt out of having their child take the Cognitive Abilities Test. For those students who are opted out, SBBC will not disclose their education records to the VENDOR.
- (f) This section supersedes any of VENDOR's privacy policies re: collecting and using education records and student information.

## 2.06 **VENDOR Confidentiality of Education Records.**

- (a) Notwithstanding any provision to the contrary within this Agreement and in accordance with VENDOR's Privacy Policy, attached hereto as **Exhibit B**, VENDOR shall:

1) fully comply with the requirements of Sections 1002.22, 1002.221, and 1002.222, Florida Statutes; the Family Educational Rights and Privacy Act, 20 U.S.C § 1232g (FERPA) and its implementing regulations (34 C.F.R. Part 99), and any other state or federal law or regulation regarding the confidentiality of student information and records;

2) hold any education records in strict confidence and not use or redisclose same except as required by this Agreement or as required or permitted by law unless the parent of each student or a student age 18 years or older whose education records are to be shared provides prior written consent for their release;

3) ensure that, at all times, all of its employees who have access to any education records during the term of their employment shall abide strictly by its obligations under this Agreement, and that access to education records is limited only to its employees that require the information to carry out the responsibilities under this Agreement and shall provide said list of employees to SBBC upon request;

4) safeguard each education record through administrative, physical and technological safety standards to ensure that adequate controls are in place to protect the education records and information in accordance with FERPA's privacy requirements;

5) utilize the education records solely for the purposes of providing products and services as contemplated under this Agreement; and shall not share, publish, sell, distribute, target advertise, or display education records to any third party;

6) notify SBBC within two (2) business days of confirmation by VENDOR of a breach of confidentiality of education records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at [privacy@browardschools.com](mailto:privacy@browardschools.com), and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;

7) fully cooperate with appropriate SBBC staff, including Privacy Officer and/or Information Technology staff to resolve any privacy investigations and concerns in a timely manner;

8) prepare and distribute, at its own cost, any and all required breach notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so, including, but not limited to, those required by Section 501.171, Florida Statutes;

9) be responsible for any fines or penalties for VENDOR's failure to meet breach notice requirements pursuant to federal and/or Florida law;

10) provide SBBC with the name and contact information of its employee who shall serve as SBBC's primary security contact and be available to assist SBBC in resolving obligations associated with a security breach of confidentiality of education records; and

11) securely erase education records from any media once any media equipment is no longer in use or is to be disposed; secure erasure will be deemed the deletion of the education records using a single pass overwrite Secure Erase (Windows) or Wipe (Unix).

(b) All education records will remain the property of SBBC, and any party contracting with SBBC serves solely as custodian of such information pursuant to this Agreement and claims no ownership or property rights thereto and, upon termination of this Agreement shall, at SBBC's request, return to SBBC or dispose of the education records in compliance with the applicable Florida Retention Schedules and provide SBBC with a written acknowledgment of said disposition.

(c) VENDOR shall, for itself, its officers, employees, agents, representatives, contractors or subcontractors, fully indemnify and hold harmless SBBC and its officers and employees for any violation of this section, including, without limitation, defending SBBC and its officers and employees against any complaint, administrative or judicial proceeding, payment of any penalty imposed upon SBBC, or payment of any and all costs, damages, judgments or losses incurred by or imposed upon SBBC arising out of a breach of this covenant by the party, or an officer, employee, agent, representative, contractor, or subcontractor of the party to the extent that the party or an officer, employee, agent, representative, contractor, or sub-contractor of the party shall either intentionally or negligently violate the provisions of this section or of Sections 1002.22 and/or 1002.221, Florida Statutes. This section shall survive the termination of all performance required or conclusion of all obligations existing under this Agreement.

#### **2.07 SBBC Disclosure of Employee Records.**

(a) SBBC will provide VENDOR with the employee records listed in this section for the following purposes:

1. For VENDOR to grant District employees with access to VENDOR's systems, to ensure students are rostered correctly
  2. For VENDOR to send reports on students' test performance to teachers
  3. For VENDOR to report scores back to teachers
- (b) SBBC will provide VENDOR with the following employee records:
- 1) First and last name
  - 2) Employee identification number
  - 3) SBBC email address
  - 4) Name of school or department
  - 5) District identification number (District 6, Broward Schools)
- (c) SBBC shall provide VENDOR with employee records through its integration program for the purposes listed in this section.
- (d) VENDOR shall not use the employee records listed in this section for any purpose other than those listed above or re-disclose the records to any outside source without the prior written consent of the employee, except as required or allowable by law
- (e) This section supersedes any of VENDOR's privacy policies recollecting and using employee records.

2.08 **VENDOR Confidentiality of Employee Records.** Notwithstanding any provision to the contrary within this Agreement, VENDOR shall, in accordance with its Privacy Policy attached hereto as **Exhibit B**:

- (a) fully comply with the requirements of state or federal law or regulation regarding the confidentiality of employee records;
- (b) hold the employee records in strict confidence and not use or disclose the same except as required by this Agreement or as required or permitted by law;
- (c) only share employee records with those who have a need to access the information in order to perform their assigned duties in the performance of this Agreement;
- (d) protect employee records through administrative, physical, and technological safeguards to ensure adequate controls are in place to protect the employee's records and information;
- (e) notify SBBC within two (2) business days of VENDOR's confirmation of a breach of confidentiality of employee records by telephone at 754-321-0300 (Manager, Information Security), and 754-321-1900 (Privacy Officer), and email at [privacy@browardschools.com](mailto:privacy@browardschools.com); and take all necessary notification steps as may be required by federal and Florida law, including, but not limited to, those required by Section 501.171, Florida Statutes;

(f) prepare and distribute, at its own cost, any and all required notifications, under federal and Florida Law, or reimburse SBBC any direct costs incurred by SBBC for doing so; and

(g) be responsible for any fines or penalties for VENDOR's failure to meet notice requirements pursuant to federal and/or Florida law. This section shall survive the termination of all performance or obligations under this Agreement.

2.09 **Inspection of VENDOR's Records by SBBC.** VENDOR shall establish and maintain books, records, and documents (including electronic storage media) sufficient to reflect all income and expenditures of funds provided by SBBC under this Agreement. All VENDOR's applicable records, regardless of the form in which they are kept, shall be open to inspection and subject to audit, inspection, examination, evaluation and/or reproduction, during normal working hours, by SBBC's agent or its authorized representative to permit SBBC to evaluate, analyze, and verify the satisfactory performance of the terms and conditions of this Agreement and to evaluate, analyze and verify the applicable business records of VENDOR directly relating to this Agreement in order to verify the accuracy of invoices provided to SBBC. Such audit shall be no more than one (1) time per calendar year. Any such audit by SBBC or an agent or authorized representative shall be subject to the VENDOR's standard non-disclosure agreement, which protects the confidentiality of the VENDOR's proprietary information.

(a) **Duration of Right to Inspect.** For the purpose of such audits, inspections, examinations, evaluations and/or reproductions, SBBC's agent or authorized representative shall have access to VENDOR's records from the effective date of this Agreement, for the duration of the term of this Agreement, and until five (5) years after the termination of this Agreement or five (5) years after the date of final payment by SBBC to VENDOR, whichever is later, pursuant to this Agreement.

(b) **Notice of Inspection.** SBBC's agent or its authorized representative shall provide VENDOR reasonable advance written notice (at least two (2) weeks) of any intended audit, inspection, examination, evaluation and or reproduction. SBBC and VENDOR will cooperate to schedule such audit at a mutually acceptable time.

(c) **Audit Site Conditions.** SBBC's agent or its authorized representative shall have access to VENDOR's facilities and to any and all records related to this Agreement, and shall be provided adequate and appropriate work space in order to exercise the rights permitted under this section.

(d) **Failure to Permit Inspection.** Failure by VENDOR to permit audit, inspection, examination, evaluation, and/or reproduction as permitted under this section shall constitute grounds for termination of this Agreement by SBBC for cause and shall be grounds for SBBC's denial of some or all any VENDOR's claims for payment.

(e) **Overcharges and Unauthorized Charges.** If an audit conducted in accordance with this section discloses overcharges or unauthorized charges to SBBC by VENDOR in excess of ten percent (10%) of the total billings under this Agreement, the actual cost of SBBC's audit shall be paid by VENDOR. If the audit discloses billings or charges to which VENDOR is not contractually

entitled, **VENDOR** shall pay said sum to **SBBC** within twenty (20) days of receipt of written demand unless otherwise agreed to in writing by both parties.

(f) **Inspection of Subcontractor's Records.** If applicable, **VENDOR** shall require any and all subcontractors, insurance agents, and material suppliers (hereafter referred to as "Payees") providing goods or services under this Agreement to comply with the requirements of this section by insertion of such requirements in any written subcontract. Failure by **VENDOR** to include such requirements in any subcontract shall constitute grounds for termination of this Agreement by **SBBC** for cause and shall be grounds for the exclusion of some or all of any Payees' costs from amounts payable by **SBBC** to **VENDOR** pursuant to this Agreement and such excluded costs shall become the liability of **VENDOR**.

(g) **Inspector General Audits.** **VENDOR** shall comply and cooperate immediately with any inspections, reviews, investigations, or audits deemed necessary by the Florida Office of the Inspector General or by any other state or federal officials.

2.10 **Notice.** When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for giving notice:

To **SBBC**: Superintendent of Schools  
The School Board of Broward County, Florida  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301

With a Copy to: Director  
Innovative Learning  
600 SE Third Avenue  
Fort Lauderdale, Florida 33301

To **VENDOR**: Tony Zubinski, Sales Operations Manager  
Riverside Insights  
One Pierce Place Suite 900W  
Itasca, Illinois 60143

With a Copy to: Kristin Hillsbery, Contracts and IP Paralegal Specialist  
Riverside Insights  
One Pierce Place Suite 900W  
Itasca, Illinois 60143

2.11 **Background Screening.** **VENDOR** shall comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and all of its personnel who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds, will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by **SBBC** in advance of **VENDOR** or its personnel providing any

services under the conditions described in the previous sentence. VENDOR shall bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to VENDOR and its personnel. The parties agree that the failure of VENDOR to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this Agreement. VENDOR agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting from VENDOR's failure to comply with the requirements of this section or with Sections 1012.32 and 1012.465, Florida Statutes.

2.12 **Public Records.** The following provisions are required by Section 119.0701, Florida Statutes, and may not be amended. VENDOR shall keep and maintain public records required by SBBC to perform the services required under this Agreement. Upon request from SBBC's custodian of public records, VENDOR shall provide SBBC with a copy of any requested public records or to allow the requested public records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law. VENDOR shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement's term and following completion of the Agreement if VENDOR does not transfer the public records to SBBC. Upon completion of the Agreement, VENDOR shall transfer, at no cost, to SBBC all public records in possession of VENDOR or keep and maintain public records required by SBBC to perform the services required under the Agreement. If VENDOR transfers all public records to SBBC upon completion of the Agreement, VENDOR shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If VENDOR keeps and maintains public records upon completion of the Agreement, VENDOR shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to SBBC, upon request from SBBC's custodian of public records, in a format that is compatible with SBBC's information technology systems.

**IF A PARTY TO THIS AGREEMENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THE AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT 754-321-1900, RECORDREQUESTS@BROWARDSCHOOLS.COM, RISK MANAGEMENT DEPARTMENT, PUBLIC RECORDS DIVISION, 600 SOUTHEAST THIRD AVENUE, FORT LAUDERDALE, FLORIDA 33301.**

2.13 **Liability.** This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

(a) By SBBC: SBBC agrees to be fully responsible up to the limits of Section 768.28, Florida Statutes, for its acts of negligence, or its employees' acts of negligence when acting within

the scope of their employment and agrees to be liable, up to the limits of Section 768.28, Florida Statutes, for any damages resulting from said negligence.

(b) By **VENDOR**: **VENDOR** agrees to indemnify, hold harmless and defend **SBBC**, its agents, servants and employees from any and all claims, judgments, costs, and expenses including, but not limited to, reasonable attorney's fees, reasonable investigative and discovery costs, court costs and all other sums which **SBBC**, its agents, servants and employees may pay or become obligated to pay on account of any, all and every claim or demand, or assertion of liability, or any claim or action founded thereon, arising or alleged to have arisen out of the products, goods or services furnished by **VENDOR**, its agents, servants or employees; the equipment of **VENDOR**, its agents, servants or employees while such equipment is on premises owned or controlled by **SBBC**; or the negligence of **VENDOR** or the negligence of **VENDOR**'s agents when acting within the scope of their employment, whether such claims, judgments, costs and expenses be for damages, damage to property including **SBBC**'s property, and injury or death of any person whether employed by **VENDOR**, **SBBC** or otherwise.

2.14 **Insurance Requirements.** **VENDOR** shall comply with the following insurance requirements throughout the term of this Agreement:

(a) **General Liability.** **VENDOR** shall maintain General Liability insurance during the term of this Agreement with limits not less than \$1,000,000 per occurrence for Bodily Injury/Property Damage; \$1,000,000 General Aggregate; and limits not less than \$1,000,000 for Products/Completed Operations Aggregate.

(b) **Professional Liability/Errors & Omissions.** **VENDOR** shall maintain Professional Liability/Errors & Omissions insurance during the term of this Agreement with a limit of not less than \$1,000,000 per occurrence covering services provided under this Agreement.

(c) **Workers' Compensation.** **VENDOR** shall maintain Workers' Compensation insurance during the term of this Agreement in compliance with the limits specified in Chapter 440, Florida Statutes, and Employer's Liability limits shall not be less than \$100,000/\$100,000/\$500,000 (each accident/disease-each employee/disease-policy limit).

(d) **Auto Liability.** **VENDOR** shall maintain Owned, Non-Owned and Hired Auto Liability insurance with Bodily Injury and Property Damage limits of not less than \$1,000,000 Combined Single Limit.

(e) **Acceptability of Insurance Carriers.** The insurance policies required under this Agreement shall be issued by companies qualified to do business in the State of Florida and having a rating of at least A- VI by AM Best or Aa3 by Moody's Investor Service.

(f) **Verification of Coverage.** Proof of the required insurance must be furnished by **VENDOR** to **SBBC**'s Risk Management Department by Certificate of Insurance within fifteen (15) days of the date of this Agreement. To streamline this process, **SBBC** has partnered with **EXIGIS** Risk Management Services to collect and verify insurance documentation. All certificates (and any required documents) must be received and approved by **SBBC**'s Risk Management Department before any work commences to permit **VENDOR** to remedy any deficiencies.



VENDOR must verify its account information and provide contact details for its Insurance Agent via the link provided to it by email.

(g) **Required Conditions.** Liability policies must include the following terms on the Certificate of Insurance:

- 1) The School Board of Broward County, Florida, its members, officers, employees and agents are added as additional insured.
- 2) All liability policies are primary of all other valid and collectable coverage maintained by The School Board of Broward County, Florida.
- 3) Certificate Holder: The School Board of Broward County, Florida, c/o EXIGIS Risk Management Services, P.O. Box 4668-ECM, New York, New York 10163-4668.

(h) **Cancellation of Insurance.** VENDOR is prohibited from providing services under this Agreement with SBBC without the minimum required insurance coverage and must notify SBBC within two (2) business days if required insurance is cancelled.

(i) SBBC reserves the right to review, reject or accept any required policies of insurance, including limits, coverage or endorsements, herein throughout the term of this Agreement.

2.15 **Equal Opportunity Provision.** The parties agree that no person shall be subjected to discrimination because of age, race, color, disability, gender identity, gender expression, marital status, national origin, religion, sex or sexual orientation in the performance of the parties' respective duties, responsibilities and obligations under this Agreement.

2.16 **Annual Appropriation.** The performance and obligations of SBBC under this Agreement shall be contingent upon an annual budgetary appropriation by its governing body. If SBBC does not allocate funds for the payment of services or products to be provided under this Agreement, this Agreement may be terminated by SBBC at the end of the period for which funds have been allocated. SBBC shall notify the other party at the earliest possible time before such termination. No penalty shall accrue to SBBC in the event this provision is exercised, and SBBC shall not be obligated or liable for any future payments due or any damages as a result of termination under this section.

2.17 **Excess Funds.** Any party receiving funds paid by SBBC under this Agreement agrees to promptly notify SBBC of any funds erroneously received from SBBC upon the discovery of such erroneous payment or overpayment. Any such excess funds shall be refunded to SBBC.

2.18 **Incorporation by Reference.** Exhibit A - VENDOR Terms of Use, Exhibit B - VENDOR Privacy Policy, Exhibit C - VENDOR Statement of Policy Regarding Test Disclosure attached hereto and referenced herein is incorporated into this Agreement.

### ARTICLE 3 – GENERAL CONDITIONS

3.01 **No Waiver of Sovereign Immunity.** Nothing herein is intended to serve as a waiver of sovereign immunity by any agency or political subdivision to which sovereign immunity may be applicable or of any rights or limits to liability existing under Section 768.28, Florida Statutes. This section shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until such time as any proceeding brought on account of this Agreement is barred by any applicable statute of limitations.

3.02 **No Third-Party Beneficiaries.** The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of any Agreement.

3.03 **Independent Contractor.** The parties to this Agreement shall at all times be acting in the capacity of independent contractors and not as an officer, employee or agent of one another. Neither party or its respective agents, employees, subcontractors or assignees shall represent to others that it has the authority to bind the other party unless specifically authorized in writing to do so. No right to SBBC retirement, leave benefits or any other benefits of SBBC employees shall exist as a result of the performance of any duties or responsibilities under this Agreement. SBBC shall not be responsible for social security, withholding taxes, contributions to unemployment compensation funds or insurance for the other party or the other party's officers, employees, agents, subcontractors or assignees.

3.04 **Default.** The parties agree that, in the event that either party is in default of its obligations under this Agreement, the non-defaulting party shall provide to the defaulting party (30) days' written notice to cure the default. However, in the event said default cannot be cured within said thirty (30) day period and the defaulting party is diligently attempting in good faith to cure same, the time period shall be reasonably extended to allow the defaulting party additional cure time. Upon the occurrence of a default that is not cured during the applicable cure period, this Agreement may be terminated by the non-defaulting party upon thirty (30) days' notice. This remedy is not intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or future exercise thereof. Nothing in this section shall be construed to preclude termination for convenience pursuant to Section 3.05.

3.05 **Termination.** This Agreement may be canceled with or without cause by SBBC during the term hereof upon thirty (30) days' written notice to the other parties of its desire to terminate this Agreement. In the event of such termination, SBBC shall be entitled to a *pro rata* refund of any pre-paid amounts for any services scheduled to be delivered after the effective date of such termination. SBBC shall have no liability for any property left on SBBC's property by any party to this Agreement after the termination of this Agreement. Any party contracting with SBBC under this Agreement agrees that any of its property placed upon SBBC's facilities pursuant to this

Agreement shall be removed within ten (10) business days following the termination, conclusion or cancellation of this Agreement and that any such property remaining upon SBBC's facilities after that time shall be deemed to be abandoned, title to such property shall pass to SBBC, and SBBC may use or dispose of such property as SBBC deems fit and appropriate.

3.06 **Compliance with Laws.** Each party shall comply with all applicable federal, state and local laws, SBBC policies, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.

3.07 **Place of Performance.** All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.

3.08 **Governing Law and Venue.** This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted exclusively to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida or to the jurisdiction of the United States District Court for the Southern District of Florida. Each party agrees and admits that the state courts of the Seventeenth Judicial Circuit of Broward County, Florida or the United States District Court for the Southern District of Florida shall have jurisdiction over it for any dispute arising under this Agreement.

3.09 **Entirety of Agreement.** This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.

3.10 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

3.11 **Assignment.** Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.

3.12 **Captions.** The captions, section designations, section numbers, article numbers, titles and headings appearing in this Agreement are inserted only as a matter of convenience, have no substantive meaning, and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way affect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

3.13 **Severability.** In the event that any one or more of the sections, paragraphs, sentences, clauses or provisions contained in this Agreement is held by a court of competent jurisdiction to be invalid, illegal, unlawful, unenforceable or void in any respect, such shall not affect the remaining portions of this Agreement and the same shall remain in full force and effect

as if such invalid, illegal, unlawful, unenforceable or void sections, paragraphs, sentences, clauses or provisions had never been included herein.

3.14 **Preparation of Agreement.** The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.

3.15 **Amendments.** No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.

3.16 **Waiver.** The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement unless the waiver is in writing and signed by the party waiving such provision. A written waiver shall only be effective as to the specific instance for which it is obtained and shall not be deemed a continuing or future waiver.

3.17 **Force Majeure.** Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotions, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.

3.18 **Survival.** All representations and warranties made herein, indemnification obligations, obligations to reimburse SBBC, obligations to maintain and allow inspection and audit of records and property, obligations to maintain the confidentiality of records, reporting requirements, and obligations to return public funds shall survive the termination of this Agreement.

3.19 **Agreement Administration.** SBBC has delegated authority to the Superintendent of Schools or his/her designee to take any actions necessary to implement and administer this Agreement.

3.20 **Counterparts and Multiple Originals.** This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same Agreement.

3.21 **Authority.** Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of

the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement on the date first above written.


**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES FOLLOW]**

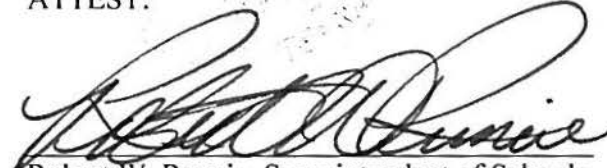
**FOR SBBC:**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

ATTEST:

By   
Donna P. Korn, Chair

  
Robert W. Runcie, Superintendent of Schools

Approved as to Form and Legal Content:



Digitally signed by Maya A.  
Moore  
Reason: Riverside Assessment  
LLC Agreement  
Date: 2020.04.15 12:57:38 -04'00'

Office of the General Counsel

**[THIS SPACE INTENTIONALLY LEFT BLANK; SIGNATURE PAGE FOLLOWS]**

**FOR VENDOR:**

(Corporate Seal)

**Riverside Assessments, LLC d/b/a Riverside Insights**

ATTEST:

Scott E. Olson  
Scott E. Olson, Secretary  
Assistant

By Tracey Barrett  
Tracey Barrett, Sr.VP, Sales and Services

Printed Name: Tracey Barrett

Title: Sr.VP, Sales and Services

-or-

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

**The Following Notarization is Required for Every Agreement Without Regard to Whether the Party Chose to Use a Secretary's Attestation or Two (2) Witnesses.**

STATE OF ILLINOIS  
COUNTY OF COOK

The foregoing instrument was acknowledged before me this 9 day of APRIL, 2020 by \_\_\_\_\_ of \_\_\_\_\_, on behalf of the corporation/agency.  
Name of Person  
Name of Corporation or Agency

He/She is personally known to me or produced DRIVER LIC as identification and did/did not first take an oath. Type of Identification

My Commission Expires: 9-8-22



Michael D. Myers  
Signature - Notary Public  
MICHAEL D MYERS  
Printed Name of Notary

## Exhibit A

### Riverside Assessments d/b/a Riverside Insights Management Platforms

#### Terms of Use

Last Updated: April 1, 2019

Riverside Assessments, LLC d/b/a Riverside Insights ("Riverside," "We" or "Our") provides content for Our assessments (collectively the "Products") and related assessment management features via Our web-based platforms including but not limited to Riverside DataManager, Online Scoring and Reporting for the Woodcock Assessment and Intervention Suite, and BDI-2 DataManager (collectively the "Platforms").

These Terms of Use (the "Terms" or "Terms of Use") constitute a legal agreement concerning Riverside's Platforms and are between you, either as an individual or acting as an authorized representative on behalf of an organization ("You" or "Your"), and Riverside. Please note that different or additional terms may apply regarding your purchase of Products.

PLEASE READ THESE TERMS OF USE CAREFULLY. BY ACCESSING, USING, OR DISPLAYING THE PLATFORMS, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY THESE TERMS. DO NOT ACCESS USE OR DISPLAY THE PLATFORMS IF YOU DO NOT AGREE TO THESE TERMS.

For purposes of these Terms, "FERPA" means the Family Educational Rights and Privacy Act, 20 USC §1232g, and the Protection of Pupil Rights Amendment ("PPRA"), including associated regulations. The term "HIPAA" means the Health Insurance Portability and Accountability Act, 42 U.S.C. §§ 1320d et seq., and the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), including associated regulations under HIPAA and the HITECH Act.

#### 1. Access to Purchased Products

Subject to Your compliance with these Terms, Riverside grants You a personal, limited, nontransferable, nonsublicensable, nonexclusive license to access the applicable Platform(s) during the term of access to use purchased Products in accordance with these Terms and any accompanying Product and Platform documentation. Riverside reserves the right, upon prior written notice to You, to sunset versions of the Products or Platform, or the Products or Platform in their entirety. In the event a Product or Platform is sunsetted, Riverside will provide you notice as to whether a new version of such Product or Platform is available and You will be required to license the latest version of such Product Platform, if such version is available, in order to maintain access to the related Product or Platform.

#### 2. Access to the Platform

##### 2.1 Required Computing Resources

Use of the Platform requires, at a minimum, computing resources needed to access and browse the Internet. Such computing resources may include, as specified in applicable Riverside documentation: (i) a personal computer and/or mobile device; (ii) software, including browser software and operating system software; and (iii) other specified client-side computing



resources (collectively “Client-Side Computing Resources”). You shall be responsible for ensuring that You (a) have access to requisite Client-Side Computing Resources, and (b) are sufficiently familiar with and trained regarding such Client-Side Computing Resources.

Riverside does not guarantee that the Platforms will operate with Your specific Client-Side Computing Resources. Carefully review each Platforms’ posted minimum system requirements to ensure compatibility.

## **2.2. Enrollment Responsibilities**

You must select the students and other adults who will have access to the Platforms and prepare the necessary files for import or manually enroll the students and other adults using features provided in the Platforms.

## **2.3 Use of Passwords**

Once enrolled, You will have the opportunity to create a password for Your assigned user name (Your “Login Credentials”). Riverside will treat anyone who uses Your Login Credentials as “You.” Riverside shall not be responsible for Your sharing or other misuse of Login Credentials and Riverside shall hold You responsible for the activities of a person using Your Login Credentials. Riverside therefore recommends that You maintain Your Login Credentials in confidence, and that You notify Riverside immediately if You suspect that someone is using Your Login Credentials in an inappropriate manner.

## **3. Riverside’s Intellectual Property**

Riverside’s Products, Platforms, derived scaled scores from number of questions answered correctly (“Score Conversions”), Reports (as defined below) and all related designs, layouts, appearances and graphics therein, as well as the trademarks, service marks, and logos contained within the Platforms and Products embody intellectual property rights owned by Riverside (or its licensors) including, where applicable, rights under patent law, copyright law, trade secret law, and trademark law (“Riverside Intellectual Property”). All rights not expressly granted herein are reserved to Riverside and/or its licensors, as applicable.

## **4. Test Security; Use of Assessment Score Reports**

Confidentiality is important to the integrity and validity of the testing process. Riverside restricts distribution of certain Products to qualified institutions and examiners. Under the Standards for Educational and Psychological Testing (2014) published by AERA, APA and NCME, (“SEPT”) educators and psychologists have a duty to protect the integrity of secured tests by maintaining the confidentiality of test questions and answers. Widespread dissemination of test protocols, which include substantial portions of the actual test items, would inevitably damage this process. It is for this reason that Products are distributed only to recipients that agree to take appropriate steps to protect the confidentiality of the Products. Providing digital access via the Platforms to these Products to unauthorized third parties, permitting notetaking by non-professionals during test administrations or permitting the audio or video recording of test administrations would be a compromise of test security and a violation of the Terms, which may result in termination of Your rights to access and use purchased Products on the Platforms.

You must use the Platforms and all assessment score reports for each Product (the "Reports") in accordance with these Terms and in accordance with all applicable federal, state, and local laws and regulations. You understand and agree that the Platforms' features and Reports are meant to be used as tools to supplement You in the overall assessment process and are not intended or designed to replace Your professional judgment. You assume all responsibility for the use or misuse of the Platform and all Reports. You must use the Platform and Reports in accordance with Riverside's Test Security Policy, and in accordance with SEPT (collectively, the "Policies and Standards").

**5. Grant of Rights in Submitted Data and Feedback; Storage**

By providing information to Riverside directly through Your use of the Platform's interface, including but not limited to, information about examinees ("Submitted Data"), You grant Riverside a royalty-free, nonexclusive, transferrable, sublicensable, worldwide license to use the Submitted Data for all purposes contemplated under these Terms as well as the Platforms' documentation and functionality. You acknowledge and agree that Riverside may use or disclose Submitted Data to provide maintenance and support for the Products or the Platforms. Riverside does not claim ownership in Submitted Data and retains only those rights in Submitted Data reasonably necessary or otherwise required in order to provide the Products and Platforms, and as otherwise contemplated under these Terms and associated Riverside documentation. Submitted Data that Riverside receives from You is subject to the terms set forth in Section 13 below regarding use of de-identified Submitted Data as well as the applicable Privacy Policy set forth in Section 14.

In addition to the license You grant us for the Submitted Data, You grant Riverside a nonexclusive, worldwide, perpetual, royalty-free, irrevocable right to use, disclose, reproduce, modify, license, transfer, and otherwise distribute and exploit any comments, ideas, and suggestions for improvements or developments related to or associated with the Products that You provide ("Feedback") in any manner without compensation to You. Please do not submit Feedback if You do not wish to grant us the rights set forth in this Section.

By providing Submitted Data and/or Feedback, You represent and warrant that You own such Submitted Data and Feedback (including intellectual property rights therein), or that You have obtained sufficient authority and right to the Submitted Data and Feedback in order to grant the rights to Riverside contemplated under these Terms and associated Riverside documentation.

**YOU ARE ADVISED TO EXPORT AND SAFEGUARD SUBMITTED DATA AND BACK UP IMPORTANT INFORMATION FREQUENTLY.** If You choose to provide Submitted Data to Riverside via the Platforms' functionality, Riverside will back up the Submitted Data in the Platform database and will take reasonable steps to securely store said backups. Notwithstanding anything to the contrary, You hereby release Riverside from any claim or liability relating to any failure in Riverside's database system and backup practices.

**6. Platform Availability and Errors**

Riverside shall use commercially reasonable efforts to make the Platforms available to You without significant interruption. There may be times when the Platforms are unavailable due to

technical errors or for maintenance and support activities. We do not represent, warrant, or guarantee that the Platforms will always be available or are completely free of human or technological errors.

If the Product experiences a significant interruption that is not due to scheduled downtime, Riverside shall use timely and commercially reasonable efforts to restore required functionality (the "Availability Commitment"). The Availability Commitment does not apply to downtime that results due to: (i) emergencies, (ii) downtime that Riverside otherwise schedules, for example, to install software updates and patches, (iii) downtime due to Your violation of these Terms; or (iv) downtime due to Your failure to update or upgrade your Product or Platform when suggested by Riverside.

The Platforms may contain typographical mistakes, inaccuracies, or omissions and some information may not be complete or current. We expressly reserve the right to correct any errors, inaccuracies, or omissions and to change or update information at any time without prior notice. We do not make any representation or warranty concerning errors, omissions, delays, or defects in the Platforms or any information supplied to You via the Platforms, or that files available through the Platforms are free of viruses, worms, Trojan horses, or other code that include or manifest contaminating or destructive characteristics.

You may contact Riverside's technical support team with questions on Platforms between the hours of 7am and 6pm Central Time (U.S.). In addition to taking reasonable steps to respond to reproducible errors or bugs in the Platforms commensurate with the severity of the error or bug, technical support may also provide You with information regarding Platform availability.

Riverside shall maintain disaster recovery, system and data backup, and business continuity for the Platforms, all in compliance with Riverside's internal policies and procedures.

## 7. Use Restrictions

You agree not to copy, duplicate, publish, distribute, display, modify, create derivative works of, or alter physical or electronic characteristics of the Products or the Platforms. You agree not to dismantle or reverse engineer or clone any part of the Products or the Platforms. You shall not grant sublicenses to, assign, transfer, sell or rent the Product or the Platforms without prior written consent of Riverside.

Because the Products, Platforms, Score Conversions, and Reports are protected by Riverside's Intellectual Property Rights, and considered confidential information of Riverside, the Products, Platforms, Score Conversions, and Reports shall not be disclosed by You in response to requests made by third parties unless otherwise required pursuant to applicable law, and then only after prior notice is provided to Riverside as well as an opportunity to prevent such disclosure. You agree that You will not otherwise, directly or indirectly, disclose any confidential information of Riverside without the prior written consent of Riverside.

Subject to the restrictions included in Sections 6 and 7, You may print, copy, display, and otherwise distribute Reports, provided that such actions are in compliance with Your obligations under the Policies and Standards and are otherwise in compliance with all applicable laws, regulations, and professional standards and obligations. You represent and warrant that You have obtained the necessary permissions from examinees and/or other applicable third parties

relating to Your use of the Reports. You hereby release Riverside from any claim or liability relating to Your use of the Reports.

Notwithstanding anything to the contrary, You shall not, under any circumstance, import into any Test Reports; copy, display, or reproduce any test question without Riverside's prior written consent; or otherwise provide, as Submitted Data, test questions from Riverside Products.

Your use of the Platforms to generate Reports is based on quantities of student administrations (record forms, answer documents, other consumable test or response booklets, digital administrations or digital licenses) that You purchase from Riverside. You are only entitled to assess one student per record form, answer document, other consumable test or response booklet, digital administration, or digital license; however, any number of different Reports may be generated from a single test administration.

You agree that when using the Platforms, You will not introduce into the Platform any virus, rogue program, time bomb, drop dead device, ransomware, back door, Trojan horse, worm or other malicious or destructive code, software routines, denial of service attack, or equipment components designed to permit unauthorized access to the Platforms, or to otherwise harm other users, Riverside Intellectual Property, or any third parties, or perform any such actions.

You will not use the Platforms to commit fraud or conduct other unlawful activities. You will not access or attempt to access any other person's account, personal information, or content without permission.

You will not use any bot, spider, or other automatic or manual device or process for the purpose of harvesting or compiling information on the Platforms or enrolled individuals for any reason.

You will not Decrypt, transfer, frame, display, or translate (except translations for personal use) any part of the Platforms.

You will not connect to or access any Riverside computer system or network without authorization.

You will not use the information in the Platforms to create or sell a similar service, or use the Platforms for the purpose of soliciting, selling or offering services, merchandise, or products.

#### **8. Third Party Websites**

The Platforms may include or provide links to other websites or open education resources on the Internet that We do not control. These other websites may provide opinions, recommendations, or other information from various individuals, organizations, or companies. We are not responsible for the nature, quality, or accuracy of the content or opinions expressed on such websites and We do not investigate, monitor, or check them for quality, accuracy, or completeness. Inclusion of any linked website on the Platforms does not imply or express an approval or endorsement of the linked website by us or of any of the content, opinions, treatments, information, products, or services provided on these websites, even if We receive a referral fee in connection with Your use of such third-party websites.

#### **9. Limited Warranty**

Riverside warrants that the Platform will not infringe on any valid United States copyrights existing at time that the Platform is made available, provided that this warranty does not extend to any infringement arising out of: (i) the use of the Platform in combination with systems, equipment, materials or platforms not supplied by Riverside or any use of the Platform outside of the United States; (ii) Your use of the Platform in violation of these Terms or the Platform documentation provided by Riverside; (iii) Your modification of the Platform; (iv) Your failure to install or implement a released upgrade to the Platform that would have avoided the infringement; or (v) any Submitted Data. If You promptly notify Riverside of any such infringement claim brought by a third party of which You have knowledge or notice, and accord Riverside the right, at its sole option and expense, to handle the defense of the infringement claim, Riverside will defend You against such infringement claim and pay any final judgment or settlement thereof. Notwithstanding the foregoing, Riverside will not indemnify for any infringement claim that arises out of the scenarios set forth in sub-sections (i)-(v) of this Section. If such an infringement claim arises, or if Riverside becomes aware of the possibility of such a claim, then Riverside may, at its sole discretion (a) acquire the right for You to continue to use the affected Platform in accordance with these Terms, (b) furnish You with a noninfringing replacement as soon as commercially possible, or (c) terminate these Terms in whole or in part by refunding any pre-paid, unused fees You paid for use of this Platform. The obligations set forth in this Section are Your exclusive remedy and Riverside's sole obligations with respect to any breach of this warranty.

EXCEPT AS OTHERWISE EXPRESSLY STATED IN THIS SECTION 9 (LIMITED WARRANTY), RIVERSIDE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PLATFORM. THE PLATFORM IS PROVIDED "AS IS". RIVERSIDE DOES NOT WARRANT OR MAKE ANY PROMISES REGARDING THE CORRECTNESS, USEFULNESS, ACCURACY, AVAILABILITY, OR RELIABILITY OF (I) YOUR USE THE PLATFORM; OR (II) ANY ADVICE YOU GLEAN FROM THE PLATFORM WHETHER PROVIDED BY US OR A THIRD PARTY. WE DO NOT PROMISE THAT THE PLATFORM WILL BE UNINTERRUPTED OR WILL BE ERROR-FREE, OR THAT ANY DEFECTS WILL BE CORRECTED. EXCEPT AS EXPRESSLY STATED IN THIS SECTION 9, THERE IS NO WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, ARE DISCLAIMED. RIVERSIDE WILL HAVE NO RESPONSIBILITY FOR THE TIMELINESS, DELETION, MISDELIVERY, OR FAILURE TO STORE ANY COMMUNICATION OR CONTENT.

#### 10. Term and Termination

These Terms are effective on the earlier of (i) the date these Terms are electronically accepted by You, or (ii) the date You first begin to use the Product or Platform ("Term"). Unless terminated earlier pursuant to this Section 10 (Term and Termination), the Term shall continue for as long as You have access to the Product.

Either party shall have the right to terminate these Terms if the other party breaches any of its obligations under these Terms and fails to cure the same within thirty (30) days after receipt of written notice of default, except that there shall be no cure period for Your breach of Riverside's rights under Section 3 (Riverside Intellectual Property); Section 4 (Test Security; Use of Assessment Score Reports); Section 5 (Grant of Rights in Submitted Data and Feedback; Storage), or Section 7 (Use Restrictions). Your obligations under this Section 10 (Term and Termination), as well as the provisions of Section 3 (Riverside Intellectual Property), Section 5

[Grant of Rights in Submitted Data and Feedback; Storage], Section 9 (Limitation of Liability) and Section 13 (General) shall survive any termination of these Terms.

Riverside reserves the right to terminate these Terms for convenience by providing You with reasonable notice and thereafter allowing You a reasonable opportunity (not to exceed thirty (30) days) to export a copy of Your Submitted Data. If these Terms are terminated for any reason, Riverside may make a reasonable effort to allow You access to the Platform for not more than thirty (30) days for the sole purpose of exporting Submitted Data (the "Submitted Data Retrieval Period"). Upon conclusion of the Submitted Data Retrieval Period, Riverside shall destroy copies of Submitted Data stored on its servers and any rights You have in the Platform or Product shall terminate.

**11. Indemnification**

EXCEPT TO THE EXTENT PROHIBITED BY LAW, YOU AGREE TO INDEMNIFY, DEFEND AND HOLD RIVERSIDE HARMLESS AGAINST ALL CLAIMS, LIABILITIES, DEMANDS, DAMAGES, OR EXPENSES (INCLUDING ATTORNEYS' FEES AND EXPENSES) ARISING OUT OF OR IN CONNECTION WITH: (I) YOUR USE OF THE PRODUCT(S) REPORTS AND PLATFORM(S) COVERED BY THESE TERMS AND/OR (II) YOUR FAILURE TO COMPLY WITH THESE TERMS.

**12. Limitation of Liability.**

RIVERSIDE'S TOTAL AGGREGATE LIABILITY FOR LOSS OR DAMAGE RELATING TO THESE TERMS AND/OR THE PRODUCT, REPORTS, OR PLATFORM OR YOUR USE OR INABILITY TO USE THE PRODUCT, REPORTS OR PLATFORM REGARDLESS OF THE FORM OF ACTION, SHALL IN NO EVENT EXCEED ONE THOUSAND U.S. DOLLARS (\$1000.00 USD).

IN NO EVENT SHALL RIVERSIDE BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, OR CONSEQUENTIAL DAMAGES ARISING FROM YOUR USE OF THE PRODUCTS, REPORTS OR PLATFORMS, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, OR LOSS OF PROFITS, EVEN IF RIVERSIDE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH CLAIM, LOSS, OR DAMAGE.

**13. Riverside's Use of Submitted Data and Feedback; De-Identified Information.**

Riverside may, from time to time, modify and otherwise anonymize Submitted Data so that it constitutes de-identified Information, and then extract de-identified Information. Riverside will only use de-identified Information for any lawful purposes including, but not limited to, quality assurance, research, and/or test development. Riverside may de-identify information that does not directly identify a particular person, but that may be linkable to a particular computer, device, operation system, platform, or software instance (via a unique device ID or otherwise) ("Usage Information") in accordance with HIPAA and FERPA and use this de-identified Information to develop, evaluate, and provide improved educational products and services, as permitted under HIPAA and FERPA. You acknowledge and agree that Riverside shall be free to use de-identified Information in compliance with HIPAA and FERPA requirements.

**14. Protection of Student Personal Information.**

Please see Our Privacy Policy governing the particular Product you purchased for information about (i) Our practices related to collection, use and deletion of personal information, including how students or their parents/legal guardians can access, review, and update personal information, and (ii) the security measures We have in place designed to safeguard student records,

**15. Applicability of HIPAA.**

If You are a "Covered Entity" under HIPAA, You and Riverside agree that the Business Associate Addendum will govern HIPAA-related matters (click on the following link to view and accept the Business Associate Addendum). If You are a school or not a Covered Entity, this Section 15 (Applicability of HIPAA) does not apply.

**16. Federal Government Terms and Conditions.**

If You are the United States Government or any agency or instrumentality thereof, the Platform (including, but not limited to, any related databases, documentation, technical data, and programmer's tools) delivered to the U.S. Government is "commercial computer software" or "commercial technical data" pursuant to the applicable Federal Acquisitions Regulation and agency-specific supplemental regulations. As such, the use, duplication, disclosure, modification, and adaptation are subject to the restrictions as provided in FAR 52.227-19 (DEC 2007), and all rights of the U.S. Government shall not exceed the minimum rights set forth in FAR 52.227-19 (DEC 2007). If You are the United States Government or any agency or instrumentality thereof and subject to Department of Defense Federal Acquisition Regulations, then the Platform (including, but not limited to, any related databases, documentation, technical data, and programmer's tools) is provided subject to DFARS 252.227-7013 (Technical Data—Commercial Items) and DFARS 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). Should the Platform be deemed to not constitute "commercial computer software" or "commercial technical data," then it shall be given to the U.S. Government with restricted rights.

**17. Consent Regarding Students' Personal Information.**

Please note that FERPA requires parental consent before a service provider (such as Riverside) is given access to personal information contained in a student's educational records. Under FERPA, this parental consent requirement is met where the service provider acts as a type of "school official" by performing services for the school that would otherwise be performed by the school's own employees. Riverside fulfills FERPA requirements for qualifying as a school official by, among other steps, giving the school direct control with respect to the use and maintenance of the education records at issue (including associated personal information), and refraining from re-disclosing or using this personal information except for purposes of providing the Product. Riverside will comply with access requests as required by FERPA.

**18. General**

THESE TERMS SHALL BE GOVERNED BY, CONSTRUED, AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS. The foregoing choice of law notwithstanding, copyright, trademark, and patent claims are subject only to U.S. Federal law and U.S. Federal court interpretation thereof. You agree that any action at law or in equity arising out of or relating to

these Terms of Use shall be filed only in the state or federal courts located in the Northern District of Illinois. These Terms shall not be assignable by You, either in whole or in part. Riverside reserves the right to assign the rights and obligations under these Terms for any reason and in Riverside's sole discretion. The Privacy Policy must be read in conjunction with these Terms, and the provisions of Our Privacy Policy are incorporated herein. These Terms and Our Privacy Policy constitute the entire agreement of You and Riverside concerning this matter, and supersede all discussions, proposals, bids, understandings, agreements, invitations, orders, and other communications, oral or written, on this subject. These Terms may not be waived, amended, or modified in any way without the prior written permission of Riverside. We may revise and update these Terms from time to time and will post the updated Terms to the Product. UNLESS OTHERWISE STATED IN THE AMENDED VERSION OF THESE TERMS, ANY CHANGES TO THESE TERMS WILL APPLY IMMEDIATELY UPON POSTING. Although We are not obligated to provide You with notice of any changes, any changes to these Terms will not apply retroactively to events that occurred prior to such changes. Your continued use of the Platform and the Products will constitute Your agreement to any new provisions within the revised Terms. You may print out a copy of these Terms and the Privacy Policy for Your records. If any one or more provisions of these Terms are found to be illegal or unenforceable, the remaining provisions will be enforced to the maximum extent possible. To the extent any purchase order from You conflicts with or amends these Terms in any way, these Terms, as unmodified, shall prevail. To the extent the Privacy Policy conflicts with or amends these Terms in any way, the Privacy Policy, as unmodified, shall prevail.

Any license granted under these Terms to You must be expressly provided herein, and there shall be no licenses or rights implied pursuant to these Terms, based on any course of conduct, or other construction or interpretation thereof. All rights and licenses not expressly granted to You by Riverside are reserved.



## Exhibit B

### RIVERSIDE ASSESSMENTS, LLC D/B/A RIVERSIDE INSIGHTS

#### PRIVACY POLICY

Last Updated: March 27, 2019

Riverside Assessments, LLC d/b/a Riverside Insights ("Riverside," "We" or "Our") provides content for Our educational assessments (the "Products") and related assessment management features via Our web-based platform Riverside DataManager (the "Platform"). The following privacy policy governs Our privacy practices for the Platform. Our Platform may contain links to third-party websites and services that are not owned or controlled by Riverside. We are not responsible for the privacy practices or the content of third party websites, services and advertisements, and you visit them at your own risk.

#### 1. Our Commitment to Privacy

We have created the Platform to help individuals elevate their potential — from early childhood, throughout their academic journey and for the rest of their lives. We believe that transparent and strong privacy practices foster these experiences, and We provide this privacy policy in that spirit.

#### 2. Our Compliance with COPPA and FERPA

The Platform is designed for teachers, school administrators, district administrators, and other educators working with K-12 Students. We recognize the sensitive nature of Personal Information concerning Students under age 13, and concerning K-12 Students generally, where the information is contained in a school's educational records. This Personal Information is protected under either or both of the following federal statutes: the Children's Online Privacy Protection Act ("COPPA") and the Family Educational Rights and Privacy Act, including the Protection of Pupil Rights Amendment ("FERPA"). Our privacy practices comply with both COPPA and FERPA.

#### 3. The Scope of Our Privacy Policy

This privacy policy governs Our privacy practices with respect to all Personal Information that Our users submit, or that We collect in connection with the Platform. This policy governs not only Our practices with respect to Students' Personal Information, but also with respect to the Personal Information of teachers and school administrators who use Our Platform. We reserve the right, at Our discretion, to change the terms of this privacy policy at any time. You can see when this privacy policy was last updated by reviewing the "Last Updated" legend on the top of this page. We may provide you with notice of material changes to the privacy policy as appropriate under the circumstances. **UNLESS OTHERWISE INDICATED, ANY CHANGES TO THIS PRIVACY POLICY WILL APPLY IMMEDIATELY UPON POSTING TO OUR SITE.**

#### 4. Consent from Schools regarding Students' Personal Information

COPPA permits a school, acting in the role of "parent," to provide required consents regarding Personal Information of Students who are under the age of 13. Where a school is the subscriber to Our Platform, We rely on this form of COPPA consent. We provide the school with this privacy policy, to ensure that the school, in providing its COPPA consent, has full information and assurance that Our practices comply with COPPA.

FERPA permits a school to provide educational records (including those that contain Students' Personal Information) to certain service providers without requiring the school to obtain specific

parental consent. FERPA permits this where the service provider acts as a type of "school official" by performing services, for example, that would otherwise be performed by the school's own employees. We fulfill FERPA requirements for qualifying as a school official by, among other steps, giving the school direct control with respect to the use and maintenance of the education records at issue (including associated Personal Information), and refraining from re-disclosing or using this Personal Information except for purposes of providing Our Platform to the school. We comply with FERPA by relying on this form of consent.

#### **5. Consents from Other Users**

We also obtain consents regarding Personal Information of users other than Students (such as teachers, school, and district administrators). To obtain these consents We (a) notify the users of Our privacy practices by including links to this privacy policy within Our Platform, and (b) rely on their continued use of Our Platform to indicate their consent to this privacy policy.

#### **6. The Types of User Information We Collect**

We limit the collection of Personal Information to no more than is reasonably necessary for users to enjoy the features and benefits of Our Platform. Specifically, we collect the following types of information:

- **District and School Administrator Information**—Includes administrators' first, last, and middle name, phone number, gender, email address, location assignment, Platform role designation, and username.
- **Teacher Information**—Includes teachers' first, last, and middle name, phone number, gender, email address, location assignment, Platform role designation, and username. Throughout the assessment process, We may collect information that may constitute Performance Review Data.
- **Student Information**—Includes the Students' first, last, and middle name, unique Student ID, date of birth, gender, grade level, location assignment, race, ethnicity, and program participation.
- **Usage Information**—Includes usage, viewing, analytics, and technical data, including device identifiers and IP addresses, relating to users of the Platform.

If We discover that we've collected information in a manner inconsistent with the requirements of COPPA or FERPA, We will either (a) delete the information or (b) promptly seek requisite consents before taking further action concerning the information. If You disclose any Personal Information to us in connection with the use of the Platforms, You represent and warrant that You have the authority to do so and permit us to use the information in accordance with this privacy policy.

#### **7. How We Collect Personal Information**

Our Platform collects Personal Information from educational institutions and designated educators in the following ways:

- **Submitting files for the purposes of completing educator and Student enrollments.**
- **Submitting files for the purposes of obtaining bar code labels that can be applied to Student answer documents or consumable test books.**
- **Hand keying data for the purposes of completing educator and Student enrollments.**
- **Central Scanning**—Riverside scanning of enrollment data and submitted assessment data gridded onto answer sheets or consumable test booklets.
- **Local Scanning**—Localized educator scanning of enrollment data and submitted assessment data gridded onto answer sheets or consumable test booklets.

- **Collection of Answer Strings**—For tests administered online, We collect submitted assessment data electronically throughout the course of proctored test sessions.
- **Collection of Usage Data**—We collect Usage Information through technology such as cookies and persistent identifiers. This collection of Usage Information takes place when Students and educators visit Our Platform, and during the assessment management activities (e.g., test administration and reporting) in which the user engages.

Please note that we use certain third-party service providers on Our Platform to enhance your experience or deliver certain services. These providers may collect Personal Information about you in performing their services and/or functions on Our Platform.

#### **8. How We Use Personal Information**

We use Personal Information for the following purposes:

- To communicate with educators about the assessments and assessment management features available through Our Platform, and, where applicable, changes to the features.
- To communicate with educators about subscription accounts or transactions with Us.
- To communicate with educators about Platform availability and downtime.
- To gather feedback on the Platform's features and, where applicable, changes to these features.
- To personalize Our Platform's content and experiences for different assigned Platform roles.
- To provide maintenance and support upon request.
- To detect, investigate and prevent activities that may violate Our policies or be illegal.

We do not, as a rule, allow third-party operators to collect Personal Information or Usage Information through persistent identifiers on Our Platform for any purposes other than the internal operations and support. Further, We do not use Personal Information collected through Our Platform for the purpose of targeted advertising.

Finally, We de-identify Usage Information in accordance with COPPA and FERPA, and use this De-Identified information to develop, evaluate, and provide improved educational products and services, as permitted under COPPA and FERPA. To the extent that We collect information that constitutes Performance Review Data, We protect such information as Personal Information in accordance with this Privacy Policy.

#### **9. We Do Not Share Personal Information Beyond Our Platform Except In Specific, Limited Circumstances**

We use Personal Information for Our internal purposes only, with the following limited exceptions. First, We share information with Our service providers if necessary for them to perform a business, professional, or technology support function for us. We use commercially reasonable efforts to only engage or interact with service providers that post a privacy policy governing their processing of Personal Information. Second, We disclose Personal Information:

- in response to the request of a law enforcement agency or other authorized public agency, including a request by a children's services agency or by the school at issue;
- to protect the security or integrity of Our Platform and associated applications and technology, as well as the technology of Our service providers;
- to enable us to take precautions against liability, enforce legal rights, and to detect, investigate and prevent activities that violate Our policy or that are illegal;

- if We are directed to do so by a subscribing school in connection with an investigation related to public safety, the safety of a Student, or the violation of a school policy; and in other cases if We believe in good faith that disclosure is required by law.

## 10. How We Protect Personal Information

We have implemented and maintain technical, administrative and physical security controls that are designed to protect the security, confidentiality and integrity of Personal Information collected through Our Platform from unauthorized access, disclosure, use or modification. Our information security controls comply with reasonable and accepted industry practice, as well as requirements under COPPA and FERPA. We diligently follow these information security controls and periodically review and test Our information security controls to keep them current.

### 10.1 Information Security Procedures

We will:

- **Standard of Care.** Keep and maintain all Personal Information in strict confidence, using such degree of care as is appropriate to avoid unauthorized access, use, modification, or disclosure;
- **Use for School Purposes Only.** Collect, use, and disclose Personal Information solely and exclusively for the purposes for which You provided the Personal Information, or access to it to us, and not use, sell, rent, transfer, distribute, modify, data mine, or otherwise disclose or make available Personal Information for Our own purposes or for the benefit of anyone other than the school, without the school's prior written consent;
- **Non-Disclosure.** Not, directly or indirectly, disclose Personal Information to any person other than Our employees and service providers who have a need to know, without express written consent from You;
- **No Commingling.** Segregate (via logical, database, or physical segregation) Personal Information from Our other information or Our other customers so that Your users' Personal Information is not commingled with any other types of information not related to You;
- **Employee Training.** Provide appropriate privacy and information security training to Our employees.
- **Transport Security.** Use Transport Layer Security (TLS) for the transmission of all user data to and from Our Platform; and
- **Secure Storage.** Use industry standard file encryption for user data that is subject to protection under either COPPA, FERPA, or both. Where file encryption is not reasonably feasible, We employ other industry standard safeguards, protections, and countermeasures to protect such data, including authentication and access controls within media, applications, operating systems and equipment.

### 10.2 Data Location and Security

We use cloud service providers in the delivery and operation of Our Platform, and data (including Personal Information) is stored on the servers of Our cloud service providers. Our contracts with Our cloud service providers require them to implement reasonable and appropriate measures designed to secure content against accidental or unlawful loss, access, or disclosure. Our cloud service providers have at least the following security measures in place for their networks and systems: (i) secure HTTP access (HTTPS) points for customer access, (ii) built-in firewalls, (iii) tested incident response program, (iv) resilient infrastructure and computing

environments, (v) ITIL based patch management system, (vi) high physical security based on SSAE-16 standards, and (vii) documented change control processes. To the extent We store Personal Information internally on Our servers, We comply with the information security controls set out in Section 10.1.

#### **11. Access and Control of Personal Information**

Designated educators hold access to Personal Information of the Students for whom they are responsible, and they are able to update this information in the manner permitted by Our Platform. Designated educators are similarly able to access and update their own Personal Information. The Parents of a Student can obtain access — through their child's school — to information concerning their child that is available on Our Platform. To do so, the Parent should follow the school's procedures for access under FERPA. We cooperate with and facilitate the school's response to these access requests. Where the school's procedures do not apply to the Parent's access request (and the request is otherwise proper), We will ourselves fulfill the request if and as required by law. After fulfilling an access request, We will update the Personal Information at issue, as requested by the school or individual entitled to such access. We limit access to Personal Information to only those employees (i) who have a need to know such information, and (ii) who use the information only for the educational purposes of operating Our Platform and delivering Our services.

#### **12. Our Retention and Deletion of Personal Information**

We retain Personal Information of users of Our Platform (i) for so long as reasonably necessary to permit users to participate in the Platform, or (ii) as required by law or contractual commitment. After this period has expired, we will delete the Personal Information from Our systems. These deletion periods apply to Personal Information and do not apply to De-Identified information. We retain De-Identified information in accordance with Our standard practices for similar information, and do not retain or delete such information in accordance with this policy.

In addition, and subject to any data retention that may be necessitated by applicable law, if requested by a school, We will delete from Our platform the Personal Information of the school's users, including its teachers and Students, as the school directs. Deleting this information will prevent the school user from engaging in some or all features of Our Platform. Where required by local law, we will delete such information and provide a certification of such deletion.

#### **13. NY Parents' Bill of Rights for Data Privacy and Security**

The New York Parents' Bill of Rights for Data Privacy and Security (the "Privacy Bill of Rights") addresses the relationship between schools and their third-party contractors in addition to the schools' relationships with Parents. The only elements of the Privacy Bill of Rights that are incorporated herein are those provisions directed to third party contractors ("Contractor Privacy Provisions"). We agree to comply with the Contractor Privacy Provisions for schools in the State of New York. In the event of a direct conflict between this Privacy Policy and the Privacy Bill of Rights, the Privacy Bill of Rights will control. The full text of the Privacy Bill of Rights is available at <http://www.p12.nysed.gov/docs/parents-bill-of-rights.pdf>.

#### **14. Your California Privacy Rights**

If you are a California resident, California Civil Code Section 1798.83 permits you to request information regarding the disclosure of Personal Information about you by Riverside to third parties

for the third parties' direct marketing purposes. To make such a request, please contact us at 800.323.9540.

#### 15. Do Not Track

Our Platform does not change its behavior when receiving the "Do Not Track" signal from browser software.

#### 16. Definitions

- "De-identified information" means information that meets each of the following criteria: the information (i) does not identify a particular natural person; (ii) does not identify, by network Internet Protocol address, raw hardware serial number, or raw MAC address, a particular device or computer associated with or used by a person; (iii) does not identify the school at issue by name or address; and (iv) is not reasonably linkable to a particular natural person or school because of technical, legal, or other controls.
- "Parent" means a parent or legal guardian of a Student.
- "Performance Review Data" means professional performance review data of teachers related to the teacher's effectiveness in the classroom and other measurements based upon factors including, but not limited to, Student achievement or growth on state assessments or examinations, classroom observations by peers, classroom observations by trained evaluators, evaluation of lesson plans and other indicia of teacher practices. Performance Review Data includes annual professional performance data, as defined under New York state law.
- "Personal Information" means information that identifies a natural person, including but not limited to similar definitions as specified in the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, including the Protection of Pupil Rights Amendment ("FERPA") and the Children's Online Privacy Protection Act, 15 U.S.C. §§ 6501–6506 ("COPPA"), the California Student Online Personal Information Protection Act, Ch. 22.2, §§ 22584 et seq. of the California Business and Professions Code, and Section 49073.1 of the California Education Code.
- "Student" means an individual who may be assessed or receive score reports via Our Platform. The term "student" includes individuals within the K–12 age group, and individuals who are children under the age of 13.
- "Usage Information" means information that does not directly identify a person, but that may be linkable to a particular device.

## Exhibit C



**Riverside  
Insights**

ELEVATE POTENTIAL

800.323.9540

Riversideinsights.com

One Pierce Place, Suite 800W, Itasca, IL 60143

### RIVERSIDE ASSESSMENTS STATEMENT OF POLICY REGARDING TEST DISCLOSURE

Riverside Assessments, LLC d/b/a Riverside Insights (Riverside Insights) does not consent to the copying of testing materials, or to the release of those materials to those not professionally qualified to obtain them. The following paragraphs set forth the reasons for Riverside Insights' commitment to this policy.

- **Copyright Ownership.** It is well established that testing materials can be the subject of copyright protection. Riverside Insights' assessment products are therefore protected by the copyright laws of the United States and other countries. Accordingly, as the copyright owner, Riverside Insights' retains the right to control the copying of these materials. The unauthorized copying of Riverside Insights' testing materials constitutes copyright infringement.
- **Test Security.** Confidentiality is important to the integrity and validity of the testing process. Widespread dissemination of test protocols, which include substantial portions of the actual test items, would inevitably damage this process. It is for this reason that Riverside Insights' tests are distributed only to recipients that agree to take appropriate steps to protect the confidentiality of the test instruments. Providing actual copies of these materials to unauthorized third parties, permitting note-taking by non-professionals during test administrations or permitting the audio or video recording of test administrations would be a compromise of test security and a violation of the test administrator's legal and contractual obligations to Riverside Insights'.
- **Professional Duty.** Riverside Insights restricts distribution of certain testing materials to qualified institutions and examiners. Under the Standards for Educational and Psychological Testing (2014) published by AERA, APA and NCME, educators and psychologists have a duty to protect the integrity of secured tests by maintaining the confidentiality of test questions and answers and by releasing such tests only to professionals who have the same duty.
- **Family Access to Educational Records.** Questions often arise about the federal requirement that families be given access to certain educational records. In order to comply with these requirements, a school or school district may be required to permit "access" to test protocols; however, "access" does not include the right to make copies of the materials provided. The Family Education Rights and Privacy Act (FERPA) provides that parents are to be given the right to "inspect and review" the educational records of their children (20 U.S.C., Section 1232G(a)(1)(A)). The right to inspect and review is defined to include the right "to a response from the participating agency to reasonable requests for explanations and interpretations of the records" and the right "to request that the agency provide copies of the records containing the information if failure to provide those copies would effectively prevent the parent from exercising the right to inspect and review the records." (34 C.F.R., Section 99.11(b)). So long as the test protocols are made available to the parent, or the parent's representative, for review, all requirements of the law are met without violating the publisher's rights or the obligations of the educational institution to keep the test materials confidential. There is, therefore, no obligation to provide copies or to permit the parent to make copies.
- **Legal Proceedings.** While Riverside Insights does not wish to impede the progress of legal

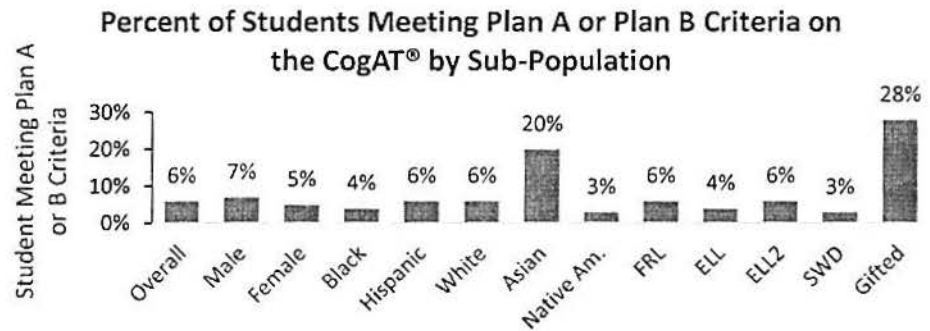


proceedings, Riverside Insights is unwilling to jeopardize the security and integrity of testing materials by consenting to the release of those materials to those not professionally qualified to obtain them. If a court issues an order requiring production of a copy of an Riverside Insights test, Riverside will permit delivery of the materials, provided that the court take certain steps to protect the confidentiality of the test and to prevent further copying or dissemination of the test. Such steps include issuing a protective order prohibiting parties from copying the materials; returning the materials to the qualified professional upon the conclusion of the proceedings; and insuring that the materials and all references to the content of the materials will not become part of the public record of the proceedings.

If you have any further questions you may contact the Legal Department of Riverside Assessments, LLC at One Pierce Place, Suite 900W, Itasca, IL 60143.



Of the students meeting criteria for gifted screening,  
**74%** were FRL  
**29%** were ELL



**CogAT® as a Screening Tool for Gifted Students**

- The CogAT® is administered to all 2<sup>nd</sup> grade students as a tool to screen for gifted students from under-represented populations. Plan B criteria is specifically geared towards students with English Language Learners (ELL) and receiving free or reduced-price lunch (FRL).
- A greater percentage of Plan A students were previously identified as gifted (23%) than Plan B students (6%), indicating the CogAT® is serving its intended purpose.
- 756 students met criteria for either Plan A or Plan B; 691 of which were not already identified as gifted.

**Adding Context to Achievement Data**

- The CogAT® measures general reasoning skills which underlie student achievement. CogAT® scores and FSA scores are highly correlated. Substantial deviations between the two scores can indicate an imbalance in cognitive development.
- Lower than expected FSA scores can indicate students are not learning to transfer information learned to different contexts. Lower than expected FSA scores can indicate a physical or learning disability, low motivation, or insufficient opportunities to learn.
- In 2018-19 between 3% and 9% of students had scores that were either substantially higher or lower than expected on the FSA in ELA and math. These students may benefit from an investigation into the cause of the discrepancies.

2018 CogAT® Score Range	2019 Third Grade FSA ELA					Total
	Level 1	Level 2	Level 3	Level 4	Level 5	
50-84	976 44.9%	708 32.6%	387 17.8%	97 4.5%	4 0.2%	2,172
85-90	388 19.7%	671 34.1%	669 34.0%	224 11.2%	17 0.9%	1,969
91-104	218 4.4%	905 18.2%	2,014 40.4%	1,528 30.7%	320 6.4%	4,985
105-117	10 0.4%	74 3.3%	597 22.1%	1,104 49.1%	564 25.1%	2,249
118-150	0 0.0%	2 0.3%	43 6.2%	252 36.4%	395 57.1%	692
<b>Total by FSA Level</b>	<b>1,592</b>	<b>2,360</b>	<b>3,610</b>	<b>3,205</b>	<b>1,300</b>	<b>12,067</b>
<b>Total Under-performing</b>					<i>n</i> = 347	2.9%
<b>Total Over-performing</b>					<i>n</i> = 1,026	8.5%

The School Board of Broward County, Florida



# Research Report

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Report from the Office of the Superintendent

Number 199  
April 2020

## The Cognitive Abilities Test™ (CogAT®) 2018

Each year Broward County Public Schools (BCPS) administers the Cognitive Abilities Test™ (CogAT®) to all second grade students. The CogAT® is used as a universal screener to identify students who need gifted services, to detect differences between ability and performance, and to provide valuable information about students' level of cognitive development in order to inform differentiated instruction.

The CogAT® measures students' abstract reasoning skills, or general reasoning ability<sup>1</sup>, in three domains: verbal, quantitative, and nonverbal. This ability underpins academic success (Lohman & Hagen, 2003). Thus, students who are in a supportive learning environment and who are free from a disability typically have standardized test scores that are predicted by their CogAT® scores. Dramatic deviations between these two scores indicate the need for further investigation to see if the student needs additional support.

The CogAT® has been used as a universal screener to identify gifted students, particularly from under-represented populations, in BCPS since 2011. In 2015, BCPS began using this assessment to help principals and guidance counselors make decisions about classroom placement and to help teachers differentiate instruction to better meet the specific needs of students based on their level of cognitive development. Profile scores for students who took all three batteries of the CogAT® were posted in the DWH reports folder in the data warehouse for both the 2015 and 2016 administrations of the CogAT®. Training on how to use CogAT® scores to differentiate instruction was also given in January and February of 2016 to the principal and one-third grade teacher from each District-run elementary school.

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<sup>1</sup> For a more detailed description of the CogAT®, see the BCPS Research Report The Cognitive Abilities Test™ (CogAT®): Screening for Giftedness, Predicting Achievement, and Informing Differentiated Instruction, released on October 16, 2015 which is available at <https://www.browardschools.com/cms/lib/FL01803656/Centricity/Domain/13537/releases/reports/BCPS-CogAT-Assessment-Report-2015.pdf>.

This report begins by reviewing the data from the 2018 administration of the CogAT® as a gifted screener, then looks at the correlation between the 2018 administration of the CogAT® and the 2019 Florida Standards Assessment (FSA) scores. Next, patterns in scores are illustrated with deviant CogAT®/FSA scores identified. Finally, a distribution of scores by group is provided.

## I. GIFTEDNESS

Gifted students have a different way of processing information, and benefit from both more challenging coursework and a curriculum that is based on independent and discovery learning. Gifted children can easily become bored in a typical classroom, which can lead to both behavioral and academic problems (Baum, Renzulli, & Herbert, 1995). Under-challenging students also leads to a lack of persistence; gifted students come to expect that all work will be easy and when faced with a difficult problem they tend to get frustrated and give up (Lohman & Hagen, 2003). Identification of gifted students is therefore critical in order to optimize outcomes for these students.

The Florida Department of Education (FDOE) mandates that all districts have a plan in place to identify gifted students from under-represented student populations. BCPS has administered the CogAT® for this purpose since 2011. Students who take the CogAT® are eligible for further screening for giftedness through either Plan A or Plan B (see Method below for specific criteria). Plan A gifted screening criteria seek to identify students with an intelligence quotient (IQ) of 130 or higher. Plan B gifted screening criteria are designed to identify students from under-represented populations who have an IQ of 115 or higher.

In 2018, of the 18,207<sup>2</sup> second grade students 16,368 (89.9%) took the CogAT®, with 13,466 (74.0%) taking all three batteries. Results from this administration of the CogAT® as a gifted screener for Plan A and Plan B are presented below.

## METHOD

The CogAT® form 6, Level A was administered District-wide to second grade students in April 2018. Level A is geared towards third graders. However, BCPS students take the exam at the end of second grade. Testing at a higher level provides a finer discrimination among the top scoring students which is ideal for the purposes of screening for gifted students. All traditional schools and some charter schools participated in the exam. All schools that participated are included in this analysis. The 2018 CogAT® data were pulled from the District's data warehouse in January 2020.

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<sup>2</sup> This number includes all grade 2 students who were enrolled in a BCPS District-run or CogAT® participating charter school during the CogAT® test administration.

**Means.** Standard Age Scores (SAS) were used to calculate means for each battery overall as well as by student sub-population. The SAS are normalized standard scale scores that compare students to other same-age students (matched to the closest month) from a national sample that took the CogAT® in 2005. Nationally, the SAS have a mean of 100 and standard deviation of 16.

**Students Meeting Screening Criteria for Gifted.** Age percentile rank scores are used to determine inclusion in the Plan A and Plan B screening groups. Age percentile rank scores are based on the 2005 national normative sample group provided by Riverside Publishing, the publisher of the CogAT®. Students scoring in the 50<sup>th</sup> percentile are considered average. Plan A includes students with a composite score for the three batteries (verbal, quantitative, and nonverbal) of the CogAT® in the 97<sup>th</sup> percentile or higher. Plan B, which is geared towards under-represented populations, includes students with a composite score from two of the three batteries (quantitative and nonverbal) in the 81<sup>st</sup> percentile or higher. In order to qualify for Plan B screening, students must also have limited English proficiency (ELL2<sup>3</sup>) or qualify to receive free or reduced-price lunch (FRL).

## RESULTS

**Participation.** In school year 2018 there were 13,466 students (74.0% of all second-grade students; 74.2% of District-run school students and 72.4% of charter school students<sup>4</sup>) had complete scores for all three batteries of the CogAT®. A total of 16,368 students (89.9% of all second-grade students) took at least some portion of the test, but either did not take all three batteries, or attempted to but did not complete enough answers to receive a score.

**Mean Scores.** Means for the verbal and quantitative batteries (Figures 1 – 4) are somewhat lower for this cohort in Broward County than for the 2005 national sample to which it is compared (7.7 lower mean for verbal and 5.4 lower mean for quantitative). Scores for the nonverbal battery ( $M=100$ ) are comparable to the national sample. Students' performance on the Nonverbal Battery is least impacted by growing up in poverty or in a home that does not speak English. Thus, these results are consistent with the fact that BCPS has a larger percentage of FRL<sup>5</sup> and ELL<sup>6</sup> students than are found nationally.

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<sup>3</sup> ELL2 includes students currently receiving special services as well as those in the two-year follow-up period. ELL includes only students currently receiving special services. BCPS typically reports data just for ELL. However, since different criteria are used to determine eligibility for Plan B, ELL2 data are reported here.

<sup>4</sup> These numbers are calculated using all grade 2 students who were enrolled in a BCPS District-run or CogAT® participating charter school during the CogAT® test administration. In 2017-18, 2<sup>nd</sup> grade enrollment was 18,207 (16,089 District-run and 2,118 charter).

<sup>5</sup> The percent of FRL students nationally in 2016-17 was 52% compared to 70% of BCPS students taking the CogAT® in 2017-18 (National Center for Education Statistics, 2018a).

<sup>6</sup> The percent of ELL students nationally in 2016-17 was 9.6% compared to 23% of BCPS students taking the CogAT® in 2017-18 (National Center for Education Statistics, 2018b).

### Verbal Reasoning 2018

Scores for the 16,284 students that took the verbal battery were distributed normally around the mean of 92.4 with a standard deviation of 14.0 (Figure 1). Mean scores by student sub-population are presented in Figure 2.

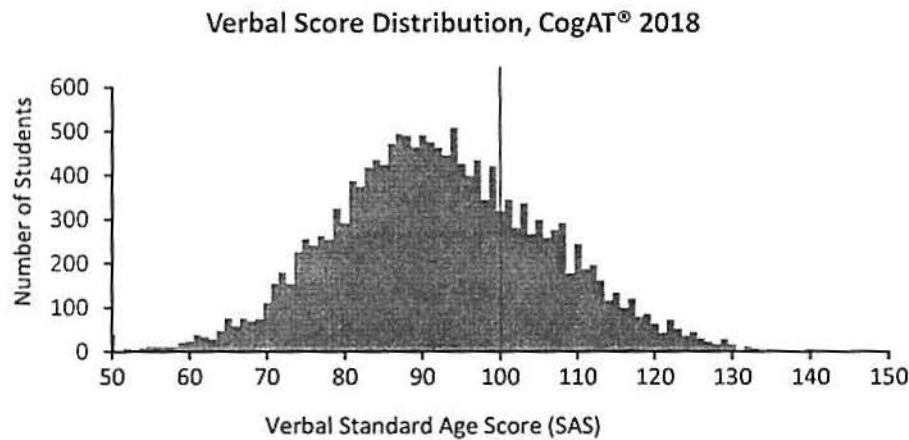


Figure 1. Distribution of verbal battery SAS scores for second grade students taking the CogAT® in Spring 2018.  $N = 16,284$ ,  $Mean = 92.4$ ,  $SD = 14.0$ . The blue line indicates the national mean score of 100.

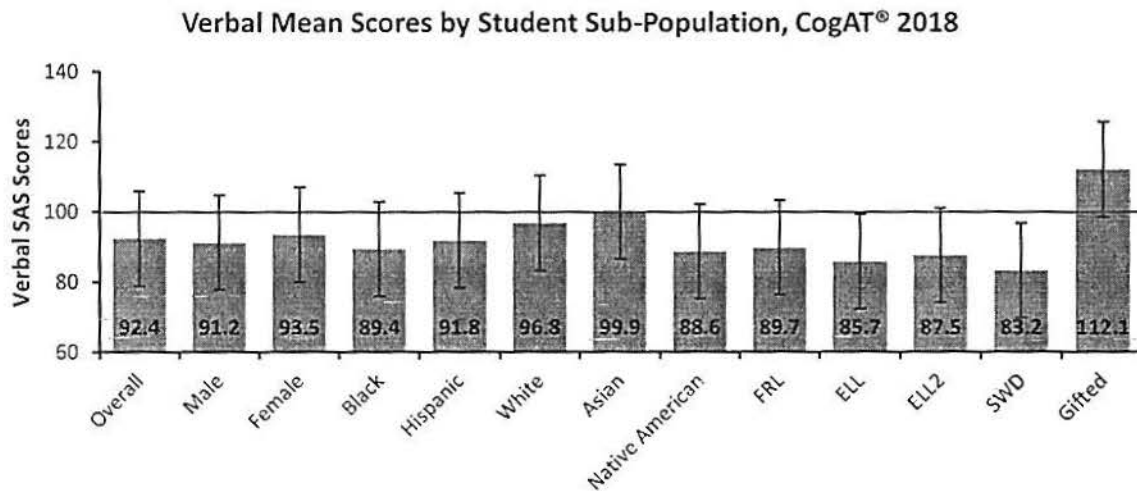


Figure 2. Mean Verbal Battery SAS scores by student sub-population for the 2018 administration of the CogAT® to second grade students. The blue line indicates the national mean score of 100. Student population sizes are as follows: Overall  $N=16,284$ , Male  $n=8,258$ , Female  $n=8,026$ , Black  $n=6,026$ , Hispanic  $n=5,828$ , White  $n=3,244$ , Asian  $n=649$ , Native American  $n=42$ , FRL  $n=11,459$ , ELL  $n=3,665$ , ELL2  $n=4,321$ , SWD  $n=2,079$ , Gifted  $n=539$ .

### Quantitative Reasoning 2018

Scores for the 14,593 students who took the quantitative battery were distributed normally around the mean of 94.7 with a standard deviation of 11.8 (Figure 3). Mean scores by student sub-population are presented in Figure 4.

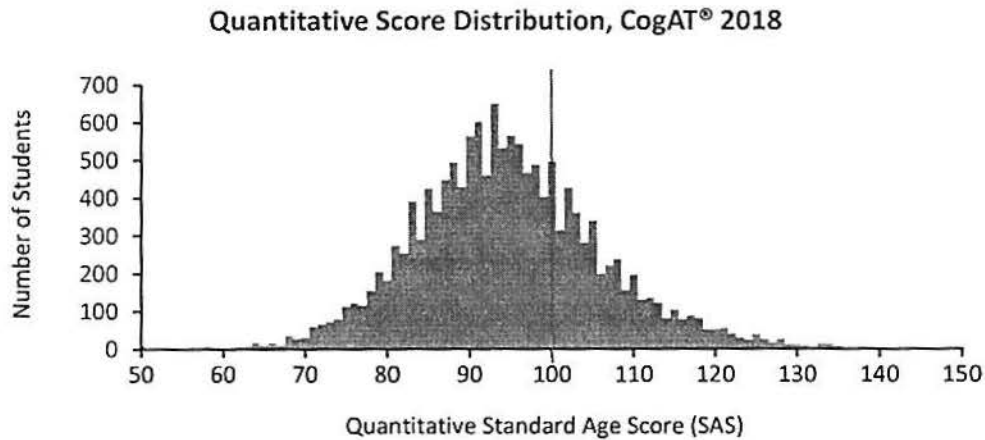


Figure 3. Distribution of quantitative battery SAS scores for second grade students taking the CogAT® in Spring 2018.  $N = 14,593$ ,  $Mean = 94.7$ ,  $SD = 11.8$ . The blue line indicates the national mean score of 100.

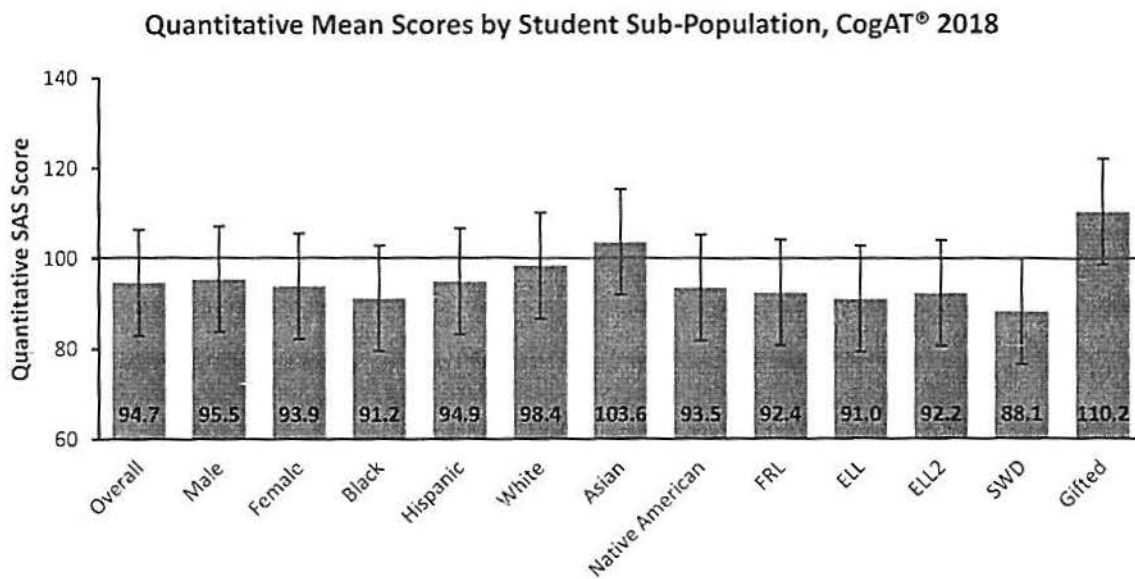


Figure 4. Mean Quantitative Battery SAS scores by student sub-population for the 2018 administration of the CogAT® to second grade students. The blue line indicates the national mean score of 100. Student population sizes are as follows: Overall  $N=14,593$ ; Male  $n=7,423$ ; Female  $n=7,170$ ; Black  $n=5,286$ ; Hispanic  $n=5,220$ ; White  $n=2,990$ ; Asian  $n=610$ ; Native American  $n=41$ ; FRL  $n=10,124$ ; ELL  $n=3,263$ ; ELL2  $n=3,873$ ; SWD  $n=1,778$ ; Gifted  $n=522$ .

### Nonverbal Reasoning 2018

Scores for the 14,514 students who took the nonverbal reasoning battery were distributed normally around the mean of 98.8 with a standard deviation of 14.4 (Figure 5). Mean scores by student sub-populations are presented in Figure 6.

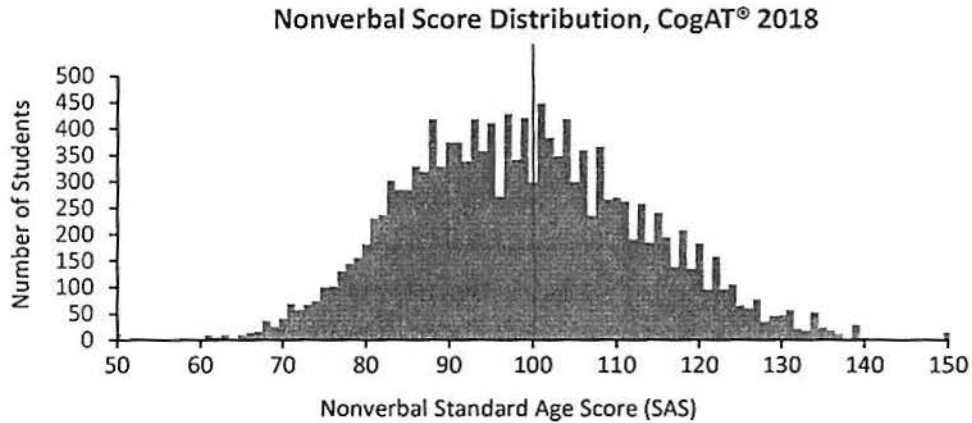


Figure 5. Distribution of nonverbal battery SAS scores for second grade students taking the CogAT® in Spring 2018.  $N = 14,514$  Mean = 98.8,  $SD = 14.4$ . The blue line indicates the national mean score of 100.

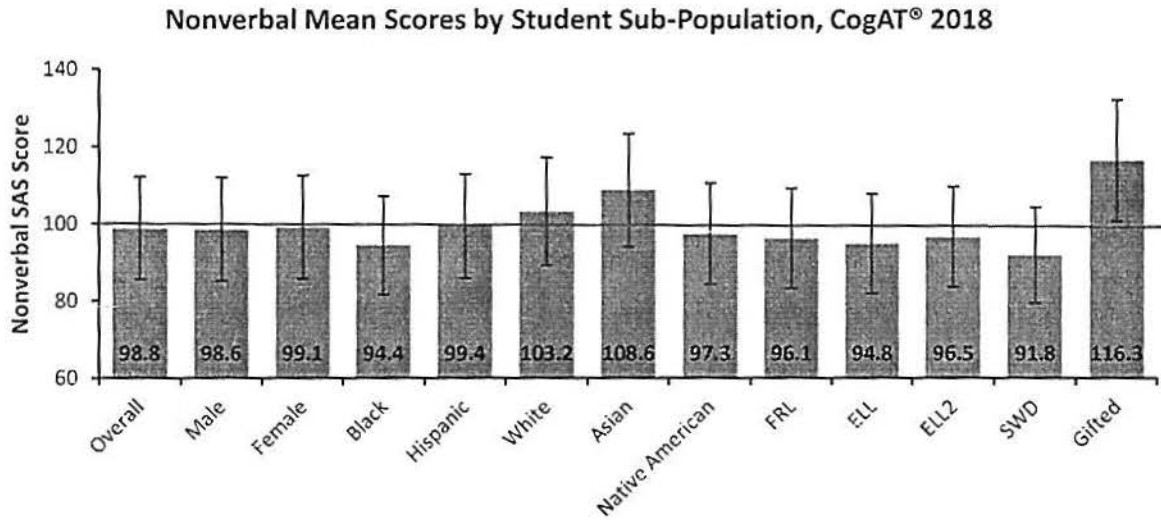
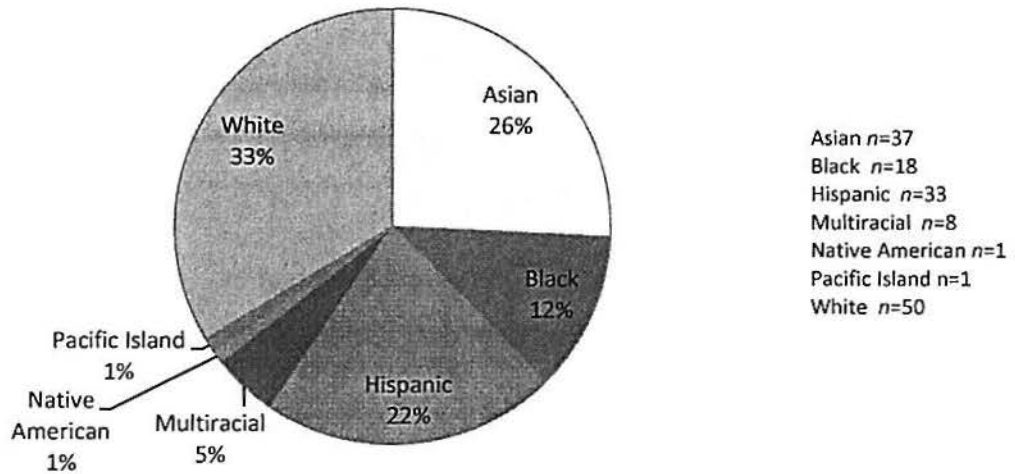


Figure 6. Mean Nonverbal Battery SAS scores by student sub-population for the 2018 administration of the CogAT® to second grade students. The blue line indicates the national mean score of 100. Student population sizes are as follows: Overall  $N=14,514$ , Male  $n=7,240$ , Female  $n=7,274$ , Black  $n=5,234$ , Hispanic  $n=5,180$ , White  $n=3,010$ , Asian  $n=603$ , Native American  $n=40$ , FRL  $n=10,041$ , ELL  $n=3,183$ , ELL2  $n=3,803$ , SWD  $n=1,747$ , Gifted  $n=524$ .

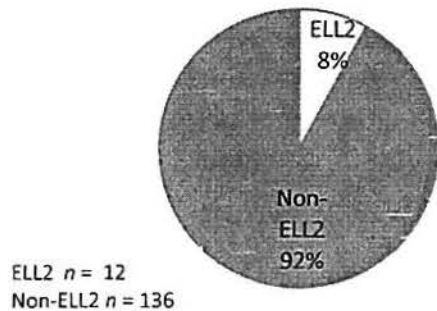
**Gifted Screening - Plan A**

Of the 13,466 students who took all three batteries of the CogAT®, 148 (1.1%) achieved a composite score of the verbal, quantitative, and nonverbal batteries (VQN) that had an age percentile ranking of 97 or higher. Thirty-four (23.0%) of these students had previously been identified as gifted students. Thus, a total of 114 Plan A students were identified for further screening for gifted eligibility through the 2018 administration of the CogAT®. Figure 7 shows the distribution of students meeting Plan A scoring criteria by racial/ethnic group, ELL2, and FRL. These figures include all 148 students regardless of whether they had been previously identified as gifted.

**Students Meeting Plan A Criteria for Gifted  
by Racial/Ethnic Group, 2018**



**Students Meeting Plan A Criteria  
by English Proficiency**



**Students Meeting Plan A Criteria  
by Free/Reduced-Price Lunch Eligibility**

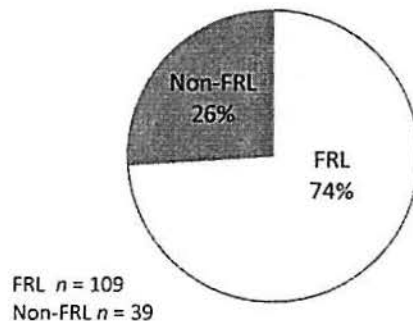


Figure 7. Students meeting criteria for Plan A by student sub-population in school year 2017-2018.



### Gifted Screening - Plan B

Plan B students need to achieve a composite quantitative and nonverbal (QN) score in the 81<sup>st</sup> percentile or higher, and either have limited English proficiency or qualify for free or reduced-price lunch. The score component of this criteria was achieved by 1,397 (10.3%) of the 13,516 students who took both the quantitative and non-verbal batteries. Of those, 655 also met the ELL or FRL requirements. Thirty-nine (6.0%) of these students had previously been identified as gifted students. Thus, the 2018 administration of the CogAT® identified 616 Plan B students to be screened for gifted program eligibility. Figure 8 illustrates the students who met Plan B criteria by sub-population, including those already identified as gifted.

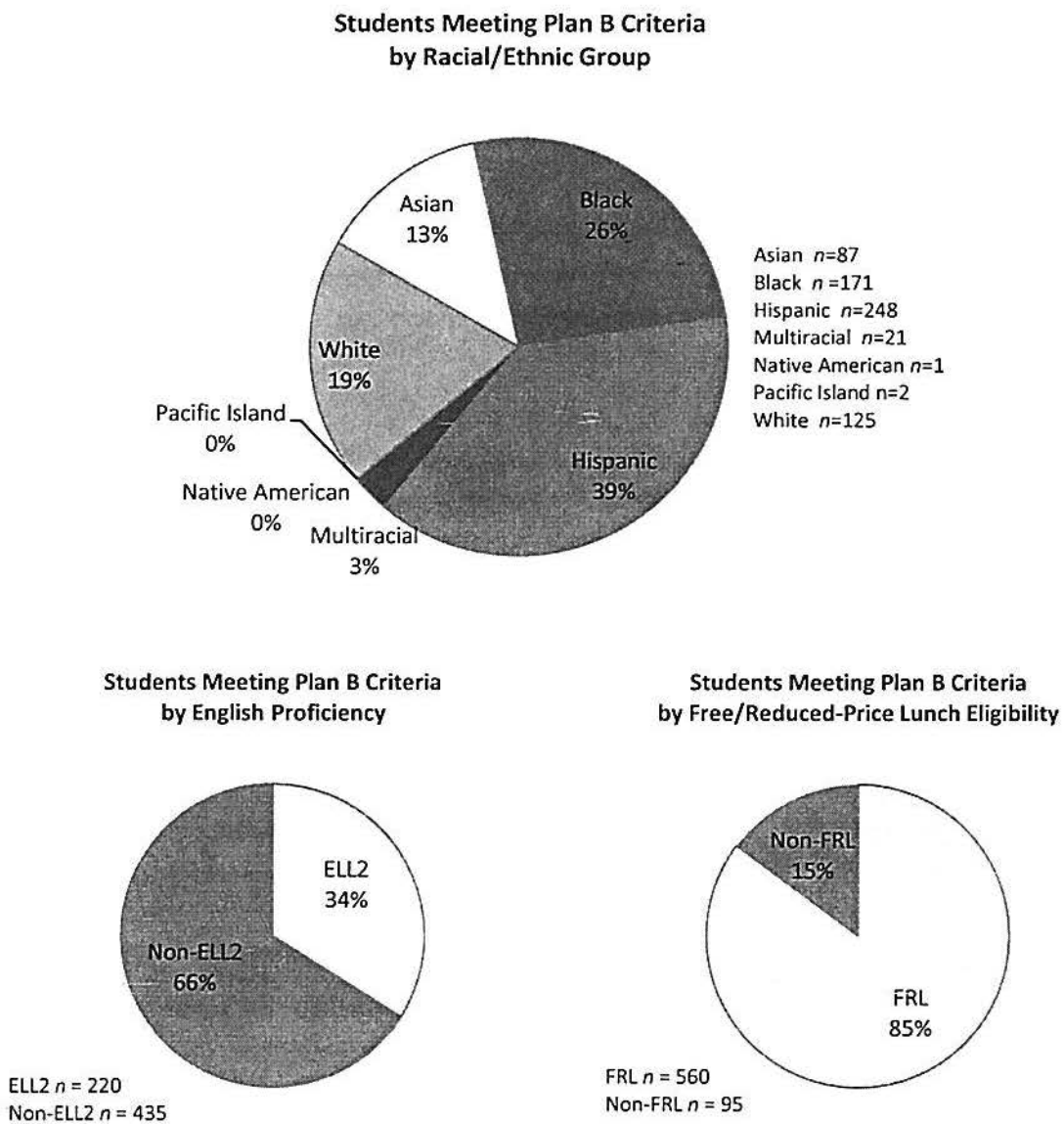
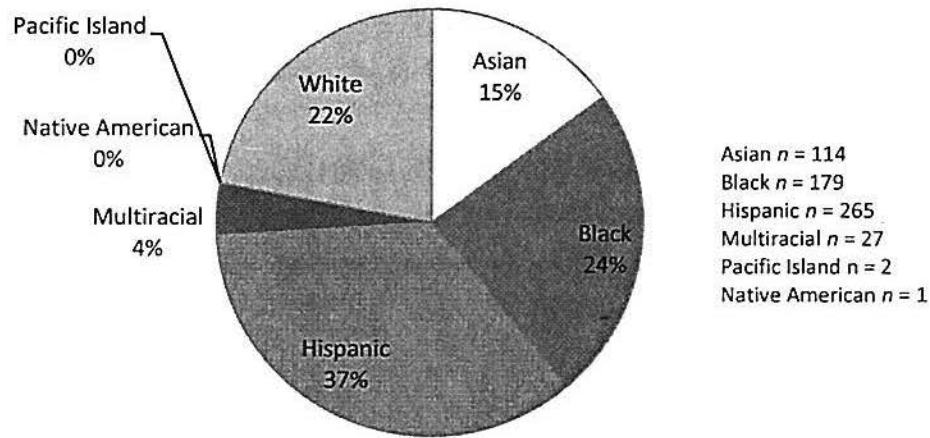


Figure 8. Students meeting criteria for Plan B by sub-population in school year 2017-18.

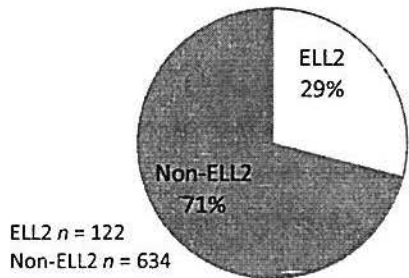
**Gifted Screening – Combined**

Combined, 756<sup>7</sup> students met criteria for either Plan A or Plan B and were thus identified as eligible for further screening for gifted. Of those, 65 were already classified as gifted, leaving 691 students to be screened. As of the 2020 school year 392 (56.7%) of the 691 students have been identified as gifted students. Figure 9 illustrates the students who met Plan A or B criteria combined, by sub-population, including those already identified as gifted. Figure 10 shows the percentage of students meeting gifted screening criteria by student sub-population.

**Students Meeting Both Plan A or Plan B Criteria  
by Racial/Ethnic Group**



**Students Meeting Plan A or Plan B  
Criteria by English Proficiency**



**Students Meeting Plan A or Plan B  
Criteria by Free/Reduced-Price  
Lunch Eligibility**

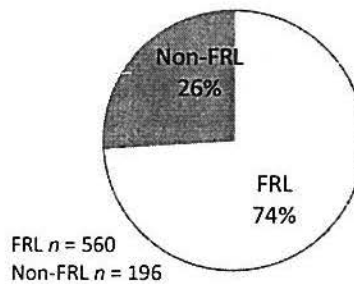


Figure 9. Students meeting criteria for Plan A or Plan B by student sub-population in school year 2017-18.

<sup>7</sup> The total number of students identified is lower than adding Plan A and Plan B together because 47 students met criteria for both Plan A and Plan B.

Percent of Students Meeting Plan A or Plan B Criteria on the CogAT®  
by Sub-Population

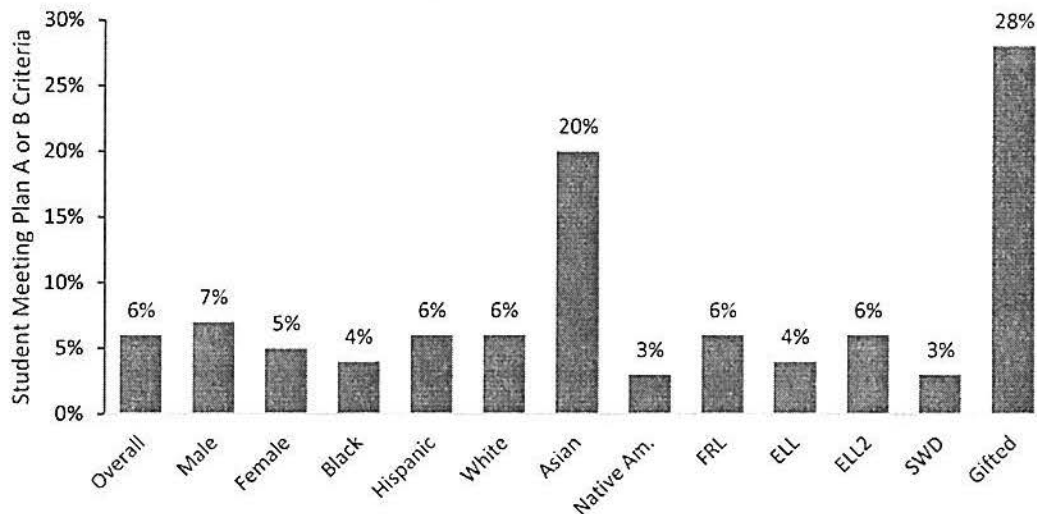


Figure 10. Percentage of students meeting Plan A or Plan B criteria on the 2018 CogAT® by student sub-population. This figure shows the percentage of a specific sub-population that met gifted screening criteria. For example, of all the students who took enough batteries of the CogAT® to have a composite score, 5% met criteria to be screened for the gifted program.

### Performance by School

One-hundred fifty-eight schools administered the CogAT® in 2018 and had students with both SAS<sub>Q</sub> and SAS<sub>N</sub> scores (142 District-run and 16 charter). Of those 156 had scores for ten or more students (140 District-run and 16 charter). Performance by school data is calculated using the 156 schools that had CogAT® scores for at least 10 students.

The percentage of students that met Plan A criteria ( $M = .01$ ,  $SD = .018$ ) ranged between 0% and 18% for each school. The percentage of students who met Plan B criteria ( $M = .03$ ,  $SD = .04$ ) ranged between 0% and 29% for each school. The percentage of students that met either Plan A or Plan B criteria ( $M = .04$ ,  $SD = .047$ ) ranged between 0% and 41%. Fifty-six schools (21 District-run and 35 charter) did not have any students successfully screen for Plan A or Plan B. See Appendix A for number and percent of students meeting Plan A and Plan B criteria as well as mean SAS<sub>VQN</sub> and SAS<sub>QN</sub> scores by school<sup>8</sup>.

<sup>8</sup> Means are not presented for schools with less than 10 students participating in the exam to respect the privacy of individual students and avoid misinterpretation of results.

## II. Predicting Achievement

The CogAT® and standardized tests such as the Florida Standards Assessment (FSA) measure two different aspects of cognitive development. The CogAT® measures the general abstract reasoning skills that serve as the foundation for the student’s ability to complete a variety of tasks such as learning and remembering information, detecting relationships, and using previous experience to solve novel problems. These abilities are also known as fluid reasoning abilities. Standardized achievement tests measure knowledge and skills explicitly taught at school, also known as crystallized abilities. Together, measures of fluid and crystallized abilities provide a more complete picture of cognitive development than either one alone (Cattell, 1971). This can be compared to measuring physical development; knowing someone’s height and weight provides a more complete picture than knowing just weight alone (Lohman & Hagen, 2003).

General reasoning ability underpins academic achievement. Thus, CogAT® scores are well correlated with standardized test scores. Dramatic deviations between CogAT® scores and FSA scores can help to identify students in need of extra support. These students exhibit an imbalance in cognitive development which can be the result of a number of factors.

Students’ whose fluid ability is greater than their crystallized achievement, as indicated by scoring substantially lower on the FSA than is predicted by their CogAT® score, demonstrate that they are better at solving novel problems than at academic tasks. There are several possible explanations for this imbalance. These students may not have the motivation to apply themselves in school (“underachievers”), may not have appropriate opportunities to learn in school, or may have a physical (i.e. vision or hearing) or learning disability (Lohman & Hagen, 2003).

Students’ whose crystallized achievement is greater than their fluid ability, as indicated by scoring substantially higher on the FSA than is predicted by their CogAT® score, demonstrate that they are learning in a contextually bound manner and are having difficulty transferring what they learn in school to other situations. This could indicate that the students have worked exceptionally hard to learn their schoolwork (“overachievers”), or it could mean that something about the way they learn or the way they are taught at school is inhibiting their ability to transfer what they have learned (Lohman & Hagen, 2003).

## METHOD

This section contains two analyses. First, correlations are shown between the CogAT® scores and standardized test scores. Next, deviations between CogAT® scores and predicted standardized test scores are shown. All CogAT® scores represent the Spring 2018 administration of the CogAT® form 6, Level A to second grade students. All students who took both the CogAT® in 2018 and the FSA in 2019 are included in the analyses.

**Correlations.** Correlations between the English Language Arts (ELA) and Math subtests of the FSA and the various standard age scores (SAS) from the CogAT® were calculated. SAS<sub>V</sub> is the verbal battery, SAS<sub>Q</sub> is the quantitative battery, SAS<sub>N</sub> is the nonverbal battery, SAS<sub>VQN</sub> is the composite of all three batteries, and is used to determine Plan A eligibility. SAS<sub>QN</sub> is a composite of the quantitative and nonverbal batteries used to determine Plan B eligibility. SAS scores range between 50 and 150. Students who had a SAS composite score greater than or equal to 50 were included in the analysis.

**Deviations.** Measures of ELA and math were obtained using results from the District-wide administration of the FSA for ELA and Math to third grade students in Spring 2019. FSA scores were linked to CogAT® scores, and only students who had valid CogAT® and FSA scores were retained for the analysis. Deviations from predicted scores were calculated using correlations between each CogAT® SAS<sub>VQN</sub> score and each FSA Achievement Level. Cut points for CogAT® scores were created at the score in which most students at that score achieved a particular level on the FSA.

## 2019 RESULTS

Correlations between students' 2015 second grade CogAT® score and 2016 third grade FSA score for ELA and Math were all moderate to strong, ranging from .57 to .71. The SAS<sub>VQN</sub> exhibited the strongest correlation.

*Table 1. Correlations between 2018 second grade CogAT® scores and 2019 third grade FSA scores.*

	SAS <sub>V</sub>	SAS <sub>Q</sub>	SAS <sub>N</sub>	SAS <sub>VQN</sub>	SAS <sub>QN</sub>
FSA 2019 ELA	.67	.58	.57	.68	.62
FSA 2019 Mathematics	.61	.67	.63	.71	.70

*Note: All correlations are significant at the 0.01 level.*

### Deviations from Predicted Scores 2019

This section presents typical and deviant scoring patterns between the 2018 second grade CogAT® SAS<sub>VQN</sub> scores and the 2019 third grade FSA ELA and math achievement levels (Tables 2 and 3). The green boxes indicate the scoring pattern observed in the greatest percent of students. The top number represents the number of students who had this pattern of score and the bottom number indicates the percent of students within that CogAT® score range who scored at that achievement level. Students who scored at least two levels above or below the level at which the majority of the students scored were identified as having deviant scores. The white boxes indicate the students' FSA achievement is one level above or below predicted achievement. The blue and yellow boxes indicate substantial differences between expected and actual FSA levels based on CogAT® scores. Blue boxes indicate students are performing better on the FSA than expected, and yellow boxes indicate they are performing worse than expected. The deviant scores suggest a potential imbalance in cognitive development and indicate the need to explore the reason for such differences in scores for these students.

Table 2. 2018 second grade CogAT® SAS<sub>V</sub> Scores compared to 2019 third grade FSA ELA scores.

2018 CogAT® Score Range	2019 Third Grade FSA ELA					Total
	Level 1	Level 2	Level 3	Level 4	Level 5	
50-84	976 44.9%	708 32.6%	387 17.8%	97 4.5%	4 0.2%	2,172
85-90	388 19.7%	671 34.1%	669 34.0%	224 11.2%	17 0.9%	1,969
91-104	218 4.4%	905 18.2%	2,014 40.4%	1,528 30.7%	320 6.4%	4,985
105-117	10 0.4%	74 3.3%	597 22.1%	1,104 49.1%	564 25.1%	2,249
118-150	0 0.0%	2 0.3%	43 6.2%	252 36.4%	395 57.1%	692
Total by FSA Level	1,592	2,360	3,610	3,205	1,300	12,067
Total Under-performing					<i>n</i> = 347	2.9%
Total Over-performing					<i>n</i> = 1,026	8.5%

Note: Green = congruent scores, white = one level above or below expected scores, yellow = lower than expected performance, blue = higher than-expected performance. The top number in each box is the number of students with that score combination.

Table 3. 2018 second grade CogAT® SAS<sub>VQN</sub> Scores compared to 2019 third grade FSA math scores.

2018 CogAT® Score Range	2019 Third Grade FSA Math					Total	
	Level 1	Level 2	Level 3	Level 4	Level 5		
50 - 85	1,048 42.9%	681 27.9%	548 22.4%	153 6.3%	11 0.5%	2,441	
86 - 86	60 19.4%	102 33.0%	115 37.2%	29 9.4%	3 1.0%	309	
87 - 101	332 6.2%	922 17.1%	2,153 40.0%	1,636 30.4%	335 6.2%	5,378	
102 - 114	9 0.3%	71 2.5%	553 19.1%	1,348 46.7%	908 31.4%	2,889	
115 - 150	0 0.0%	0 0.0%	30 3.0%	258 26.2%	697 70.8%	985	
Total by FCAT Level	1,449	1,776	3,339	3,424	1,954	12,002	
Total Under-performing						<i>n</i> = 442	3.7%
Total Over-performing						<i>n</i> = 1,058	8.8%

Note: Green = congruent scores, white = one level above or below expected scores, yellow = lower than expected performance, blue = higher than expected performance. The top number in each box is the number of students with that score combination.

In this cohort, we identified 347 students with lower FSA ELA scores and 442 students with lower math scores than would be expected given their CogAT® scores<sup>9</sup>. After combining lists, the total unduplicated number of students underperforming on either of the FSA exams is 730.

We also identified 1,026 students who scored higher than expected on the FSA in ELA, and 1,058 who scored higher than expected on the FSA in math. After combining and removing duplicates from the lists, there were a total of 1,743 students whose FSA performance on either assessment exceeded the score predicted by their prior year CogAT® score.

<sup>9</sup> When Riverside Publishing scores CogAT® and the Iowa Test of Basic Skills (IBTS) simultaneously, they flag students whose IBTS scores fall in the top and bottom 10% of the range for that particular CogAT® score. FSA levels were used here in order to simplify the calculation and better illustrate the deviant scores.

### III. Differentiated Instruction

The 2018 report contains detailed information about the learning characteristics of students with specific CogAT® scores as well as instructional strategies to best meet the varying needs of these different students. Knowing these characteristics and strategies helps teachers to determine how they can be effective in supporting students to reach their highest potential. For example, students scoring in the bottom three stanines<sup>10</sup> have lower levels of working memory which interferes with their ability to complete more challenging work. Often, when the teacher supports their working memory, students are able to work on these more challenging tasks. This is important because when lower-ability students are not exposed to higher-order thinking, the gap between them and other students continues to widen. Teachers can support students' working memory in a number of ways. Providing a graphic organizer, chunking work down into smaller tasks, modeling the task, and forgiving components that are not the main focus of the task (i.e. spelling in an essay) are some examples.

To help teachers differentiate instruction, profile scores for each student that completed all three batteries of the CogAT® are provided to schools. Profile scores can be typed into the CogAT® online Interactive Profile Interpretation System ([www.cogat.com](http://www.cogat.com)) to receive a detailed customized report on learning characteristics and instructional recommendations for that particular student.

Information below summarizes Districtwide performance on the CogAT® by stanine and by Profile Group. Stanine scores are used here instead of profile scores for ease of illustrating trends in the data. In addition to stanine, profile scores also indicate if there is an even pattern among the three batteries, a relative strength or weakness in one area, a relative strength and weakness in two areas, or an extreme strength or weakness in one area. Thus, the large number of specific profile scores makes it difficult to graph. A summary of the distribution of scores across the groups and stanines is presented below at the district level.

#### Description

All students who had an Age Stanine<sub>VQN</sub> score were included in this analysis. Students with an Age Stanine<sub>VQN</sub> of one, two, and three were assigned a Profile Group of one. Students with an Age Stanine<sub>VQN</sub> score of four, five, or six were assigned a Profile Group of two. Students with an Age Stanine<sub>VQN</sub> score of seven or eight were assigned a Profile Group of three, and students with an Age Stanine<sub>VQN</sub> score of 9 were assigned a Profile Group of four.

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<sup>10</sup> Stanine is a method of scaling test scores on a 9-point standard scale that has a mean of 5 and standard deviation of 2.



## Results

The distribution of stanine scores for 2018 and 2017 showed a similar pattern (Figure 11). In both years, the data are skewed to the left, indicating that BCPS students had scores somewhat lower than the national normative sample. Specifically, BCPS had more students with stanine scores of three and four, and less with stanines seven and eight. Scores for 2018 were slightly different than scores for 2017.

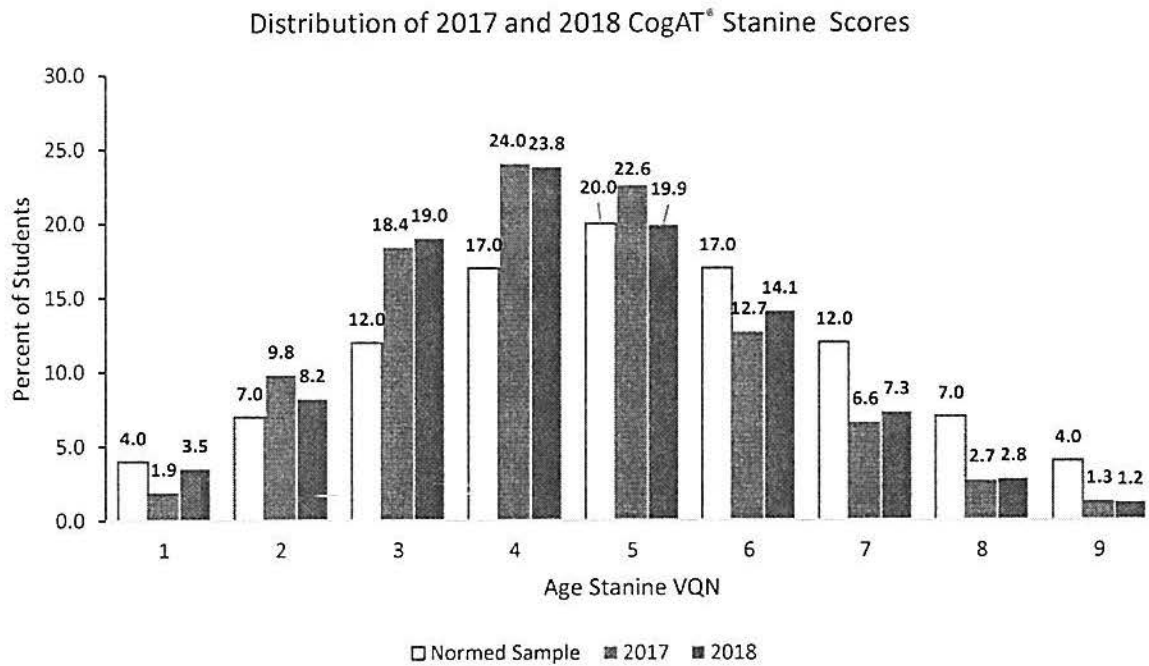
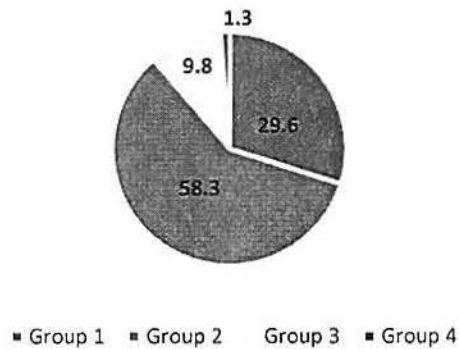


Figure 11. Distribution of CogAT® age stanine VQN scores for 2017 and 2018.

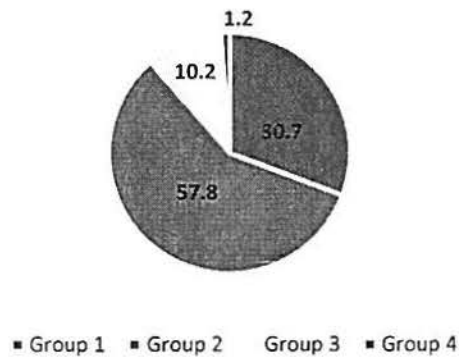
Similarly, the distribution of profile groups for BCPS showed more students in groups one and two, and less in groups three and four (see figure 12).

<sup>1</sup> Stanine is a method of scaling test scores on a 9-point standard scale that has a mean of 5 and standard deviation of 2.

Distribution of 2017 CogAT® Scores by Group



Distribution of 2018 CogAT® Scores by Group



Distribution of National Normed Sample CogAT® Scores by Group

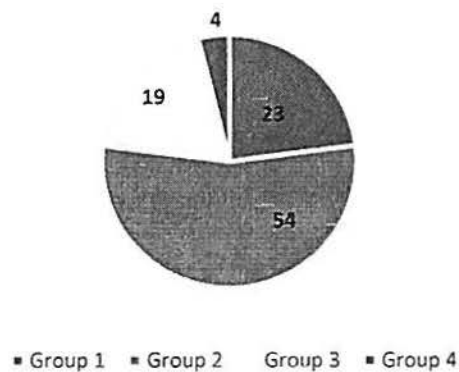


Figure 12. Distribution of scores by profile group for BCPS in 2017 (top) and 2018 (middle) and for the national normed sample to which BCPS data are compared (bottom).

## SUMMARY

### Participation

The 2018 administration of the CogAT® yielded profile scores for 13,466 (74.0% of second grade students) students. In total, 16,368 (89.9%) students attempted at least one battery of the CogAT®. Not all students attempted all three batteries, and some attempted but were not able to complete enough items to receive a score.

### Performance

Mean scores for BCPS students on the Verbal and Quantitative batteries were somewhat lower than the national sample to which it is compared (7.6 percentage points lower for verbal and 5.3 percentage points lower for quantitative). Scores for the nonverbal battery were 2.2 percentage points lower the national sample.

### Gifted Screener

One-hundred and forty-eight students who took all three batteries of the CogAT® met screening criteria for Plan A (1.1%). For Plan B, 1,397 students met the score criteria of the CogAT® (10.3%), with 655 also meeting the requirement of being ELL or FRL. Thirty-four students meeting Plan A criteria and 39 students meeting Plan B criteria had already been identified as gifted. In total, after accounting for duplication (some students met both Plan A and Plan B criteria), 756 students met screening criteria, 691 of which were not previously identified as gifted. The distribution of all students meeting screening criteria is 24% Black, 37% Hispanic, 22% White, 29% ELL2, and 74% FRL.

### Correlations with FSA

The 2018 CogAT® scores were well-correlated with the 2019 FSA in both reading and math. The composite score of all batteries of the CogAT® (SAS<sub>VQN</sub>) offered the best predictive value, having the highest correlations (.68 for 3<sup>rd</sup> grade reading and .71 for 3<sup>rd</sup> grade math).

### Deviations from Predicted Scores

Since CogAT® scores are correlated with standardized test scores, they are a good predictor of FSA performance. Students whose CogAT® exam predicts a substantially higher score than they achieve may not have had appropriate opportunities to learn in school, may not be motivated to learn, or may have a disability that interferes with their learning. Of the students who took the CogAT® in 2018, 347 students scored lower than expected on the 3<sup>rd</sup> grade FSA ELA and 442 for math. Students whose CogAT® score predicts standardized test scores that are lower than their actual performance may be working really hard to master the material. However, they may also be learning in a contextually bound manner and not learning to transfer information they learn in class to other situations. In ELA, 1,026 students had substantially higher 2019 3<sup>rd</sup> grade FSA scores than was predicted by the CogAT®. In math, 1,058 students were in this category.

### **Differentiated Instruction**

CogAT® scores provide valuable information to teachers in customizing instruction to meet the cognitive needs of students. Each elementary school is provided with their students CogAT® profile score and profile group. Each of the four groups have distinctive learning characteristics as well as instructional strategies that they benefit from. The majority of BCPS students taking the CogAT® in 2018 fell into Group Two (57.8%). Group One was the second largest group, with 30.7% of students belonging in this group. The two highest groups, Group Three (10.2%) and Group Four (1.2%) make up less than 15% of BCPS students. Nationally, 23% of students fall into the two highest categories.

### **DISCUSSION**

Since the release of the initial CogAT® report in October 2015, BCPS's Student Assessment and Research department has supplied teachers and principals with tools to help differentiate instruction.

In January and February of 2016, all District-run elementary school principals attended a CogAT® workshop along with one of their third grade teachers. In this half-day workshop, they learned how to translate CogAT® scores into meaningful information about the learning characteristics of each student. They also learned teaching strategies to support students based on their learning characteristics and had the opportunity to practice differentiating lessons and strategies to teach the same standard to all students, but in a way that is well-suited to the students' individual learning needs. As part of the training, a Using CogAT® Scores to Inform Instruction guide was distributed and is included in Appendix B.

At the workshop, principals expressed interest in receiving CogAT® scores in May so they could be used to help plan classroom placement for the following year. This information was posted on the DWH Reports folder on May 9, 2016. There was also interest in a letter template that could be used to share CogAT® scores with parents. A copy of this letter is included in Appendix C.

Discrepancy scores at the student level are posted in the DWH reports folder. Schools are encouraged to take a closer look at these students to determine if they need extra support. In the case of "underachievers," a good place to start is with gauging the student's level of engagement and motivation. A relative strength on the nonverbal battery is consistent with the student having a low level of motivation. If that is not a concern, the next step is to determine if the student has had been afforded appropriate opportunities to learn at school. Finally, screening for a physical or learning disability may be appropriate. In the case of "overachievers," a relative weakness on the nonverbal battery supports the idea that the student has worked exceptionally hard to achieve a high score on the FSA. A relative weakness on the verbal or quantitative battery may be an indication that the student's instruction has not focused on transfer.

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Exhibit III

**THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA**  
**DANIEL GOHL**  
**CHIEF ACADEMIC OFFICER**

DATE: April 24, 2020

TO: All Principals

FROM: Daniel Gohl  
Chief Academic Officer

VIA: Valerie S. Wanza, Ph.D.  
Chief School Performance and Accountability Officer

SUBJECT: **COGNITIVE ABILITIES TEST (COGAT®) 2018**

The Cognitive Abilities Test (CogAT®) has been used as a universal screener to identify gifted students from under-represented populations since 2011. In Broward County Public Schools, this is defined as having limited English Proficiency or qualifying for free or reduced-price lunch. The 2017-18 administration of the CogAT® identified 756 students who met criteria for further screening to determine gifted eligibility. Of those, 691 were not previously identified as gifted. Almost one-third (29%) of the students who met CogAT criteria for gifted screening are English Language Learners, and over two-thirds (74%) qualify for free or reduced-price lunch.

Information was provided to schools to help them use CogAT® scores to customize instruction to meet the needs of all students based on their level of cognitive development. All principals from traditional elementary schools attended training on using CogAT® scores to differentiate instruction during the 2015-16 school year. One anticipated outcome of the training was increased participation of students completing all three batteries of the CogAT®. In school year 2017-18, 74% of all second-grade students completed all three batteries of the CogAT® increasing participation by 3 percent point from the 2015-16 school year, (71%).

This report examines the results of the 2017-18 administration of the CogAT® as a gifted screener. It also shows deviations in predicted 3<sup>rd</sup> grade FSA scores based on 2<sup>nd</sup> grade CogAT scores.

Please direct any questions or comments concerning this report to Richard Baum, Director, Student Assessment & Research, at 754-321-2500. This report can also be found on the Student Assessment and Research website at <http://www.broward.k12.fl.us/sar/Releases.htm>.

VSW/DG/RB/JC:rs

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