

██████████, Assistant Commissioner  
Minnesota Department of Education  
1500 Highway 36 West  
Roseville, MN 55113

Re.: Complaint Decision File 19-043C on behalf of Students from ██████████

Dear Assistant Commissioner ██████████:

The Minnesota Department of Education (MDE) has reached a decision regarding the complaint ██████████ assistant commissioner of MDE (Complainant) brought on behalf of all Students with disabilities who participated in the spring 2018 Minnesota Test of Academic Skills (MTAS) (Students) at ██████████ School in ██████████ Independent School District ██████████ (District). An independent investigation was conducted, which was limited to allegations that occurred on or after December 21, 2017, one year prior to the date the complaint was received. The independent investigation included:

- An opportunity for the District to respond to the complaint.
- An opportunity for the Complainant and the District to submit additional information, either orally or in writing.
- An onsite visit.
- Discussions with the Complainant, District staff,<sup>1</sup> School administration,<sup>2</sup> and School staff.<sup>3</sup>
- A review of all relevant information.

Based on consideration of the information collected in the investigation, an independent decision was made about whether the District violated special education law. The decision addresses the issue from MDE's letter dated December 27, 2018. The District provided a written response to the complaint on January 16, 2019. The decision includes:

- Findings of fact and conclusions.
- The reasons for the final decision.
- Corrective action (remedies).

The findings of fact and conclusions, and reasons for the final decision, explain how the decision was reached on the issue. The decision section reports on whether there was a violation of special education law. Corrective action is included when appropriate. Corrective action outlines the remedies the school district must complete when a violation is found.

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<sup>1</sup> When referenced in this complaint decision, District staff includes District administration and/or District staff that work for the special education cooperative that serves the District.

<sup>2</sup> When referenced in this complaint decision, School administration includes the School principal and the School assessment coordinator.

<sup>3</sup> When referenced in this complaint decision, School staff includes special education teachers and general education teachers for grades 3 and 4.

The issues have been combined for organizational purposes.

## Issue 1

The Complainant alleges that, in the spring of 2018, the District failed to provide accommodations and modifications in conformity with the Students' individualized education programs (IEPs). Specifically, the Complainant alleges the District failed to administer the Minnesota Comprehensive Assessments (MCAs) with the accommodations listed in the Students' IEPs and instead administered the MTAS to the Students.

## Issue 2

The Complainant alleges that, based on the high percentage of District students taking the MTAS versus the statewide average, the Students' IEP teams, in determining which students take the MTAS instead of the MCA, did not properly limit MTAS takers to those students with the most significant cognitive disabilities that cannot participate in the MCA, even with accommodations.

## Findings of Fact

### *Background*

1. The Students are eligible for, and in need of, special education and related services. The Students include all students determined eligible to receive special education and related services attending [REDACTED] (School) in grades 3 and 4 within the District during the 2017-18 school year that participated in the spring 2018 MTAS.
2. The Complainant alleges the District failed to provide accommodations and modifications in conformity with Students' IEPs by administering to Students the spring 2018 MTAS instead of the MCAs with accommodations, as set forth in the Students' IEPs.
3. In its written response to the complaint, the District stated, in pertinent part: "The [D]istrict agrees that [it] failed to provide accommodations and modifications in conformity with the [S]tudents' IEPs as they were written."
4. The Complainant further alleges that, based on the high percentage of Students taking the MTAS versus the statewide average, the District did not properly limit MTAS takers to those students with the most significant cognitive disabilities that cannot participate in the MCA, even with accommodations.
5. In its written response to the complaint, the District stated, in pertinent part:

The Special Education Director agrees that based on the high percentage of District students taking the MTAS versus the statewide average, the Students' IEP teams, in determining which students take the MTAS instead of the MCA, did not properly limit MTAS takers to those students with the most significant

cognitive disabilities that [cannot] participate in the MCA, even with accommodations. [School] staff feel strongly that they have identified student state assessments appropriately.

### ***Statewide Assessments Overview***

6. All Minnesota public schools and school districts are responsible for administering statewide assessment tests to all students each year in grades 3 and 4 in the subject areas of math and reading.<sup>4</sup> According to MDE's website:<sup>5</sup>

The [MCAs] and alternate assessment, [MTAS], are the statewide tests that help districts measure student progress toward Minnesota's academic standards and meet the requirements of the Elementary and Secondary Education Act (ESEA) [ . . . ] Most students take the MCAs, but students who receive special education services and meet eligibility criteria may take the MTAS.

7. As required by state law,<sup>6</sup> MDE developed a Procedures Manual for the Minnesota Assessments for 2017-18 (Manual). In pertinent part, the Manual provides that school districts, prior to statewide assessment administration, are to identify appropriate tests for students, determine which students have an IEP and will be taking the MTAS, and enter Learner Characteristics Inventory for Alternate Assessments on Alternate Achievement Standards (LCI) form data in PearsonAccess Next.<sup>7</sup>

8. Regarding the LCI data, the Manual provides, in pertinent part:

For each student, the student's [LCI] must be completed and entered online before MTAS scores may be entered. The LCI is a research tool developed by the National Alternate Assessment Center (NAAC). The purpose of the LCI is to better understand the learning characteristics of students participating in alternate assessments based on alternate achievement standards. It is an instrument that helps Minnesota answer validity questions and extends our knowledge of the assessment population to ensure that the test is designed appropriately for students with the most significant cognitive disabilities; it also ensures that the intended population is participating in the test. . .

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<sup>4</sup> See Minn. Stat. § 120B.30.

<sup>5</sup> See [MDE's website](#) (last accessed January 29, 2019).

<sup>6</sup> See Minn. Stat. § 120B.30(n) ("The commissioner [of education] shall determine the testing process and the order of administration."); see also 34 C.F.R. § 300.160(b)(1) ("A State . . . must develop guidelines for the provision of appropriate accommodations [for statewide assessments].")

<sup>7</sup> According to the Manual: "PearsonAccess Next is used for the administration of MCA and MTAS. It allows users to sign in to create and manage users, set up test sessions for online testing, and access results. Districts are also able to download user guides and resources, access trainings, and access student resources without signing in."

[LCI] data must be entered online once for each student who will take the MTAS[.] . . . LCI data must be entered before any MTAS scores can be entered. Data entry opens one week prior to the start of the MTAS testing window to allow for earlier entry of LCI data. However, MTAS tasks cannot be administered and MTAS scores cannot be entered until the MTAS testing window opens. All MTAS student scores must be entered online before the end of the testing window.

Manual at 24, 135 (2017-18).

9. The LCI form is included as an appendix to the Manual. The LCI's purpose, as indicated on the form, is "to assist states in describing the population of students who take alternate assessments on alternate achievement standards. These students represent less than 1 [percent] of the total student population and come from a variety of disability categories but represent students with the 'most significant cognitive disabilities.'" The LCI is three pages in length, with 13 questions requiring the district to check which statement best describes the student in terms of the student's ability,<sup>8</sup> and one box titled, "Teacher Comments: Please share any additional information you would like for us to know about the learning characteristics of this student. Thank you for your time and honest answers."
10. For example, the Reading question on the LCI asks the district to check the best description for the student of the following:
  - Reads fluently with critical understanding in print or braille (e.g., to differentiate fact/opinion, point of view, emotional response, etc.)
  - Reads fluently with basic (literal) understanding from paragraphs/short passages with narrative/informational texts in print or braille.
  - Reads basic sight words, simple sentences, directions, bullets, and/or lists in print or braille.
  - Aware of text/braille, follows directionality, makes letter distinctions, or tells a story from the pictures that are not linked to the text.
  - No observable awareness of print or braille.
11. Additionally, the Mathematics question on the LCI asks the district to check the best description for the student of the following:

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<sup>8</sup> The titles of the 13 questions include: Classroom Setting; Augmentative Community System (Does your student use an augmentation communication system in addition to or in place of oral speech?); Speech Language as a Related Service; Expressive Communication; Receptive Language; Vision; Hearing; Motor; Engagement; Health Issues/Attendance; Reading; Mathematics; and Assistive Technology Devices the Student Will Use on the Assessment.

- Applies computational procedures to solve real-life or routine word problems from a variety of contexts.
- Does computational procedures with or without a calculator.
- Counts with 1:1 correspondence to at least 10, and/or makes numbered sets of items.
- Counts by rote to 5.
- No observable awareness or use of numbers.

12. The Manual also sets forth information about permissible accommodations for students on the MCA that do not invalidate the assessment. Such accommodations are too numerous to list. When interviewed as part of this complaint investigation, the MDE statewide assessment supervisor confirmed the MCA in reading does not allow an accommodation for oral presentation but the MCA in math and science both allow an accommodation of text-to-speech.

13. As required by federal law,<sup>9</sup> MDE has developed statewide alternate assessment guidelines titled, "Eligibility Requirements for the [MTAS]" (MDE MTAS Eligibility Guidelines). In pertinent part, the MDE MTAS Eligibility Guidelines provide:

#### **MTAS Eligibility Requirements**

The IEP team is responsible for making annual decisions about student participation in the statewide assessment program. The MTAS, an alternate assessment for students with the most significant cognitive disabilities, is one component of that program. The MTAS is designed to appropriately measure progress toward state standards for students who meet each of the criteria listed below.

The MTAS may be appropriate for a student with a significant cognitive disability if all of the following requirements have been met:

1. The IEP team first considered the student's ability to access the [MCA], with or without accommodations.
2. The IEP team reviewed the student's instructional program to ensure that the student is receiving instruction linked to the general education curriculum to the extent appropriate. If instruction is not linked to the

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<sup>9</sup> See 34 C.F.R. § 300.160(c)(1) ("[T]he State . . . must develop and implement alternate assessments and guidelines for the participation in alternate assessments of those children with disabilities who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs[.]")

general education curriculum, then the IEP team must review the student's goals and determine how access to the general curriculum will be provided.

3. The IEP team determined the student's cognitive functioning to be significantly below age expectations. The team also determined that the student's disability has a significant impact on his or her ability to function in multiple environments, including home, school and community.
4. The IEP team determined that the student needs explicit and intensive instruction and/or extensive supports in multiple settings to acquire, maintain and generalize academic and life skills in order to actively participate in school, work, home and community environments.
5. The IEP team documented, in the IEP, reasons the MCA would not be an appropriate measure of the student's academic progress and how the student would participate in statewide testing.

MDE MTAS Eligibility Guidelines at 2.

14. Included in the MDE MTAS Eligibility Guidelines is a flow chart (MDE MTAS flow chart), which is attached to this complaint decision as Appendix A.

#### ***The District's Administration of the Spring 2018 Statewide Assessments***

15. Documentation provided by the District reflects that 20 students determined eligible to receive special education and related services attending the School in grades 3 and 4 participated in the spring 2018 MCAs, with or without accommodations, 11 of which were in grade 3, and nine of which were in grade 4.
16. Documentation provided by the District reflects that 27 Students participated in the spring 2018 MTAS in math, reading, or both, 16 of which were in grade 3, and 11 of which were in grade 4.<sup>10</sup>
17. According to data publicly available on MDE's website, the total enrollment of students attending the School in grade 3 for the 2017-18 school year was 80. Thus, 20 percent of students attending the School in grade 3 during the 2017-18 school year participated in the spring 2018 MTAS in math, reading, or both.
18. According to data publicly available on MDE's website, the total enrollment of students attending the School in grade 4 for the 2017-18 school year was 90. Thus, 12.2 percent of students attending School in grade 4 during the 2017-18 school year participated in the spring 2018 MTAS in math, reading, or both.

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<sup>10</sup> These Students include: Student 1, Student 2, Student 3, Student 4, Student 5, Student 6, Student 7, Student 8, Student 9, Student 10, Student 11, Student 12, Student 13, Student 14, Student 15, Student 16, Student 17, Student 18, Student 19, Student 20, Student 21, Student 22, Student 23, Student 24, Student 25, Student 26, Student 27.

19. For each of the 27 Students that participated in the spring 2018 MTAS, the District provided the following: the IEPs in effect at the time the Student participated in the spring 2018 MTAS, the Student's most recent special education evaluation reports, any spring 2018 Notice of Team Meetings and/or meeting notes for each Student, the Student's spring 2018 progress reports, the Student's 2017-18 school year report cards and grades, the Student's 2017-18 school year school schedules, the Student's LCI form, and a document titled "Decision Making Process for the MTAS" created by School administration in about November 2018 to provide insight into School staff's decision-making process as to which Students should participate in the MTAS.<sup>11</sup>
20. During interviews, School staff reported that an administrative meeting was held in January 2018 at the School with the School principal, the School assessment coordinator (SAC), and School special education teachers.<sup>12</sup> School staff credibly and consistently reported the purpose of the January 2018 meeting was to discuss whether the MCA or MTAS was more appropriate for each student determined eligible to receive special education and related services attending the School in grades 3 and 4.
21. School staff consistently reported that, in discussing each student's MTAS eligibility during the January 2018 meeting, School staff focused on whether a student was academically behind in either reading or math, with most School staff reporting they focused on whether a student was two or more grade levels behind their peers. In determining which statewide assessment was appropriate for each student, School staff reported they compared data compiled by the SAC about each student's progress toward grade-level curriculum with the MDE MTAS flow chart. The SAC reported such data included information regarding the student's present levels of performance in reading and math, including the student's average words per minute in reading and number of known sight words.
22. School staff reported that, based on their discussion at the January 2018 meeting, each case manager was supposed to schedule IEP team meetings with the parents of Students that School staff discussed should take the MTAS and inform parents of statewide testing options. Several School staff reported, in some cases, they recommended to parents that the Student take the MTAS over the MCA and that parents relied upon their recommendations. Other School staff reported they simply informed parents

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<sup>11</sup> The "Decision Making Process for the MTAS" document created by School administration parrots the following five questions from the MDE MTAS flow chart, and then provides an answer to each question for each Student:

1. Has the IEP team determined that the student's cognitive disability precludes his or her participation in the MCA?
2. Is the student receiving instruction linked to the general education curriculum to the extent appropriate?
3. Is the student's cognitive functioning significantly below age expectations?
4. Does the student's disability have a significant impact on his/her ability to function in multiple environments?
5. Does the student need explicit and intensive instruction and/or extensive supports in multiple settings to acquire, maintain and generalize academic and life skills.

The "Decision Making Process for the MTAS" document does not address for any Student the first item on the MDE MTAS flow chart: "The IEP team discusses the appropriateness of the MCA, with or without accommodations, as a measure of the student's academic progress."

<sup>12</sup> Only one School staff member interviewed stated he did not attend the January 2018 meeting. He reported the SAC asked him individually about which of the students on his case load he believed should take the MTAS, and he reported he only recommended one student from his case load take the MTAS.

of the statewide assessment options and did not offer their recommendation unless asked. School staff consistently reported the IEP team was responsible for the ultimate decision of whether the Student was to take the MCA, with or without accommodations, or the MTAS, and if the parent wanted the Student to take the MCA, the Student's IEP accurately reflected that decision.

23. The SAC reported that, in advance of the MCA and MTAS test dates in spring 2018, she created the testing schedule for all students, including students determined eligible to receive special education and related services, attending the School in grades 3 and 4. She reported she created the schedule based in part on which students School staff discussed should take the MTAS at the January 2018 meeting as well as what was subsequently reported to her by each Student's case manager.
24. School staff reported that, prior to administering the spring 2018 MTAS, each Student's case manager filled out an LCI form for each of the 27 Students that would be participating in the spring 2018 MTAS. The SAC reported she confirmed that each of the 27 Students had an LCI form filled out and entered into the testing system.
25. The SAC reported she did not cross-confirm the Students for whom she had an LCI form filled out and entered into the testing system also had the MTAS listed in their respective IEPs as the statewide assessment in which the Student would participate. Instead, she relied upon the list of students School staff discussed should take the MTAS at the January 2018 meeting as well as what was subsequently reported to her by each Student's case manager.
26. In its written response to the complaint, the District stated, in pertinent part:

In the [ ] Special Education Cooperative, there is a Due Process Specialist (DPS) whose primary role is to review all due process for all teachers in the Cooperative's six districts, provide feedback to teachers to assist them with meeting compliance requirements and work with [MDE] to ensure that interpretations of rules and regulations are correct. In order for our DPS to know due process paperwork is ready to be reviewed, case managers are expected to email the DPS and notify her of whom the student is and what paperwork needs to be reviewed.

In January 2018, our [ ] Special Education Cooperative's DPS started to notice paperwork that she was notified to review had state assessments listed that did not align with district assessments, accommodations and/or modifications needed and cognitive disabilities identified in student evaluations. The DPS spoke with the Director of Special Education about these concerns and was directed by the Special Education Director to provide that feedback to the teachers. Due to this continuing pattern of high MTAS assessment numbers over the course of the next month with minimal verification in the IEP and Evaluation to support the decision, the Director of Special Education sent out an email on March 22, 2018 to all Building Principals in the [ ] Special Education Cooperative.

. . .



27. The special education director's March 22, 2018 email to District and School administration stated, in pertinent part:

Each year as IEPs are reviewed, we are noticing an increase in IEPs that are documenting a student qualifies for the MTAS assessment. There are many cases where this is coming from [Specific Learning Disability (SLD)], [Emotional Behavioral Disorder (EBD)] and [Other Health Disability (OHD)] IEPs and the justification written in the IEP is that the determination is based on a student reading or performing below grade level.

I have attached the MTAS eligibility flow chart for assessments. As you work through the flow chart, you can see that most often a student who qualifies for an MTAS is served under the [Developmental Cognitive Delay (DCD)]/[Severely Multiply Impaired (SMI)] category. Districts should not exceed 1 [percent] of the student population taking the MTAS assessment and currently many of our districts do exceed that limit.

Please look over the flow chart and let me know if you have questions. I wanted to be able to provide some direction for you as you help guide IEP teams. This is a public document from MDE and is built in Sped Forms as a link on the assessment page, so anyone has access to it.

Moving forward, I have asked [the DPS] to let case managers know if the MTAS is on an IEP and there is not justification for it. She will refer to the flow chart as well.

28. Via email later that same date, School administration responded to the special education director as follows: "We use this flow chart for determination with every student taking the MTAS. The MCA Assessment manual states 1 [percent] of the state population not the district population. Just thought you might want to know that in case someone is confused."
29. Via email later that same date, the special education director responded to School administration, stating:

Some of our districts are getting this information as well:

***Alternate Assessment Waiver Process Discontinued***

Under the Every Student Succeeds Act (ESSA), there is no longer a local 1 percent cap for MTAS. As a result districts will no longer be asked to submit a waiver if they anticipate more than 1 percent of their tested students will take

the MTAS. The waiver process has been removed from Test WES.<sup>13</sup> ESSA does maintain a 1 percent cap at the statewide level, so MDE will be analyzing MTAS administration data after testing is completed and following up individually with districts where MTAS participation exceeds 1 percent for reasons that cannot be explained by the district's small size or special programs the district operates that attract students likely to take the MTAS.

...

I just wanted to be sure staff are prepared if MDE were to ask questions about our participation levels.

(Emphasis in original.)

30. Documentation provided by the District reflects that, on March 19, 20, and 21, 2018, the District administered the spring 2018 MTAS in math to the Students.
31. Documentation provided by the District reflects that, on March 22 and 23, 2018, and April 9, 10, 11, and 12, 2018, the District administered the spring 2018 MTAS in reading to the Students.
32. In its written response to the complaint, the District stated, in pertinent part:

On April 6, 2018[,] at 7:45am, the Director of Special Education and Special Education Coordinator met with the special education teachers at [School.] The purpose of the meeting was to discuss some changes to a contract with a mental health agency the district partners with. At the end of the discussion, the Special Education Director gave the teachers an opportunity to ask questions about their concerns with the feedback they were receiving on the MTAS from our DPS. The teachers explained that they felt that they had justified the IEP teams['] decision in the IEP for MTAS assessment. When the Special Education Director explained that from her perspective and interpretation of the law, the IEP team hadn't justified the student taking an MTAS over an MCA due to the lack of evidence of a significant cognitive disability/impairment, the teachers disagreed. The Special Education Director informed them at that point that she can not [sic] support how they have determined who takes the MTAS. It was explained that there should be a correlation throughout the evaluation and IEP that demonstrates a cognitive disability, as that is the first step in the MDE MTAS flowchart to determine eligibility for MTAS. After that meeting, our DPS continued to give the feedback she was directed based on the guidance document from the MDE MTAS flowchart.

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<sup>13</sup> [Test WES](#) is a data submissions page on the MDE website (last accessed January 29, 2019).

In interviewing the Due Process Specialist [for this complaint], she provided information from emails that were sent to teachers with feedback on her concerns with the MTAS assessment on several IEPs. In most cases, the justification that she received back in the Cooperative office from special education teachers is that the IEP team determined the MTAS was the appropriate assessment for the student or she received no response at all.

During interviews with the six special education teachers [at School] on January 9, 2019, [for this complaint,] there seemed to be a misunderstanding of the interpretation of what the term “significant cognitive disability” means. Special education cooperative administration and the [DPS] have given the guidance that “significant cognitive disabilities” refers to a combination of the student’s full scale intellectual score on a special education evaluation along with disability category the student receives services in and the functional level of each student. Each decision is still made on an individual basis but these items are a starting point to see if the MTAS is an option to be discussed or if the discussion should be focused more on what accommodations will be needed on the MCA so the student is able to participate in that assessment.

Overwhelmingly, [School] staff disagreed with that guidance and feel that a student functioning below grade level, using modified curriculum, grade level assessment data and the behavioral needs and mental health needs of the child have a larger determination in determining if a student has a significant cognitive disability.<sup>14</sup>

33. In its written response to the complaint, the District stated, in pertinent part:

On April 17, 2018, the MDE MTAS flowchart was brought to the [ ] Special Education Cooperative Superintendent meeting and was reviewed with Superintendents. The [District] Superintendent was in attendance at that meeting. On April 26, 2018[,] the MDE MTAS flowchart was brought to the [ ] Special Education Cooperative Principal meeting and reviewed with Principals. The [School] Principal was in attendance at this meeting.

### ***The District’s Administration of District-wide Assessments***

34. School districts may additionally choose to administer district-wide assessments to students.<sup>15</sup> District-wide assessments are not mandated by state or federal law.

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<sup>14</sup> The District’s written response is an accurate reflection of School staff interviews taken as a part of this complaint investigation.

<sup>15</sup> See Minn. Stat. § 120B.301 (limiting amount of time students may be assessed via statewide and district-wide assessments in a school year).

35. School staff reported the District administers the following district-wide assessments to students attending the School in grades 3 and 4, unless a student's IEP states otherwise or provides for an alternate district-wide assessment: AIMSweb for reading fluency probes<sup>16</sup> and STAR 360 math and reading assessments.<sup>17</sup>
36. Documents provided by the District reflect that Students' IEPs regularly set forth that the Student would participate in the spring 2018 MTAS but participate in a district-wide assessment such as AIMSweb and STAR 360 without any accommodations. When questioned about this aspect of the Students' IEPs, School staff had varying explanations.
37. Several School staff reported that some Students' IEPs fail to list the accommodations they are receiving. For example, one School staff member reported the district-wide STAR 360 assessments in reading and math are administered in the small group setting in a special education room, which is an accommodation. The School staff member reported that, often times, the Students are actually taking that test individually or in a small group setting at 10 minutes at a time over the course of several days, all of which are accommodations and should have been listed as such in the Student's IEP.
38. One School staff member stated that, although the STAR 360 reading assessment might be listed in a Student's IEP, that staff member actually administers the early literacy version of the STAR reading assessment, and not the STAR reading assessment at that Student's present grade level. Likewise, the School staff member stated she might administer the AIMSweb at a grade level lower than the Student's present-grade level. She stated the Student is essentially taking the alternate version of the district-wide assessment.
39. Yet another School staff member reported the AIMSweb is a reading fluency test and, because it is adaptive—that is, it adapts the questions to the Student's ability level as the Student is taking the assessment—the Students do not need an accommodation, as it does not test the Student's skill at a particular grade level. Rather, the AIMSweb test assesses what the Student's reading level is. She further reported the AIMSweb test is only about one minute total in length, and the assessment's brevity is why Students would not need accommodations for the AIMSweb district-wide assessments.

***Students with MCA with Accommodations Listed in IEP but Administered the Spring 2018 MTAS***

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<sup>16</sup> School staff reported, when referenced in Students' IEPs, AIMSweb, R-CBM (Reading – Curriculum Based Measurement), ORF (Oral Reading Fluency), and reading fluency probes are the same assessment.

<sup>17</sup> School staff reported, when referenced in Students' IEPs, STAR 360 and STAR assessments for reading and math are the same assessment.

40. A review of District records indicates there were seven Students attending the School in grades 3 and 4 whose IEPs in effect at the time of the District's administration of the spring 2018 MTAS indicate they were to participate in the MCA with accommodations but were administered the MTAS instead.<sup>18</sup>

a. Student 12:

- i. Student 12 was a Student attending the School in grade [REDACTED] at the time she participated in the spring 2018 MTAS.
- ii. Student 12 participated in the spring 2018 MTAS in reading on March 22 and 23, 2018. Student 12 participated in the spring 2018 MCA in math.
- iii. The Assessments section regarding state assessments for accountability of Student 12's IEP dated May 23, 2017 (May 2017 IEP), in effect during the testing period, provides for the following accommodations for the MCA in both reading and math: "Extended testing time of sections/segments over multiple testing sessions[.]"
- iv. The Assessments section regarding district-wide assessments of Student 12's May 2017 IEP provides that she will take the AIMSweb with "[n]o accommodations needed."
- v. During interviews, Student 12's case manager reported recalling that Student 12's parents expressed they wanted Student 12 to take the MTAS at an IEP team meeting sometime after the January 2018 administrative meeting and before the spring 2018 MTAS, and the case manager forgot to amend her IEP accordingly.
- vi. Documentation provided by the District reflects no IEP team meetings were held between May 2017 and May 2018 for Student 12.

b. Student 13:

- i. Student 13 was a Student attending the School in grade [REDACTED] at the time she participated in the spring 2018 MTAS.
- ii. Student 13 participated in the spring 2018 MTAS in math on March 20, 2018, and the spring 2018 MTAS in reading on April 11 and 12, 2018.
- iii. Student 13's IEP was [REDACTED] dated April 14, 2017 (April 2017 IEP). [REDACTED]  
[REDACTED] Student 13's April 2017 IEP stated she would take [REDACTED] accommodations. The Statewide Assessments section of Student 13's April 2017 IEP

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<sup>18</sup> These Students include: Student 12 [REDACTED], Student 13 [REDACTED], Student 18 [REDACTED], Student 19 [REDACTED], Student 21 [REDACTED], Student 22 [REDACTED], and Student 24 [REDACTED].

provides for the following accommodations [REDACTED]:  
“alternate setting and oral presentation.”

- iv. The Assessments section regarding district-wide assessments of Student 13’s April 2017 IEP provides that she will take district-wide assessments with the following accommodations: “alternate setting and oral presentation.”
- v. Student 13’s case manager reported they administered the MTAS to Student 13 because her previous [REDACTED] school district explained Student 13 needed all items to be presented orally, [REDACTED], then she should receive the alternate assessment, or rather the MTAS. Student 13’s case manager further reported the IEP team, including Student 13’s parent, agreed that Student 13 should take the MTAS in lieu of the MCA with accommodations [REDACTED].
- vi. [REDACTED] School staff stated they found out at the January 2, 2018 meeting that Student 13 was a student determined eligible to receive special education and related services. No IEP team meeting was held for Student 13 after January 2, 2018, and prior to the spring 2018 MTAS administration.

c. Student 18:

- i. Student 18 was a Student attending the School in grade [REDACTED] at the time he participated in the spring 2018 MTAS.
- ii. Student 18 participated in the spring 2018 MTAS in reading on April 11 and 12, 2018. Student 18 participated in the spring 2018 MCA in math.
- iii. The Assessments section regarding state assessments for accountability of Student 18’s IEP dated February 19, 2018 (February 2018 IEP), provides for the following accommodations for the MCA in both reading and math: “Extended testing time[; and] Individual or small-group settings.” For math, Student 18’s February 2018 IEP provides for the following additional accommodation: “Accommodated [REDACTED] for mathematics and science assessments.”
- iv. The Assessments section regarding district-wide assessments of Student 18’s February 2018 IEP provides that he will take the AIMSweb with “[e]xtended time[;] [s]mall group or individual setting.”
- v. Student 18’s case manager reported that she saw his name listed on the testing schedule as taking the MTAS sometime in the spring 2018 but failed to check which test—the MTAS or MCA—his IEP reflected he be administered.

- vi. Documents provided by the District reflect that no IEP team meeting was held for Student 18 after February 9, 2018 and prior to the spring 2018 MTAS administration.

d. Student 19:

- i. Student 19 was a Student attending the School in grade [REDACTED] at the time he participated in the spring 2018 MTAS.
- ii. Student 19 participated in the spring 2018 MTAS in reading on April 9 and 10, 2018. Student 19 participated in the spring 2018 MCA in math.
- iii. The Assessments section regarding state assessments for accountability of Student 19's IEP dated November 14, 2017 (November 2017 IEP), provides for the following accommodations for the MCA in both reading and math: "Extended testing time of sections/segments over multiple testing sessions[.] Student is tested individually or in a small-group setting."
- iv. The Assessments section regarding district-wide assessments of Student 19's November 2017 IEP provides that he will take the AIMSweb with "[n]o accommodations needed."
- v. Student 19's case manager reported that she saw his name listed on the testing schedule as taking the MTAS sometime in the spring 2018 but failed to check which test—the MTAS or MCA—his IEP reflected he be administered.
- vi. Documentation provided by the District reflects that no IEP team meetings were held for Student 19 after November 2017, and prior to the spring 2018 MTAS administration.

e. Student 21:

- i. Student 21 was a Student attending the School in grade [REDACTED] at the time she participated in the spring 2018 MTAS.
- ii. Student 21 participated in the spring 2018 MTAS in math on March 20, 2018, and the spring 2018 MTAS in reading on March 22 and 23, 2018.
- iii. The Assessments section regarding state assessments for accountability of Student 21's IEP dated May 25, 2017 (May 2017 IEP), provides for the following accommodations for the MCA in reading: "Extended testing time of sections/segments over multiple testing sessions." Student 21's May 2017 IEP also provides for the following accommodations for the MCA in math: "Accommodated [REDACTED] for mathematics and science assessments."

- iv. The Assessments section regarding district-wide assessments of Student 21's May 2017 IEP provides that she will take the Reading MCA and Math MCA<sup>19</sup> with "[e]xtended time to complete tests."
  - v. Student 21's case manager reported recalling that Student 21's parent expressed she wanted Student 21 to take the MTAS at an IEP team meeting sometime after the January 2018 administrative meeting and before the spring 2018 MTAS, and the case manager forgot to amend her IEP accordingly. When asked what changed [REDACTED] for Student 21 such that the IEP team felt she should participate in the MTAS instead of the MCA with accommodations, Student 21's case manager reported the primary difference was in the School's interpretation that "most significant cognitive disability" included those students that were working two years or more behind in reading and math rather than focusing on cognitive ability or intelligence quotient (IQ).
  - vi. Documents provided by the District reflect that no IEP team meeting was held for Student 21 after the School administrative meeting in January 2018 and prior to the spring 2018 MTAS administration.
- f. Student 22:
- i. Student 22 was a Student attending the School in grade [REDACTED] at the time she participated in the spring 2018 MTAS.
  - ii. Student 22 participated in the spring 2018 MTAS in math on March 21, 2018, and the spring 2018 MTAS in reading on April 11 and 12, 2018.
  - iii. The Assessments section regarding state assessments for accountability of Student 22's IEP dated October 18, 2017 (October 2017 IEP), provides for the following accommodations for the MCA in both reading and math: "Extended testing time of sections/segments over multiple testing sessions[.]"
  - iv. The Assessments section regarding district-wide assessments of Student 22's October 2017 IEP provides that she will participate in fluency checks, STAR Reading assessment, and STAR Math assessment. No accommodations are listed.
  - v. Student 22's case manager at School reported recalling that Student 22's parent expressed wanting Student 22 to take the MTAS at an IEP team meeting sometime after the January 2018 administrative meeting and before the spring 2018 MTAS, and the case manager forgot to amend her IEP accordingly.

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<sup>19</sup> The Reading MCA and Math MCA are not district-wide assessments.



- vi. Documentation provided by the District reflects that no IEP team meetings were held for Student 22 after October 2017, and prior to the spring 2018 MTAS administration.

g. Student 24:

- i. Student 24 was a Student attending the School in grade [REDACTED] at the time he participated in the spring 2018 MTAS.
- ii. Student 24 participated in the spring 2018 MTAS in reading on April 11 and 12, 2018. Student 24 participated in the spring 2018 MCA in math.
- iii. The Assessments section regarding state assessments for accountability of Student 24's IEP dated January 17, 2018 (January 2018 IEP), provides for the following accommodations for the MCA in both reading and math: "Extended testing time[, and] Individual or small-group settings[.]"
- iv. The Assessments section regarding district-wide assessments of Student 24's January 2018 IEP provides that he will participate in AIMSweb with "[n]o accommodations needed."
- v. Student 24's case manager at School reported Student 24's parent expressed wanting him to take the MTAS during an IEP team meeting prior to the spring 2018 MTAS "because of his behaviors, [REDACTED] because the MCA was too difficult for him. Student 24's case manager at School stated he accidentally erred when he copied and pasted the statewide assessment information into Student 24's IEP from another student's IEP, as almost all of his students participate in the MCA with accommodations, and that Student 24's IEP should have reflected he participate in the MTAS.
- vi. Documentation provided by the District reflects that no IEP team meetings were held for Student 24 after January 17, 2018, and prior to the spring 2018 MTAS administration.

***Students Administered Spring 2018 MTAS with the MTAS Listed in their IEPs***

- 41. Documentation provided by the District reflects there were 19 Students whose IEPs in effect at the time they participated in the spring 2018 MTAS indicate they were to participate in the MTAS.<sup>20</sup>
- 42. Documentation provided by the District reflects there was one Student whose IEP in effect at the time he participated in the spring 2018 MTAS indicated statewide assessments were not administered at his grade level.<sup>21</sup>

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<sup>20</sup> These Students include: Student 1, Student 2, Student 3, Student 4, Student 5, Student 6, Student 8, Student 9, Student 10, Student 11, Student 14, Student 15, Student 16, Student 17, Student 20, Student 23, Student 25, Student 26, and Student 27.

<sup>21</sup> This Student is Student 7.

43. Documentation provided by the District reflects the Special Education Cooperative DPS flagged for review the IEPs for 10 Students on the basis that the Student's MTAS determination for spring 2018 seemed inconsistent with districtwide assessments eligibility and/or the Student's intellectual functioning as stated in their evaluation report.<sup>22</sup>
44. Each of the 20 Students that either had the spring 2018 MTAS or, in one case, no statewide assessment, listed in their IEP, and participated in the spring 2018 MTAS, is analyzed below and, where they exist, the DPS's concerns are included:
- a. Student 1:
- i. Student 1 was a Student attending the School in grade [REDACTED] at the time he participated in the spring 2018 MTAS.
  - ii. Student 1 participated in the spring 2018 MTAS in math on March 19, 2018, and the spring 2018 MTAS in reading on April 11 and 12, 2018.
  - iii. The Assessments section regarding state assessments for accountability of Student 1's IEP dated November 8, 2017 (November 2017 IEP), in effect during the testing period, provides that he will participate in the MTAS. The basis for that decision provides: "Student 1 displays skills that are [two] grade levels below his peers. He receives an alternate curriculum in the resource room setting."
  - iv. The Assessments section regarding district-wide assessments of Student 1's November 2017 IEP provides that he will take the STAR 360 and AIMSweb Reading Probes. Regarding accommodations for these assessments, Student 1's IEP states: "One on one assessment in a quiet environment. Assessment administered in segments of short duration."
  - v. Documentation provided by the District reflects no IEP team meetings were held between December 2017 and May 2018 for Student 1.
  - vi. Student 1's most recent special education evaluation report dated November 8, 2017, provides, in pertinent part, that he has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED], and extremely low cognitive functioning, as measured by the WISC-V.
  - vii. In relevant part, on the LCI form filled out by the District regarding Student 1 for the spring 2018 MTAS, the District checked the following boxes under the Reading and Mathematics questions, respectively: "Reads fluently with basic (literal) understanding from paragraphs/short passages with narrative/informational texts in print or braille" and "Does

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<sup>22</sup> These Students include: Student 3, Student 9, Student 10, Student 11, Student 17, Student 20, Student 21, Student 25, Student 26, and Student 27.

[math] computational procedures with or without a calculator.” There are no teacher comments on the LCI form regarding Student 1.

- viii. On the “Decision Making Process for the MTAS” that School administration created for Student 1 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: “The IEP team first considered the student’s ability to access the [MCA], with or without accommodations.” Elsewhere on the document, in pertinent part, in response to the question of whether the Student’s cognitive functioning is significantly below age expectations, School administration stated: “The team has decided that the MTAS is the best assessment for Student 1 due to his current academic and cognitive skills (fluency [REDACTED] errors, comprehension and modified math curriculum [REDACTED]), his inability to independently start and complete academic tasks and his significant behavioral needs.” Finally, in response to the question of whether the Student’s disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: “Student 1’s disability interferes with his ability to be successful without adult support in multiple school environments.” The District did not provide specific information about Student 1’s needs in other settings, such as home and community.

b. Student 2:

- i. Student 2 was a Student attending the School in grade [REDACTED] at the time she participated in the spring 2018 MTAS.
- ii. Student 2 participated in the spring 2018 MTAS in math on March 19, 2018, and the spring 2018 MTAS in reading on April 9 and 10, 2018.
- iii. Student 2 had two separate IEPs in effect when she participated in the spring 2018 MTAS for math and reading. Student 2’s IEP in effect during the spring 2018 MTAS for math is dated April 4, 2017 (April 2017 IEP). Student 2’s IEP in effect during the spring 2018 MTAS for reading is dated March 26, 2018 (March 2018 IEP).
- iv. The Assessments section regarding state assessments for accountability of both Student 2’s April 2017 and March 2018 IEPs provide that Student 2 will participate in the MTAS. The basis for that decision provides:

Due to Student 2’s disability [REDACTED] and low cognitive ability, Student 2 is unable to complete academic tasks at grade level. Student 2 is over two years behind her same aged peers in reading and it has been determined that her disability impacts all areas of school life, that qualifies her to take the MTAS.
- v. The Assessments section regarding district-wide assessments of Student 2’s April 2017 and March 2018 IEPs regarding district-wide assessments provide that Student 2 will take the

STAR 360 Assessment/Reading. Regarding accommodations for this assessment, Student 2's April 2017 and March 2018 IEPs both state: "No accommodations needed."

- vi. Documentation provided by the District reflects an IEP team meeting was held on March 26, 2018, for Student 2. No other IEP team meetings were held in the spring of 2018 for Student 2.
  - vii. Student 2's most recent special education evaluation report dated March 14, 2017, provides, in pertinent part, that she has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED], and extremely low cognitive functioning, as measured by [REDACTED]<sup>23</sup>
  - viii. In relevant part, on the LCI form filled out by the District regarding Student 2 for the spring 2018 MTAS, the District checked boxes under the Reading and Mathematics questions, respectively: "Reads basic sight words, simple sentences, directions, bullets, and/or lists in print or braille" and "Does [math] computational procedures with or without a calculator." There are no teacher comments on the LCI form regarding Student 2.
  - ix. On the "Decision Making Process for the MTAS" that School administration created for Student 2 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: "The IEP team first considered the student's ability to access the [MCA], with or without accommodations." Elsewhere on the document, in response to the question of whether the Student's cognitive functioning is significantly below age expectations, School administration stated: "The team has decided that the MTAS is the best assessment for Student 2 due to her current academic and cognitive skills (fluency [REDACTED] errors, comprehension [REDACTED] level, and math skills [REDACTED]), the need to which she requires 1:1 adult support and complete academic tasks, navigate her school environment, personal care and safety." Finally, in response to the question of whether the Student's disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: "Student 2's disability interferes with her ability to be successful without adult support in all school environments." The District did not provide information about Student 2's needs in other settings, such as home, school, and community.
- c. Student 3:
- i. Student 3 was a Student attending the School in grade [REDACTED] at the time she participated in the spring 2018 MTAS.

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<sup>23</sup> As her evaluation report provides, the [REDACTED] "is a standardized, norm-referenced, individually administered test designed to measure the general cognitive ability for children and adolescents ages 4.0 to 21.11."

- ii. Student 3 participated in the spring 2018 MTAS in math on March 20, 2018, and the spring 2018 MTAS in reading on March 22 and 23, 2018.
- iii. The Assessments section regarding state assessments for accountability of Student 3's IEP dated March 12, 2018 (March 2018 IEP), in effect during the testing period, provides that she will participate in the MTAS. The basis for that decision provides: "Student 3 is working over two years below grade level in all academic areas."
- iv. The Assessments section regarding district-wide assessments of Student 3's March 2018 IEP provides that she will take reading fluency checks, STAR math assessment, and STAR reading assessment. Regarding accommodations for these assessments, Student 3's IEP states: "No accommodations are identified."
- v. Documentation provided by the District reflects an IEP team meeting was held March 12, 2018, for Student 3. No other IEP team meetings were held in the spring of 2018 for Student 3.
- vi. In an email dated March 22, 2018, the DPS wrote to Student 3's case manager stating, in pertinent part: "MTAS – We need to start closely monitoring who is being given the MTAS – being behind in grade level is not a reason to take it. Only 1 [percent] of the school[']s population is allowed to take the MTAS by state standards. The main reason a student should take the MTAS is for severe cognitive impairment shown on the evaluation. Currently School is way over this 1 [percent]. I am attaching the flowchart (which is also at the top of SPed [sic] forms page for assessment)[.]"
- vii. The District provided no data showing Student 3's March 2018 IEP was changed as a result of the DPS' March 22, 2018 email.
- viii. Student 3's most recent special education evaluation report dated March 17, 2017, provides, in pertinent part, that she has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED], and extremely low cognitive functioning, as measured by the WISC-V. The evaluation report further provides, in pertinent part:

Throughout the testing session Student 3 was cooperative and pleasant. She did state at times "I don't get it." Writing was slow for Student 3. She was also quick to [say] "don't know" or "I forgot." She stated she was more comfortable in day [two] than first day. The first session was made up of most of the subtests that make up the Full Scale IQ. Review of Student 3's records indicates she received much higher results on the WISC-IV on [March 5, 2014] with a Full Scale IQ [REDACTED]. Overall the results of the current evaluation are considered to be [a] questionable indication of Student 3's intellectual ability at the present time. Her results from [three] years ago may be more accurate.

- ix. In relevant part, on the LCI form filled out by the District regarding Student 3 for the spring 2018 MTAS, the District checked boxes under the Reading and Mathematics questions, respectively: "Reads basic sight words, simple sentences, directions, bullets, and/or lists in print or braille" and "Does [math] computational procedures with or without a calculator." The teacher comments state: "Student 3 is working over two years below grade level[.]"
- x. On the "Decision Making Process for the MTAS" that School administration created for Student 3 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: "The IEP team first considered the student's ability to access the [MCA], with or without accommodations." Elsewhere on the document, in response to the question of whether the Student's cognitive functioning is significantly below age expectations, School administration stated: "The team has decided that the MTAS is the best assessment for Student 3 due to her current academic and cognitive skills (fluency, comprehension, and math skills [REDACTED]), her inability to independently start and complete tasks, and her current mental health needs." Finally, in response to the question of whether the Student's disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: "Student 3's disability interferes with her ability to be successful without adult support in multiple school environments." The District did not provide information about Student 3's needs in other settings, such as home and community.

d. Student 4:

- i. Student 4 was a Student attending the School in grade [REDACTED] at the time she participated in the spring 2018 MTAS.
- ii. Student 4 participated in the spring 2018 MTAS in math on March 19, 2018, and the spring 2018 MTAS in reading on March 22 and 23, 2018.
- iii. The Assessments section regarding state assessments for accountability of Student 4's IEP dated March 7, 2018 (March 2018 IEP), in effect during the testing period, provides that she will participate in the MTAS. The basis for that decision provides:

The IEP team established that the MCA is not an appropriate measure of Student 4's knowledge and skills on grade-level content standards, even when Student 4 is provided allowable and appropriate accommodations. Student 4 is currently reading at [REDACTED] reading level. She is two grade levels below her grade level in math. Student 4 has access to the general education curriculum, and has opportunities to actively engage in learning the content and skills of the general education curriculum. The IEP team determined that Student 4 needs explicit and intensive instruction and/or extensive supports in multiple settings to acquire, maintain and generalize academic and life skills in

order to actively participate in school, work, home and community environments.

- iv. The Assessments section regarding district-wide assessments of Student 4's March 2018 IEP provides that she will take AIMSweb and STAR math and reading. Regarding accommodations for AIMSweb, Student 4's IEP states: "No accommodations required." Regarding accommodations for STAR math and reading, Student 4's IEP states: "Extended time to complete tests[.] Frequent breaks[.]"
- v. Documentation provided by the District reflects an IEP team meeting was held March 1, 2018, for Student 4. No other IEP team meetings were held in the spring of 2018 for Student 4.
- vi. Student 4's most recent special education evaluation report dated February 22, 2018, provides, in pertinent part, that she has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED], and very low cognitive functioning, as well as a General Ability Index [REDACTED], with a percentile rank [REDACTED], and low average cognitive functioning, as measured by the WISC-V. The evaluation report further provides, in pertinent part:

Throughout the testing session [for the WISC-V] Student 4 displayed good effort, was cooperative and pleasant. Review of Student 4's records indicates she received higher results on the WISC-IV on [February 24, 2015] with a Full Scale IQ [REDACTED]. A General Ability Index [REDACTED] may be a more accurate indication of her intellectual functioning.
- vii. In relevant part, on the LCI form filled out by the District regarding Student 4 for the spring 2018 MTAS, the District checked boxes under the Reading and Mathematics questions, respectively: "Reads basic sight words, simple sentences, directions, bullets, and/or lists in print or braille" and "Does [math] computational procedures with or without a calculator." The teacher comments state: "When given assignments that are perceived as hard or difficult to Student 4, she will become angry, rip up her assignment [and] refuse to do the task."
- viii. On the "Decision Making Process for the MTAS" that School administration created for Student 4 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: "The IEP team first considered the student's ability to access the [MCA], with or without accommodations." Elsewhere on the document, in response to the question of whether the Student's cognitive functioning is significantly below age expectations, School administration stated: "The team has decided that the MTAS is the best assessment for Student 4 due to her current academic and cognitive skills (fluency [REDACTED] errors, comprehension and math [REDACTED]), her significant [REDACTED] needs, and her inability to independently start and complete academic [tasks]." Finally, in response to the question of whether the Student's disability significantly impacts his or her ability to function in multiple

environments, School administration stated, in pertinent part: "Student 4's disability interferes with her ability to be successful without support in multiple school environments." The District did not provide specific information about Student 4's needs in other settings, such as home and community.

e. Student 5:

- i. Student 5 was a Student attending the School in grade [REDACTED] at the time he participated in the spring 2018 MTAS.
- ii. Student 5 participated in the spring 2018 MTAS in math on March 20, 2018, and the spring 2018 MTAS in reading on March 22 and 23, 2018.
- iii. The Assessments section regarding state assessments for accountability of Student 5's IEP dated November 28, 2017 (November 2017 IEP), in effect during the testing period, provides that he will participate in the MTAS. The basis for that decision provides:

The [IEP] team determined that Student 5 should take the MCA [sic] because he is functioning significantly below his peers and is not exposed to the regular curriculum and because he needs intensive supports and instruction to acquire, maintain, and generalize skills. The [MCA] would not be an appropriate measure of Student 5's academic progress.

- iv. The Assessments section regarding district-wide assessments of Student 5's November 2017 IEP provides that he will take [REDACTED] STAR Reading and Math. Regarding accommodations [REDACTED], Student 5's November 2017 IEP states: "Adaptations will be made for Student 5 in reading fluency if he becomes frustrated and starts guessing at words." Regarding accommodations for STAR reading and math, Student 5's November 2017 IEP states: "Extended testing time of sections/segments over multiple testing sessions. Access to the Special Education classroom, if necessary, to complete district-wide assessments."
- v. Documentation provided by the District reflects that no IEP team meetings were held between December 2017 and May 2018 for Student 5.
- vi. Student 5's most recent special education evaluation report dated May 20, 2017, provides, in pertinent part, that he has an IQ Composite Score [REDACTED], with a percentile rank [REDACTED] and below average cognitive functioning, as measured by [REDACTED].<sup>24</sup>

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<sup>24</sup> As his evaluation report provides, the "[REDACTED]" is a brief, individually administered measure of [REDACTED] intelligence of a wide range of individuals spanning the ages of 4 through 90 years."



- vii. In relevant part, on the LCI form filled out by the District regarding Student 5 for the spring 2018 MTAS, the District checked boxes under the Reading and Mathematics questions, respectively: “Reads basic sight words, simple sentences, directions, bullets, and/or lists in print or braille” and “Does [math] computational procedures with or without a calculator.” The teacher comments state: “Student 5 is working over [two] years below grade level[.]”
- viii. On the “Decision Making Process for the MTAS” that School administration created for Student 5 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: “The IEP team first considered the student’s ability to access the [MCA], with or without accommodations.” Elsewhere on the document, in response to the question of whether the Student’s cognitive functioning is significantly below age expectations, School administration stated: “The team has decided that the MTAS is the best assessment for Student 5 due to his current academic and cognitive skills (fluency [REDACTED] errors, comprehension [REDACTED] [REDACTED], modified [REDACTED] math curriculum), his inability to independently start and complete academic tasks and his [REDACTED] behavioral needs.” Finally, in response to the question of whether the Student’s disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: “Student 5’s disability interferes with his ability to be successful without adult support in multiple school environments.” The District did not provide specific information about Student 5’s needs in other settings, such as home and community.

f. Student 6:

- i. Student 6 was a Student attending the School in grade [REDACTED] at the time he participated in the spring 2018 MTAS.
- ii. Student 6 participated in the spring 2018 MTAS in math on March 19, 2018, and the spring 2018 MTAS in reading on April 9 and 10, 2018.
- iii. The Assessments section regarding state assessments for accountability of Student 6’s IEP dated October 17, 2017 (October 2017 IEP), in effect during the testing period, provides that he will participate in the MTAS. The basis for that decision provides:

The IEP team established that the MCA is not an appropriate measure of Student 6’s knowledge and skills on grade-level content standards, even when Student 6 is provided allowable and appropriate accommodations. Student 6 is currently reading [REDACTED] and typical peers at his grade level are reading [REDACTED]. Student 6 is one [to] two grade levels below his grade level in math. Student 6 has access to the general education curriculum, and has opportunities to actively engage in learning the content and skills of the general education curriculum. The IEP team determined that Student 6 needs explicit and intensive instruction and/or extensive supports in

multiple settings to acquire, maintain and generalize academic and life skills in order to actively participate in school, work, home and community environments.

- iv. The Assessments section regarding district-wide assessments of Student 6's October 2017 IEP provides that he will take STAR math and reading. Regarding accommodations for these assessments, Student 6's October 2017 IEP states: "Extended testing time of sections/segments over multiple testing sessions."
- v. Documentation provided by the District reflects that no IEP team meetings were held between November 2017 and May 2018 for Student 6. However, the District provided a copy of an Agreement to Amend [the IEP] for Student 6 dated March 5, 2018, that provides:

The [School] proposes to amend the current [IEP] for Student 6 to have him participate in the MTAS assessment for reading and math as the team agrees that this is an appropriate measure of Student 6's knowledge and skills on grade-level content standards.

- vi. Student 6's most recent special education evaluation report dated October 4, 2018, provides, in pertinent part, that he has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED], and low average cognitive functioning, as well as a General Ability Index of 97, with a percentile rank [REDACTED], and average cognitive functioning, as measured by the WISC-V. The evaluation report further provides, in pertinent part:

Due to the discrepancy in Student 6's scores [on the WISC-V], the General Ability Index was calculated. . . . Student 6 obtained a [General Ability Index] [REDACTED] which falls at the [REDACTED] average range of functioning. This may be a better indication of Student 6's current intellectual functioning.

. . .

Review of Student 6's records indicates he received similar results on the WISC-V in April of 2015. Overall the results of the current evaluation are considered to be an accurate indication of Student 6's intellectual ability at the present time.

- vii. In relevant part, on the LCI form filled out by the District regarding Student 6 for the spring 2018 MTAS, the District checked boxes under the Reading and Mathematics questions, respectively: "Reads basic sight words, simple sentences, directions, bullets, and/or lists in print or braille" and "Does [math] computational procedures with or without a calculator." The teacher comments state: "When given a task or work that he perceives is too difficult or non-preferred, Student 6 will refuse to do it [REDACTED]."

viii. On the “Decision Making Process for the MTAS” that School administration created for Student 6 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: “The IEP team first considered the student’s ability to access the [MCA], with or without accommodations.” Elsewhere on the document, in response to the question of whether the Student’s cognitive functioning is significantly below age expectations, School administration stated: “The team has decided that the MTAS is the best assessment for Student 6 [REDACTED] errors, comprehension and math skills [REDACTED] ), the need to which he requires adult support to start and complete academic tasks, to help regulate his [REDACTED] behavior [REDACTED].” Finally, in response to the question of whether the Student’s disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: “Student 6’s disability interferes with his ability to be successful without support in all school environments.” The District did not provide information about Student 6’s needs in other settings, such as home and community.

g. Student 7:

- i. Student 7 was a Student attending the School in grade [REDACTED] at the time he participated in the spring 2018 MTAS.
- ii. Student 7 participated in the spring 2018 MTAS in math on March 21, 2018, and the spring 2018 MTAS in reading on April 11 and 12, 2018.
- iii. The Assessments section regarding state assessments for accountability of Student 7’s IEP dated May 25, 2017 (May 2017 IEP), in effect during the testing period, provides that the MCA is not administered at Student 7’s grade level.
- iv. District records show Student 7’s IEP was updated on May 1, 2018 (May 2018 IEP), which was after the spring 2018 MTAS was administered. His primary disability category and federal setting remained the same as in his May 2017 IEP. Nevertheless, Student 7’s May 2018 IEP provides that that he will participate in the MTAS. The basis for that decision provides:

[REDACTED] He is currently reading at a [REDACTED] level. [REDACTED]

- v. The Assessments section regarding district-wide assessments of Student 7’s May 2017 IEP provides that district-wide assessments are not administered at his grade level.

- vi. The Assessments section regarding district-wide assessments of Student 7's May 2018 IEP provides that he will take fluency checks, STAR reading assessment, and STAR Math assessment. No accommodations are listed for these district-wide assessments.
- vii. Documentation provided by the District reflects that an IEP team meeting was held on May 1, 2018, for Student 7. No other IEP team meetings were held in the spring of 2018 for Student 7.
- viii. Student 7's most recent special education evaluation report dated May 1, 2018, provides, in pertinent part, that he has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED], and low average cognitive functioning, as measured by the WISC-V. Student 7's evaluation report further provides, in pertinent part:

Review of Student 7's records indicates he received higher results on the WISC-V on [May 22, 2015] with a Full Scale IQ [REDACTED]. Overall the results of the current evaluation are considered to be an accurate indication of Student 7's intellectual ability at the present time.

- ix. In relevant part, on the LCI form filled out by the District regarding Student 7 for the spring 2018 MTAS, the District checked boxes under the Reading and Mathematics questions, respectively: "Reads basic sight words, simple sentences, directions, bullets, and/or lists in print or braille" and "Does [math] computational procedures with or without a calculator." The teacher comments state: "Student 7 is working more than [two] years below grade level."
  - x. On the "Decision Making Process for the MTAS" that School administration created for Student 7 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: "The IEP team first considered the student's ability to access [MCA], with or without accommodations." Elsewhere on the document, in response to the question of whether the Student's cognitive functioning is significantly below age expectations, School administration stated: "The team has decided that the MTAS is the best assessment for Student 7 due to his current academic and cognitive skills (fluency, comprehension [REDACTED], and modified math curriculum) and the need to which he requires support to start and complete academic tasks. Student 7 is able to read [REDACTED] but is not yet able to independently read and comprehend text." Finally, in response to the question of whether the Student's disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: "Student 7's disability interferes with his ability to be successful without support in multiple school environments." The District did not provide information about Student 7's needs in other settings, such as home and community.
- h. Student 8:

- i. Student 8 was a Student attending the School in grade [REDACTED] at the time she participated in the spring 2018 MTAS.
- ii. Student 8 participated in the spring 2018 MTAS in math on March 19, 2018, and the spring 2018 MTAS in reading on March 22 and 23, 2018.
- iii. The Assessments section regarding state assessments for accountability of Student 8's IEP dated May 30, 2017, with an amended date of March 1, 2018 (May 2017 IEP), in effect during the testing period, provides that she will participate in the MTAS. The basis for that decision provides:

The team determined that Student 8 would take the MTAS due to her cognitive ability and low academic achievement. She is significantly below her same age peers with academic skills and continues to receive a majority of her academic instruction at a modified level in the resource room.
- iv. The Assessments section regarding district-wide assessments of Student 8's May 2017 IEP provides that she will take STAR 360 assessment in reading and math. Regarding accommodations for these assessments, Student 8's May 2017 IEP states: "[S]mall group or one on one administration in a quiet setting with few visual or noise distractions."
- v. Documentation provided by the District reflects that IEP team meetings were held on February 9, March 1, and March 27, 2018, for Student 8. No other IEP team meetings were held in the spring of 2018 for Student 8.
- vi. Student 8's most recent special education evaluation report dated March 27, 2018, provides, in pertinent part, that she has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED] and extremely low cognitive functioning, as measured by the WISC-V.
- vii. In relevant part, on the LCI form filled out by the District regarding Student 8 for the spring 2018 MTAS, the District checked boxes under the Reading and Mathematics questions, respectively: "Reads basic sight words, simple sentences, directions, bullets, and/or lists in print or braille" and "Does [math] computational procedures with or without a calculator." There are no teacher comments on the LCI form regarding Student 8.
- viii. On the "Decision Making Process for the MTAS" that School administration created for Student 8 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: "The IEP team first considered the student's ability to access the [MCA], with or without accommodations." Elsewhere on the document, in response to the question of whether the Student's cognitive functioning is significantly below age expectations, School administration stated: "The team has decided that the MTAS is the best assessment for Student 8 due to her current academic, cognitive skills (fluency, comprehension, and math skills [REDACTED], her

inability to independently start and complete tasks, and her [REDACTED] needs." Finally, in response to the question of whether the Student's disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: "Student 8's disability interferes with her ability to be successful without 1:1 adult support in all school environments." The District did not provide information about Student 8's needs in other settings, such as home and community.

i. Student 9:

- i. Student 9 was a Student attending the School in grade [REDACTED] at the time he participated in the spring 2018 MTAS.
- ii. Student 9 participated in the spring 2018 MTAS in math on March 19, 2018, and the spring 2018 MTAS in reading on April 9 and 10, 2018.
- iii. The Assessments section regarding state assessments for accountability of Student 9's IEP dated February 9, 2018 (February 2018 IEP), in effect during the testing period, provides that he will participate in the MTAS. The basis for that decision provides:

The IEP team established that the MCA is not an appropriate measure of Student 9's knowledge and skills on grade-level content standards, even when Student 9 is provided allowable and appropriate accommodations. Student 9 is currently reading at [REDACTED] level. He is able to read [REDACTED] while his same age peers are reading [REDACTED]. Student 9 is at least one grade level below in math. Student 9 has access to the general education curriculum, and has opportunities to actively engage in learning the content and skills of the general education curriculum. The IEP team determined that Student 9 needs explicit and intensive instruction and/or extensive supports in multiple settings to acquire, maintain and generalize academic and life skills in order to actively participate in school, work, home and community environments.

- iv. The Assessments section regarding district-wide assessments of Student 9's February 2018 IEP provides that he will take AIMSweb and STAR reading and math tests. Regarding accommodations for these assessments, Student 9's February 2018 IEP states: "Extended testing time of sections/segments over multiple testing sessions."
- v. Documentation provided by the District reflects that IEP team meetings were held February 8 and 9, 2018, for Student 9. No other IEP team meetings were held in the spring of 2018 for Student 9.

- vi. In an email dated February 7, 2018, the DPS wrote to Student 9's case manager stating, in pertinent part: "MTAS – not sure why he would be taking this. Being below grade level is not a reason to take MTAS – MTAS is for kids with cognitive impairments and only [one] [percent] of the school's population should be taking the MTAS – [This needs to be a discussion with your principal[.]] Look at the [d]ropdown list for taking the MTAS at the top of the MCA page – it is very helpful."
  - vii. The District provided no data showing Student 9's February 2018 IEP was changed as a result of the DPS's February 7, 2018 email.
  - viii. Student 9's most recent special education evaluation report dated February 4, 2016, provides, in pertinent part, that he has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED] and very low cognitive functioning, as measured by the WISC-V.
  - ix. In relevant part, on the LCI form filled out by the District regarding Student 9 for the spring 2018 MTAS, the District checked boxes under the Reading and Mathematics questions, respectively: "Reads basic sight words, simple sentences, directions, bullets, and/or lists in print or braille" and "Does [math] computational procedures with or without a calculator." The teacher comments state: "Student 9 works hard on his assignments. He can become restless and unable to stay focused. [REDACTED]"
  - x. On the "Decision Making Process for the MTAS" that School administration created for Student 9 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: "The IEP team first considered the student's ability to access the [MCA], with or without accommodations." Elsewhere on the document, in response to the question of whether the Student's cognitive functioning is significantly below age expectations, School administration stated: "The team has decided that the MTAS is the best assessment for Student 9 due to his current academic and cognitive skills (fluency, comprehension and math skills [REDACTED]), the need to which he requires adult support to start and complete tasks, to help regulate his [REDACTED] behavior [REDACTED] [REDACTED]." Finally, in response to the question of whether the Student's disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: "Student 9's disability interferes with his ability to be successful without support in multiple school environments." The District did not provide information about Student 9's needs in other settings, such as home and community.
- j. Student 10:
- i. Student 10 was a Student attending the School in grade [REDACTED] at the time he participated in the spring 2018 MTAS.
  - ii. Student 10 participated in the spring 2018 MTAS in math on March 19, 2018, and the spring 2018 MTAS in reading on April 11 and 12, 2018.

- iii. The Assessments section regarding state assessments for accountability of Student 10's IEP dated January 10, 2018 (January 2018 IEP), in effect during the testing period, provides that he will participate in the MTAS. The basis for that decision provides:

Student 10 receives a modified curriculum in reading, math and written language in the resource room. Student 10 is two grade levels below his peers and the team feels that the MTAS would be appropriate [REDACTED].
- iv. The Assessments section regarding district-wide assessments of Student 10's January 2018 IEP provides that he will take RCBM [Reading Curriculum-Based Measurement]/Reading Fluency<sup>25</sup> and AIMSwebReading benchmarks. Regarding accommodations for these assessments, Student 10's January 2018 IEP states: "Student 10 is two grade levels behind his peers and will test individually."
- v. Documentation provided by the District reflects that an IEP team meeting was held January 12, 2018, for Student 10. No other IEP team meetings were held in the spring of 2018 for Student 10.
- vi. In an email dated January 26, 2018, the DPS wrote to Student 10's case manager stating, in pertinent part: "MTAS is being given – but you don't have accommodations or alternate tests for district wide assessment. These do not match up. If he needs to take the MTAS then he wouldn't be able to do grade level testing for other tests without alternate tests or accommodations."
- vii. The District provided no data showing Student 10's January 2018 IEP was changed as a result of the DPS' January 26, 2018 email.
- viii. Student 10's most recent special education evaluation report dated January 10, 2018, provides, in pertinent part, that he has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED], and very low cognitive functioning, and a General Ability Index [REDACTED], with a percentile rank [REDACTED], and very low cognitive functioning, as measured by the WISC-V.
- ix. In relevant part, on the LCI form filled out by the District regarding Student 10 for the spring 2018 MTAS, the District checked boxes under the Reading and Mathematics questions, respectively: "Reads basic sight words, simple sentences, directions, bullets, and/or lists in print or braille" and "Does [math] computational procedures with or without a calculator." There are no teacher comments on the LCI form regarding Student 10.

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<sup>25</sup> According to the [AIMSweb assessment creator's website](#), the R-CBM is an AIMSweb assessment where "[s]tudents read graded passages of controlled difficulty aloud for a brief (i.e., [one] minute) period of time and the number of words read correctly (WRC) is counted." (last accessed January 29, 2019).



- x. On the “Decision Making Process for the MTAS” that School administration created for Student 10 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: “The IEP team first considered the student’s ability to access the [MCA], with or without accommodations.” Elsewhere on the document, in response to the question of whether the Student’s cognitive functioning is significantly below age expectations, School administration stated: “Due to [REDACTED] his [inability] to independently interact with people and things in his environment, his struggle to express his wants and needs, and his current academic abilities the IEP team has determined that the MTAS is the appropriate assessment option for Student 10 at this time.” Finally, in response to the question of whether the Student’s disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: “Student 10’s disability interferes with his ability to be successful without adult support in multiple school environments.” The District did not provide specific information about Student 10’s needs in other settings, such as home and community.

k. Student 11:

- i. Student 11 was a Student attending the School in grade [REDACTED] at the time he participated in the spring 2018 MTAS.
- ii. Student 11 participated in the spring 2018 MTAS in math on March 19, 2018, and the spring 2018 MTAS in reading on April 9 and 10, 2018.
- iii. The Assessments section regarding state assessments for accountability of Student 11’s IEP dated January 8, 2018 (January 2018 IEP), in effect during the testing period, provides that he will participate in the MTAS. The basis for that decision provides:

The team decided that the MTAS is the best assessment for Student 11 due to his current academic skills, the need to which he requires support to start and complete academic tasks [REDACTED].
- iv. The Assessments section regarding district-wide assessments of Student 11’s January 2018 IEP provides that he will take AIMSweb. Regarding accommodations for this assessment, Student 11’s January 2018 IEP states: “No Accommodations required.”
- v. Documentation provided by the District reflects that an IEP team meeting was held January 8, 2018, for Student 11. No other IEP team meetings were held in the spring of 2018 for Student 11.

- vi. In an email dated January 12, 2018, the DPS wrote to Student 11's case manager stating, in pertinent part: "MCA – up at the top it is marked he doesn't take at this grade level – remove those sentences."
- vii. Student 11's January 2018 IEP does not mark that MCAs are not administered at his grade level, so it appears Student 11's January 2018 IEP was changed as a result of the DPS's January 12, 2018 email.
- viii. Student 11's most recent special education evaluation report dated December 22, 2015, provides, in pertinent part, that he has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED], and low average cognitive functioning, as measured by the WISC-V.
- ix. In relevant part, on the LCI form filled out by the District regarding Student 11 for the spring 2018 MTAS, the District checked boxes under the Reading and Mathematics questions, respectively: "Aware of text/braille, follows directionality, makes letter distinctions, or tells a story from the pictures that are not linked to the text" and "Does [math] computational procedures with or without a calculator." The teacher comments state:

Student 11 is able to [REDACTED] comprehend passages [at] [REDACTED] level. [REDACTED] He is able to complete [REDACTED] math problems [REDACTED].

- x. On the "Decision Making Process for the MTAS" that School administration created for Student 11 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: "The IEP team first considered the student's ability to access the [MCA], with or without accommodations." Elsewhere on the document, in response to the question of whether the Student's cognitive functioning is significantly below age expectations, School administration stated: "The team has decided that the MTAS is the best assessment for Student 11 due to his current academic and cognitive skills (fluency [REDACTED] errors, comprehension and math skills [REDACTED]), the need to which he requires adult support to start and complete academic tasks, to help regulate his [REDACTED] behavior [REDACTED] Finally, in response to the question of whether the Student's disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: "Student 11's disability interferes with his ability to be successful without support in all school environments." The District did not provide information about Student 11's needs in other settings, such as home and community.
- I. Student 14:

- i. Student 14 was a Student attending the School in grade [REDACTED] at the time she participated in the spring 2018 MTAS.
- ii. Student 14 participated in the spring 2018 MTAS in math on March 20, 2018, and the spring 2018 MTAS in reading on March 22 and 23, 2018.
- iii. The Assessments section regarding state assessments for accountability of Student 14's IEP dated November 2, 2017 (November 2017 IEP), in effect during the testing period, provides that she will participate in the MTAS. The basis for that decision provides:

Due to her [REDACTED] behaviors [REDACTED]  
[REDACTED] and her current academic abilities the IEP team has determined that MTAS is the appropriate assessment option for Student 14 at this time.

- iv. The Assessments section regarding district-wide assessments of Student 14's November 2017 IEP provides that she will take AIMSweb. Regarding the accommodations for this district-wide assessment, Student 14's November 2017 IEP states: "No accommodations needed."
- v. Documentation provided by the District reflects that no IEP team meetings were held between December 2017 and May 2018 for Student 14.
- vi. Student 14's most recent special education evaluation report dated November 2, 2017, provides, in pertinent part, that she has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED], and extremely low cognitive functioning, as measured by the WISC-V.
- vii. In relevant part, on the LCI form filled out by the District regarding Student 14 for the spring 2018 MTAS, the District checked boxes under the Reading and Mathematics questions, respectively: "Reads basic sight words, simple sentences, directions, bullets, and/or lists in print or braille" and "Does [math] computational procedures with or without a calculator." The teacher comments state:

Due to her [REDACTED] behaviors [REDACTED]  
[REDACTED] and her current academic abilities the IEP team has determined the MTAS to be the appropriate assessment.

- viii. On the "Decision Making Process for the MTAS" that School administration created for Student 14 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: "The IEP team first considered the student's ability to access the [MCA], with or without accommodations." Elsewhere on the document, in response to the question of whether the Student's cognitive functioning is

significantly below age expectations, School administration stated: “Due to her [REDACTED] behaviors [REDACTED] and her current academic abilities the IEP team has determined that MTAS is the appropriate assessment option for Student 14 at this time.” Finally, in response to the question of whether the Student’s disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: “Student 14’s disability interferes with her ability to be successful without 1:1 adult support in all school environments.” The District did not provide specific information about Student 14’s needs in other settings, such as home and community.

m. Student 15:

- i. Student 15 was a Student attending the School in grade [REDACTED] at the time he participated in the spring 2018 MTAS.
- ii. Student 15 participated in the spring 2018 MTAS in math on March 20, 2018, and the spring 2018 MTAS in reading on March 22 and 23, 2018.
- iii. The Assessments section regarding state assessments for accountability of Student 15’s IEP dated October 16, 2017 (October 2017 IEP), in effect during the testing period, provides that he will participate in the MTAS. The basis for that decision provides:

The team agrees that due to Student 15's working very below grade level in math and reading that he should take the MTAS instead of the MCA's. Student 15 is working over three years below grade level in reading and over two years below in math.
- iv. The Assessments section regarding district-wide assessments of Student 15’s October 2017 IEP provides that he will take fluency checks, STAR reading assessment, and STAR math assessment. No accommodations are listed for these assessments in Student 15’s October 2017 IEP.
- v. Documentation provided by the District reflects that no IEP team meetings were held between November 2017 and May 2018 for Student 15.
- vi. Student 15’s most recent special education evaluation report dated October 14, 2016, provides, in pertinent part, that he has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED] and borderline cognitive functioning, as measured by the WISC-V by an outside provider.
- vii. In relevant part, on the LCI form filled out by the District regarding Student 15 for the spring 2018 MTAS, the District checked boxes under the Reading and Mathematics questions, respectively: “Aware of text/braille, follows directionality, makes letter distinctions, or tells a story from the pictures that are not linked to the text” and “Does [math] computational

procedures with or without a calculator.” The teacher comments state: “Student 15 is working over [two] years below grade level.”

- viii. On the “Decision Making Process for the MTAS” that School administration created for Student 15 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: “The IEP team first considered the student’s ability to access the [MCA], with or without accommodations.” Elsewhere on the document, in response to the question of whether the Student’s cognitive functioning is significantly below age expectations, School administration stated: “The team has decided that the MTAS is the best assessment for Student 15 due to his current academic and cognitive skills (fluency [REDACTED] errors, [REDACTED] comprehension [REDACTED], modified math curriculum [REDACTED]), and his inability to independently start and complete academic tasks. [REDACTED] [REDACTED] [REDACTED].” Finally, in response to the question of whether the Student’s disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: “Student 15’s disability interferes with his ability to be successful without adult support in multiple school environments.” The District did not provide specific information about Student 15’s needs in other settings, such as home and community.

n. Student 16:

- i. Student 16 was a Student attending the School in grade [REDACTED] at the time she participated in the spring 2018 MTAS.
- ii. Student 16 participated in the spring 2018 MTAS in math on March 19, 2018, and the spring 2018 MTAS in reading on April 9 and 10, 2018.
- iii. The Assessments section regarding state assessments for accountability of Student 16’s IEP dated May 1, 2017 (May 2017 IEP), in effect during the testing period, provides that she will participate in the MTAS. The basis for that decision provides:
- Due to low cognitive ability and below grade level academic progress, that impact all areas of school life, Student 16 qualifies to take the MTAS. Student 16 reads [REDACTED] [words per minute]. The benchmarks for her grade are [REDACTED] [words per minute].
- iv. The Assessments section regarding district-wide assessments of Student 16’s May 2017 IEP provides that she will take AIMSweb Reading and STAR 360. Regarding the accommodations for these district-wide assessments, Student 16’s May 2017 IEP states: “Small group setting free from visual and auditory distractions.”

- v. Documentation provided by the District reflects an IEP team meeting was held on May 1, 2018, for Student 16. No other IEP team meetings were held in the spring of 2018 for Student 16.
  - vi. Student 16's most recent special education evaluation report dated April 8, 2016, provides, in pertinent part, that she has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED], and extremely low cognitive functioning, as measured by the WISC-V.
  - vii. In relevant part, on the LCI form filled out by the District regarding Student 16 for the spring 2018 MTAS, the District checked boxes under the Reading and Mathematics questions, respectively: "Reads basic sight words, simple sentences, directions, bullets, and/or lists in print or braille" and "Does [math] computational procedures with or without a calculator." There are no teacher comments on the LCI form regarding Student 16.
  - viii. On the "Decision Making Process for the MTAS" that School administration created for Student 16 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: "The IEP team first considered the student's ability to access the [MCA], with or without accommodations." Elsewhere on the document, in response to the question of whether the Student's cognitive functioning is significantly below age expectations, School administration stated: "The team has decided that the MTAS is the best assessment for Student 16 due to her current academic, cognitive skills (fluency, comprehension, and math skills [REDACTED]), and her inability to independently start and complete tasks." Finally, in response to the question of whether the Student's disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: "Student 16's disability interferes with her ability to be successful without adult support in multiple school environments." The District did not provide information about Student 16's needs in other settings, such as home and community.
- o. Student 17:
- i. Student 17 was a Student attending the School in grade [REDACTED] at the time he participated in the spring 2018 MTAS.
  - ii. Student 17 participated in the spring 2018 MTAS in reading on March 22 and 23, 2018. Student 17 participated in the spring 2018 MCA in math.
  - iii. The Assessments section regarding state assessments for accountability of Student 17's IEP dated May 25, 2017 (May 2017 IEP), in effect during the testing period, provides that he will participate in the MTAS in reading. District records show Student 17's IEP was revised on April 18, 2018 (April 2018 IEP), after the spring MTAS was administered in the District. His April 2018 IEP also provides that he will participate in the MTAS. The basis for that decision in both Student 17's May 2017 and April 2018 IEPs, provides: "Student 17 will take the MTAS test in the area of reading due to [REDACTED] reading disability that is more than two years

below grade level.” Student 17’s April 2018 IEP adds the following information: “Student 17 is reading [at] [REDACTED] level. Student 17[’]s full scale IQ [REDACTED] is very low cognitively.”

- iv. Student 17’s May 2017 IEP and May 2018 IEPs also state he will participate in the MCA for math with the following accommodation: “Extended testing time of sections/segments over multiple testing sessions.”
- v. The Assessments section regarding district-wide assessments of Student 17’s May 2017 IEP provides that district-wide assessments are not administered at his grade level.
- vi. The Assessments section regarding district-wide assessments of Student 17’s April 2018 IEP provides that he will take fluency checks, STAR math assessment, and STAR reading assessment. No accommodations are listed for the district-wide assessments in Student 17’s April 2018 IEP.
- vii. Documentation provided by the District reflects that an IEP team meeting was held on April 18, 2018, for Student 17. No other IEP team meetings were held in the spring of 2018 for Student 17.
- viii. In an email dated April 26, 2018, the DPS wrote to Student 17’s case manager regarding Student 17’s April 2018 IEP stating, in pertinent part: “On the MTAS – please justify by saying [that] his full scale IQ [REDACTED]<sup>26</sup> – which is in the very low range of cognitive functioning.” Via follow up email later that same day, the DPS further stated: “Oh – one more thing – Is he taking the grade level STAR testing in reading and math? Or is he taking the lower level ones? Not sure why he would be able to take the grade level tests for that but not the MCA? Just checking if you need to change your [district-wide] assessment section.”
- ix. Student 17’s April 2018 IEP reflects the revision to the Assessments section set forth in the DPS’ April 26, 2018 email.
- x. Student 17’s most recent special education evaluation report dated May 14, 2015, provides, in pertinent part, that he has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED], and very low cognitive functioning, and a General Ability Index [REDACTED], with a percentile rank [REDACTED], and low average cognitive functioning, as measured by the WISC-V.
- xi. In relevant part, on the LCI form filled out by the District regarding Student 17 for the spring 2018 MTAS, the District checked boxes under the Reading and Mathematics questions, respectively: “Reads basic sight words, simple sentences, directions, bullets, and/or lists in print or braille” and “Does [math] computational procedures with or without a calculator.”

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<sup>26</sup> This number may be a typographical error. As noted below, Student 17’s evaluation report provides his Full Scale IQ [REDACTED].

The teacher comments state: "Student 17 is working over [two] years below grade level in reading."

- xii. On the "Decision Making Process for the MTAS" that School administration created for Student 17 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: "The IEP team first considered the student's ability to access the [MCA], with or without accommodations." Elsewhere on the document, in response to the question of whether the Student's cognitive functioning is significantly below age expectations, School administration stated: "The team has decided that the MTAS is the best assessment for Student 17 due to his current academic and cognitive skills (fluency [REDACTED] errors, comprehension [REDACTED])." Finally, in response to the question of whether the Student's disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: "Student 17's disability interferes with his ability to be successful without adult support in multiple school environments." The District did not provide information about Student 17's needs in other settings, such as home and community.

p. Student 20:

- i. Student 20 was a Student attending the School in grade [REDACTED] at the time he participated in the spring 2018 MTAS.
- ii. Student 20 participated in the spring 2018 MTAS in math on March 19, 2018, and the spring 2018 MTAS in reading on April 9 and 10, 2018.
- iii. The Assessments section regarding state assessments for accountability of Student 20's IEP dated January 25, 2018 (January 2018 IEP), in effect during the testing period, provides that he will participate in the MTAS. The basis for that decision provides:

The IEP team established that the MCA is not an appropriate measure of Student 20's knowledge and skills on grade-level content standards, even when Student 20 is provided allowable and appropriate accommodations. Student 20 is currently reading at [REDACTED] reading level. He is one grade level below in math. Student 20 has access to the general education curriculum, and has opportunities to actively engage in learning the content and skills of the general education curriculum. The IEP team determined that Student 20 needs explicit and intensive instruction and/or extensive supports in multiple settings to acquire, maintain and generalize academic and life skills in order to actively participate in school, work, home and community environments.

- iv. The Assessments section regarding district-wide assessments of Student 20's January 2018 IEP provides that he will take AIMSweb and STAR reading and math tests. Regarding



accommodations for these assessments, Student 20's January 2018 IEP states: "Small group setting. Testing over a few days."

- v. Documentation provided by the District reflects that no IEP team meetings were held between January 2018 and May 2018 for Student 20.
- vi. In an email dated January 16, 2018, the DPS wrote to Student 20's case manager stating, in pertinent part: "MCA needs to be addressed [REDACTED]." Via follow up email on January 25, 2018, the DPS further stated: "Question: If the team made the decision for him to need to take the MTAS – why are there no accommodations or alternate assessments for the district administered tests. [sic] These two things do not match up."
- vii. Because Student 20's January 2018 IEP provides for statewide assessments and accommodations on district-wide assessments, it appears Student 20's January 2018 IEP was changed as a result of the DPS' January 16 and January 25, 2018 emails.
- viii. Student 20's most recent special education evaluation report dated December 5, 2018, provides, in pertinent part, that he has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED], and low average cognitive functioning, as measured by the WISC-V.
- ix. In relevant part, on the LCI form filled out by the District regarding Student 20 for the spring 2018 MTAS, the District checked boxes under the Reading and Mathematics questions, respectively: "Reads basic sight words, simple sentences, directions, bullets, and/or lists in print or braille" and "Does [math] computational procedures with or without a calculator." The teacher comments state: "When given a task/assignment that Student 20 perceives as difficult, Student 20 will shut down and refuse to complete the task or assignment."
- x. On the "Decision Making Process for the MTAS" that School administration created for Student 20 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: "The IEP team first considered the student's ability to access the [MCA], with or without accommodations." Elsewhere on the document, in response to the question of whether the Student's cognitive functioning is significantly below age expectations, School administration stated: "The team has decided that the MTAS is the best assessment for Student 20 due to his current academic and cognitive skills (fluency [REDACTED] errors, comprehension, and math skills [REDACTED]), the need to which he requires adult support to start and complete tasks [REDACTED] Finally, in response to the question of whether the Student's disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: "Student 20's disability interferes with his ability to be successful without support in multiple school environments." The District did not provide information about Student 20's needs in other settings, such as home and community.
- q. Student 23:

- i. Student 23 was a Student attending the School in grade [REDACTED] at the time he participated in the spring 2018 MTAS.
- ii. Student 23 participated in the spring 2018 MTAS in reading on April 9 and 10, 2018. Student 23 participated in the spring 2018 MCA in math.
- iii. The Assessments section regarding state assessments for accountability of Student 23's IEP dated February 23, 2018 (February 2018 IEP), in effect during the testing period, provides that he will participate in the MTAS for reading. The basis for that decision provides:

The IEP team established that the MCA reading assessment is not an appropriate measure of Student 23's knowledge and skills on grade-level content standards, even when Student 23 is provided allowable and appropriate accommodations. Student 23 is able to read [REDACTED] [REDACTED] as typical peers [REDACTED] are able to read at an average of [REDACTED]. Student 23 is able to comprehend passages [REDACTED] [REDACTED]. Student 23 has access to the general education curriculum, and has opportunities to actively engage in learning the content and skills of the general education curriculum. The IEP team determined that Student 23 needs explicit and intensive instruction and/or extensive supports in multiple settings to acquire, maintain and generalize academic and life skills in order to actively participate in school, work, home and community environments.
- iv. Student 23's February 2018 IEP also states he will participate in the MCA for math with the following accommodation: "Extended testing time of sections/segments over multiple testing sessions."
- v. The Assessments section regarding district-wide assessments of Student 23's February 2018 IEP provides that he will take STAR Math/Reading and AIMSweb. Regarding accommodations for these assessments, Student 23's February 2018 IEP states: "Extended testing time of sections/segments over multiple testing sessions."
- vi. Documentation provided by the District reflects that an IEP team meeting was held on February 23, 2018 for Student 23. No other IEP team meetings were held in the spring of 2018 for Student 23.
- vii. Student 23's most recent special education evaluation report dated February 16, 2018, provides, in pertinent part, that he has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED] and extremely low cognitive functioning, as measured by the WISC-V. His evaluation report further provides, in pertinent part:

Review of Student 23's records indicates he received significantly [different] results on the WISC-V on [April 1, 2015] with a Full Scale IQ [redacted]. Overall the results of the current evaluation are NOT considered to be an accurate indication of Student 23's intellectual ability at the present time. The examiner does not feel these results truly indicate Student 23's intellectual performance and should be interpreted with extreme caution due to the significant variation between the [two] scores on the same instruction. The IQ score [redacted] from [April 1, 2015] appears to be a more accurate indication of Student 23's intellectual ability.

- viii. In relevant part, on the LCI form filled out by the District regarding Student 23 for the spring 2018 MTAS, the District checked boxes under the Reading and Mathematics questions, respectively: "Reads basic sight words, simple sentences, directions, bullets, and/or lists in print or braille" and "Does [math] computational procedures with or without a calculator." The teacher comments state: "[redacted]"
- ix. On the "Decision Making Process for the MTAS" that School administration created for Student 23 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: "The IEP team first considered the student's ability to access the [MCA], with or without accommodations." Elsewhere on the document, in response to the question of whether the Student's cognitive functioning is significantly below age expectations, School administration stated: "The team has decided that the MTAS is the best assessment for Student 23 due to his current academic and cognitive skills (fluency [redacted] errors, comprehension [redacted])." Finally, in response to the question of whether the Student's disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: "Student 23's disability interferes with his ability to be successful without adult support in multiple school environments." The District did not provide information about Student 23's needs in other settings, such as home and community.
- r. Student 25:
  - i. Student 25 was a Student attending the School in grade [redacted] at the time she participated in the spring 2018 MTAS.
  - ii. Student 25 participated in the spring 2018 MTAS in math on March 20, 2018, and the spring 2018 MTAS in reading on April 11 and 12, 2018.
  - iii. Student 25's IEP in effect during the spring 2018 MTAS for math is dated April 3, 2017 (April 2017 IEP). Student 25's IEP in effect during the spring 2018 MTAS for reading is dated April

3, 2018 (April 2018 IEP). The Assessments section regarding state assessments for accountability of Student 25's April 2017 IEP provides that Student 25 will participate in the MTAS. The basis for that decision provides: "Student 25's reading skills are significantly below that of her peers. Student 25 reads [REDACTED] [words per minute] and benchmark is [REDACTED] words per minute. The team feels that the MTAS is appropriate for Student 25."

- iv. In the same section in her April 2018 IEP, Student 25's April 2018 IEP also states she will participate in the MTAS. The basis for that decision provides:

The IEP team has decided that the MTAS is the appropriate assessment for Student 25. [REDACTED]

[REDACTED] Her cognitive skills significantly impair her ability to be independently successful in most of her school environments without adult prompting or support. She requires explicit academic support and instruction to acquire and retain academic skills.

- v. The Assessments section regarding district-wide assessments of Student 25's April 2017 IEP provides that Student 25 will take STAR 360 Reading Assessment and AIMSweb Fluency. Regarding accommodations for these assessments, Student 25's April 2017 IEP states: "[S]mall group or one on one administration."
- vi. In the same section for her April 2018 IEP, Student 25's April 2018 states the STAR reading district-wide assessment is not an appropriate assessment for Student 25. The basis for that decision provides: "Student 25's currently abilities require her to take the STAR [REDACTED] [REDACTED] assessment instead of the STAR [REDACTED] assessment."
- vii. Documentation provided by the District reflects an IEP team meeting was held on April 3, 2018, for Student 25. No other IEP team meetings were held in the spring of 2018 for Student 25.
- viii. In an email dated April 18, 2018, the DPS wrote to Student 25's Case Manager stating, in pertinent part: "MTAS – please put in her full scale of IQ [REDACTED]. This is what qualifies her for taking the MTAS."
- ix. The District provided no data showing Student 25's April 2018 IEP was changed as a result of the DPS's April 18, 2018 email.
- x. Student 25's most recent special education evaluation report dated March 15, 2017, provides, in pertinent part, that she has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED], and extremely low cognitive functioning, as measured by the WISC-V.
- xi. In relevant part, on the LCI form filled out by the District regarding Student 25 for the spring 2018 MTAS, the District checked the following boxes under the Reading and Mathematics questions, respectively: "Reads basic sight words, simple sentences, directions, bullets,

and/or lists in print or braille;" and "Does computational procedures with or without a calculator." Additionally, the teacher comments box states: "[REDACTED]

- xii. On the "Decision Making Process for the MTAS" that School administration created for Student 25 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: "The IEP team first considered the student's ability to access the [MCA], with or without accommodations." Elsewhere on the document, in response to the question of whether the Student's cognitive functioning is significantly below age expectations, School administration stated: "The team has decided that the MTAS is the best assessment for Student 25 due to her current academic and cognitive skills (fluency [REDACTED] errors, comprehension and math skills [REDACTED] []), and her inability to independently start and complete academic tasks." Finally, in response to the question of whether the Student's disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: "Student 25's disability and cognitive skills significantly impair her ability to be independently successful in most of her school environments without adult prompting or support." The District did not provide information about Student 25's needs in other settings, such as home and community.

s. Student 26:

- i. Student 26 was a Student attending the School in grade [REDACTED] at the time he participated in the spring 2018 MTAS.
- ii. Student 26 participated in the spring 2018 MTAS in math on March 20, 2018, and in the spring 2018 MTAS in reading on April 11 and 12, 2018.
- iii. The Assessments section regarding state assessments for accountability of Student 26's IEP dated May 19, 2017 (May 2017 IEP), in effect during the testing period, provides that he will participate in the MTAS. The basis for that decision provides:

The team has decided that the MTAS is the best assessment for Student 26 due to his current academic skills (fluency and comprehension [REDACTED] [REDACTED]), the need to which he requires support to start and complete academic tasks [REDACTED] [REDACTED]

- iv. The Assessments section regarding district-wide assessments of Student 26's May 2017 IEP provides that he will take AIMSweb. Regarding accommodations for this assessment, Student 26's May 2017 IEP states: "No accommodations required."

- v. Documentation provided by the District reflects that no IEP team meetings were held between in the spring of 2018 prior to May 2018 for Student 26.
  - vi. Student 26's most recent special education evaluation report dated May 9, 2016, provides, in pertinent part, that he has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED], and low average cognitive functioning, and a General Ability Index [REDACTED], with a percentile rank [REDACTED], and average cognitive functioning, as measured by the WISC-V.
  - vii. In relevant part, on the LCI form filled out by the District regarding Student 26 for the spring 2018 MTAS, the District checked boxes under the Reading and Mathematics questions, respectively: "Reads basic sight words, simple sentences, directions, bullets, and/or lists in print or braille" and "Does [math] computational procedures with or without a calculator." The teacher comments state: "[REDACTED]"
  - viii. On the "Decision Making Process for the MTAS" that School administration created for Student 26 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: "The IEP team first considered the student's ability to access the [MCA], with or without accommodations." Elsewhere on the document, in response to the question of whether the Student's cognitive functioning is significantly below age expectations, School administration stated: "The team has decided that the MTAS is the best assessment for Student 26 due to his current academic and cognitive skills (fluency, comprehension [REDACTED] and math [REDACTED]), the need to which he requires support to start and complete academic tasks." Finally, in response to the question of whether the Student's disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: "Student 26's disability interferes with his ability to be successful without support in multiple school environments." The District did not provide information about Student 26's needs in other settings, such as home and community.
- t. Student 27:
- i. Student 27 was a Student attending the School in grade [REDACTED] at the time she participated in the spring 2018 MTAS.
  - ii. Student 27 participated in the spring 2018 MTAS in math on March 19, 2018, and the spring 2018 MTAS in reading on April 9 and 10, 2018.
  - iii. Student 27's IEP in effect during the spring 2018 MTAS for math is dated April 6, 2017, with an amended date of March 12, 2018 (April 2017 IEP). Student 27's IEP in effect during the spring 2018 MTAS for reading is dated April 4, 2018 (April 2018 IEP). The Assessments section regarding state assessments for accountability of both Student 27's April 2017 and April 2018 IEPs provide that Student 27 will participate in the MTAS. The basis for that decision provides:

The IEP team established that the MCA is not an appropriate measure of Student 27's knowledge and skills on grade-level content standards, even when Student 27 is provided allowable and appropriate accommodations. Student 27 is currently reading [REDACTED] words per minute, and typical peers are reading [REDACTED] words per minute. Student 27 is [one to two] grade levels below her grade level in math. Student 27 has access to the general education curriculum, and has opportunities to actively engage in learning the content and skills of the general education curriculum. The IEP team determined that Student 27 needs explicit and intensive instruction and/or extensive supports in multiple settings to acquire, maintain and generalize academic and life skills in order to actively participate in school, work, home and community environments.

- iv. The Assessments section regarding district-wide assessments of both Student 27's April 2017 and April 2018 IEPs provide that Student 25 will take STAR Assessment. Regarding accommodations for these assessments, both Student 27's April 2017 and April 2018 IEPs state: "Extended time to complete tests[.]" Student 27's April 2018 IEP provides for an additional accommodation of "[f]requent breaks[.]"
- v. Documentation provided by the District reflects an IEP team meeting was held on April 4, 2018, for Student 27. No other IEP team meetings were held in the spring of 2018 for Student 27.
- vi. In an email dated April 2, 2018, the DPS wrote to Student 27's case manager stating, in pertinent part: "[Student 27] should be taking the MCAs and not the MTAS – [s]he does not have [a] cognitive disability low enough to warrant the MTAS. ([S]he doesn't have alternate assessments to district testings as well[.]"
- vii. The District provided no data showing Student 27's April 2018 IEP was changed as a result of the DPS's April 2, 2018 email.
- viii. Student 27's most recent special education evaluation report dated March 23, 2016, provides, in pertinent part, that she has a Full Scale IQ [REDACTED], with a percentile rank [REDACTED], and low average cognitive functioning, as measured by the WISC-V.
- ix. In relevant part, on the LCI form filled out by the District regarding Student 27 for the spring 2018 MTAS, the District checked the following boxes under the Reading and Mathematics questions, respectively: "Reads basic sight words, simple sentences, directions, bullets, and/or lists in print or braille;" and "Does computational procedures with or without a calculator." Additionally, the teacher comments box states: "Student 27 has difficulty when presented with material that is a little challenging. [REDACTED]"

- x. On the “Decision Making Process for the MTAS” that School administration created for Student 27 in November 2018, School administration did not provide any data demonstrating the first eligibility requirement occurred: “The IEP team first considered the student’s ability to access the [MCA], with or without accommodations.” Elsewhere on the document, in response to the question of whether the Student’s cognitive functioning is significantly below age expectations, School administration stated: “The team has decided that the MTAS is the best assessment for Student 27 due to her current academic and cognitive skills (fluency [REDACTED] errors, comprehension and math skills [REDACTED]), her [REDACTED] needs, and her inability to independently start and complete academic tasks.” Finally, in response to the question of whether the Student’s disability significantly impacts his or her ability to function in multiple environments, School administration stated, in pertinent part: “Student 27’s disability interferes with her ability to be successful without adult support in all school environments.” The District did not provide specific information about Student 27’s needs in other settings, such as home and community.

***The District’s Proposed Corrective Action***

45. In its written response to the complaint, the District proposed the following corrective action relating to issue one, in pertinent part:

Case managers will submit the assessment pages of the current active IEPs to the [SAC] prior to the assessment schedule being created and testing beginning. The [SAC] will keep these documents as verification of testing until the next school year testing window begins.

46. In its written response to the complaint, the District proposed the following corrective action regarding issue two, in pertinent part:

Training will be provided on MTAS determination by MDE. Clarification on what constitutes a cognitive disability will be critical if changes will be made to the MTAS determination process.

MDE MTAS determination flowchart will be addressed at all IEP meetings for students who are eligible for state assessments and when the meeting is being held to address state assessment needs. Based on the information provided in the MTAS training also proposed as corrective action, IEP teams will be educated on what constitutes a cognitive impairment and if a student doesn’t qualify for the MTAS, the IEP team will determine what accommodations may or may not be needed for the student to take the MCA.

47. As a written supplement to its initial response to the complaint, the special education director stated:



In response to the [special education complaint] investigation interviews that took place in early January [2019], I have met with all special education teachers, school assessment coordinator and general education teachers ([identified] in the complaint) at [the School] who work with students in grades 3 and 4 this year to discuss the importance of revisiting the MTAS requirements with families. Many of the IEPs have been changed for students due to the information that was provided by me to them about assisting with defining a cognitive disability. This information was obtained from communication between [MDE staff] and [the District] Due Process Specialist, on January 17[, 2019].

After meeting with [School] staff, I also met with [g]rade 5 [special education] teachers, [high school] Principal and District Assessment Coordinator to discuss students who went to [District] High School this year as 5<sup>th</sup> graders who took the MTAS last year. Many changes were made or are being made in February [2019] to reduce the number of MTAS assessments administered and to only those students who meet the criteria. Some students have annual IEPs coming up in February [2019] which is why they waited to make the change. Any other students who didn't have an annual IEP coming due in February [2019] were changed.

I am also attaching [two] documents [titled State Assessment Determination Guidance – Principal Copy and State Assessment Administration Checklist – Principal copy, respectively] that I shared with [p]rincipals on January 24[, 2019,] at our monthly [special education] meeting. One document is to ensure that state assessments are determined appropriately at IEP meetings. The other document is to ensure that students are given the correct assessment during testing. Principals were asked to share this with the District and School Assessment Coordinator.

## Conclusions

1. Federal regulations implementing the Individuals with Disabilities Education Act (IDEA) at 34 C.F.R. § 300.160 provide, in pertinent part:
  - (a) General. A State must ensure that all children with disabilities are included in all general State and district-wide assessment programs, including assessments described under section 1111 of the ESEA [Elementary and Secondary Education Act of 1965, as amended by Every Student Succeeds

Act (ESSA)], 20 U.S.C. 6311,<sup>27</sup> with appropriate accommodations and alternate assessments, if necessary, as indicated in their respective IEPs.

- (b) Accommodation guidelines.
  - (1) A State (or, in the case of a district-wide assessment, an LEA [Local Educational Agency]) must develop guidelines for the provision of appropriate accommodations.
  - (2) The State's (or, in the case of a district-wide assessment, the LEA's) guidelines must –
    - (i) Identify only those accommodations for each assessment that do not invalidate the score; and
    - (ii) Instruct IEP Teams to select, for each assessment, only those accommodations that do not invalidate the score.
- (c) Alternate assessments aligned with alternate academic achievement standards for students with the most significant cognitive disabilities.
  - (1) If a State has adopted alternate academic achievement standards for children with disabilities who are students with the most significant cognitive disabilities as permitted in section 1111(b)(1)(E) of the ESEA, the State (or, in the case of a district-wide assessment, an LEA) must develop and implement alternate assessments and guidelines for the participation in alternate assessments of those children with disabilities who cannot participate in regular assessments, even with accommodations, as indicated in their respective IEPs, as provided in paragraph (a) of this section.
  - (2) For assessing the academic progress of children with disabilities who are students with the most significant disabilities under title I of the ESEA, the alternate assessments and guidelines in paragraph (c)(1) of this section must –
    - (i) Be aligned with the challenging State academic content standards under section 1111(b)(1) of the ESEA and alternate academic achievement standards under section 1111(b)(1)(E) of the ESEA; and

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<sup>27</sup> The reference in 34 C.F.R. § 300.160 to section 1111 of the ESEA is a reference to section 1111 of Public Law 89-10 (Apr. 11, 1965), which is codified at 20 U.S.C. § 6311. The ESEA was reauthorized and amended by ESSA, Public Law 114-95 (Dec. 10, 2015), codified at 20 U.S.C. §§ 6301 *et seq.*

- (ii) Measure the achievement of children with disabilities who are students with the most significant cognitive disabilities against those standards.
- (3) Consistent with section 1111(b)(1)(E)(ii) of the ESEA and 34 CFR 200.6(c)(6), a State may not adopt modified academic achievement standards or any other alternate academic achievement standards that do not meet the requirements in section 1111(b)(1)(E) of the ESEA for any children with disabilities under section 602(3) of the IDEA.

...

2. In amending 34 C.F.R. § 300.160, comments in the Federal Register, 82 F.R. 29756 (Jun. 30, 2017), provide, in pertinent part:

We are changing the title of § 300.160(c) from “Alternate Assessments” to “Alternate Assessments Aligned with Alternate Academic Achievement Standards for Students with the Most Significant Cognitive Disabilities.” We are adding the phrase “children with disabilities who are students with the most significant cognitive disabilities” in § 300.160(c)(1) with respect to State guidelines for participation in alternate assessments, because section 9215(ss)(3)(B) of the ESSA clarifies that the State guidelines referred to in section 612(a)(16)(C)(i) of the IDEA apply only to participation of children with disabilities who are students with the most significant cognitive disabilities in alternate assessments aligned with alternate academic achievement standards as permitted under section 1111(b)(1)(E) of the ESEA, if those children cannot take regular assessments, even with accommodations as indicated in their respective individualized education programs (IEPs).

3. In pertinent part, the ESEA, as amended by ESSA, provides, at 20 U.S.C. § 6311(b)(1)(E):

- (E) Alternate academic achievement standards for students with the most significant cognitive disabilities
  - (i) In general[.] The State may, through a documented and validated standards-setting process, adopt alternate academic achievement standards for students with the most significant cognitive disabilities, provided those standards –
    - (I) are aligned with the challenging State academic content standards under subparagraph (A);
    - (II) promote access to the general education curriculum, consistent with the Individuals with Disabilities Education Act (20 U.S.C. 1400 et seq.);

- (III) reflect professional judgment as to the highest possible standards achievable by such students;
  - (IV) are designated in the individualized education program developed under section 614(d)(3) of the [IDEA] (20 U.S.C. 1414(d)(3)) for each such student as the academic achievement standards that will be used for the student; and
  - (V) are aligned to ensure that a student who meets the alternate academic achievement standards is on track to pursue postsecondary education or employment, consistent with the purposes of Public Law 93-112, as in effect on July 22, 2014.
- (ii) Prohibition on any other alternate or modified academic achievement standards[.] A State shall not develop, or implement for use under this part, any alternate academic standards for children with disabilities that are not alternate academic achievement standards that meet the requirements of clause (i).

4. In pertinent part, the ESEA, as amended by ESSA, further provides, at 20 U.S.C. § 6311(b)(2)(D):

(b) Challenging academic standards and academic assessments

...

(2) Academic assessments

...

(D) Alternate assessments for students with the most significant cognitive disabilities

(i) Alternate assessments aligned with alternate academic achievement standards[.] A State may provide for alternate assessments aligned with the challenging State academic standards and alternate academic achievement standards described in paragraph [(b)](1)(E) for students with the most significant cognitive disabilities, if the State--

(I) consistent with clause (ii), ensures that, for each subject, the total number of students assessed in such subject using the alternate assessments does not exceed 1 percent of the total number of all students in the State who are assessed in such subject;

(II) ensures that the parents of such students are clearly informed, as part of the process for developing the individualized education program (as defined in section 614(d)(1)(A) of the [IDEA] (20 U.S.C. 1414(d)(1)(A)))--

- (aa) that their child's academic achievement will be measured based on such alternate standards; and
- (bb) how participation in such assessments may delay or otherwise affect the student from completing the requirements for a regular high school diploma;
- (III) promotes, consistent with the [IDEA] (20 U.S.C. 1400 et seq.), the involvement and progress of students with the most significant cognitive disabilities in the general education curriculum;
- (IV) describes in the State plan the steps the State has taken to incorporate universal design for learning, to the extent feasible, in alternate assessments;
- (V) describes in the State plan that general and special education teachers, and other appropriate staff--
  - (aa) know how to administer the alternate assessments; and
  - (bb) make appropriate use of accommodations for students with disabilities on all assessments required under this paragraph;
- (VI) develops, disseminates information on, and promotes the use of appropriate accommodations to increase the number of students with significant cognitive disabilities--
  - (aa) participating in academic instruction and assessments for the grade level in which the student is enrolled; and
  - (bb) who are tested based on challenging State academic standards for the grade level in which the student is enrolled; and
- (VII) does not preclude a student with the most significant cognitive disabilities who takes an alternate assessment based on alternate academic achievement standards from attempting to complete the requirements for a regular high school diploma.
- (ii) Special rules
  - (I) Responsibility under IDEA[.] Subject to the authority and requirements for the individualized education program team for a child with a disability under section 614(d)(1)(A)(i)(VI)(bb) of the [IDEA] (20 U.S.C. 1414(d)(1)(A)(i)(VI)(bb)), such team, consistent with the guidelines established by the State and required under section 612(a)(16)(C) of such Act (20 U.S.C. 1412(c)(16)(C))5 and clause (i)(II) of this subparagraph, shall

determine when a child with a significant cognitive disability shall participate in an alternate assessment aligned with the alternate academic achievement standards.

(II) Prohibition on local cap[.] Nothing in this subparagraph shall be construed to permit the Secretary or a State educational agency to impose on any local educational agency a cap on the percentage of students administered an alternate assessment under this subparagraph, except that a local educational agency exceeding the cap applied to the State under clause (i)(I) shall submit information to the State educational agency justifying the need to exceed such cap.

(III) State support[.] A State shall provide appropriate oversight, as determined by the State, of any local educational agency that is required to submit information to the State under subclause (II).

(IV) Waiver authority[.] This subparagraph shall be subject to the waiver authority under section 7861 of this title.

5. Federal regulations implementing the ESEA, as amended by the ESSA, at 34 C.F.R. § 200.6<sup>28</sup> provide, in pertinent part:

(c)(2) For each subject for which assessments are administered under § 200.2(a)(1), the total number of students assessed in that subject using an alternate assessment aligned with alternate academic achievement standards under paragraph (c)(1) of this section may not exceed 1.0 percent of the total number of students in the State who are assessed in that subject.

(3) A State must –

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<sup>28</sup> The most recent changes to 34 C.F.R. § 200.6 were made effective January 9, 2017. *See* 81 F.R. 88886 (Dec. 8, 2016):

The ESSA reauthorizes the ESEA[.] . . . In the spirit of making assessments as fair as possible and inclusive of all students, the ESSA also imposed a cap to limit, to 1.0 percent of the total number of students who are assessed in a State in each assessed subject, the number of students with the most significant cognitive disabilities whose performance may be assessed with an alternate assessment aligned with alternate academic achievement standards (AA-AAAS), if the State has adopted alternate academic achievement standards. . .

We amend §§ 200.2-200.6 and §§ 200.8-200.9 of title 34 of the Code of Federal Regulations (CFR) in order to implement these statutory changes, as well as other key statutory provisions[.] . . .

- (i) Not prohibit an LEA from assessing more than 1.0 percent of its assessed students in any subject for which assessments are administered under § 200.2(a)(1) with an alternate assessment aligned with alternate academic achievement standards;
- (ii) Require that an LEA submit information justifying the need of the LEA to assess more than 1.0 percent of its assessed students in any such subject with such an alternate assessment;
- (iii) Provide appropriate oversight, as determined by the State, of an LEA that is required to submit information to the State; and
- (iv) Make the information submitted by an LEA under paragraph (c)(3)(ii) of this section publicly available, provided that such information does not reveal personally identifiable information about an individual student.

6. Comments to 34 C.F.R. § 200.6, the Federal Register at 81 F.R. 88904 (Dec. 8, 2016) regarding changes made to 34 C.F.R. § 200.6 provide, in pertinent part:

These regulations address assessment requirements under title I, part A of the ESEA, while 34 CFR 300.160 implements the requirement in the IDEA regarding participation in assessments (see 20 U.S.C. 1412(a)(16)). Consistent with this statutory provision, 34 CFR 300.160 also requires the participation of children with disabilities in assessments described in section 1111 of the ESEA. Therefore, title I and IDEA assessment provisions for children with disabilities must be read and implemented together. While the regulations in this document cannot alter the IDEA requirements, we note that the ESEA also amended the IDEA's participation in assessment requirements, and the [U.S.] Department [of Education] anticipates updating the IDEA regulations in 34 CFR 300.160 to reflect those amendments.

7. School districts must make available to each eligible student a free and appropriate public education (FAPE), consisting of special education and related services that are provided in conformity with the Student's IEP, pursuant to 34 C.F.R. §§ 300.17 and 300.101.

8. Federal regulations at 34 C.F.R. § 300.320 provide, in pertinent part:

- (a) General. As used in this part, the term individualized education program or IEP means a written statement for each child with a disability that is developed, reviewed, and revised in a meeting in accordance with §§ 300.320 through 300.324, and that must include –

...

- (6)(i) A statement of any individual appropriate accommodations that are necessary to measure the academic achievement and functional performance of the child on State and districtwide assessments consistent with section 612(a)(16) of the [IDEA]; and
- (ii) If the IEP Team determines that the child must take an alternate assessment instead of a particular regular State or districtwide assessment of student achievement, a statement of why –
  - (A) The child cannot participate in the regular assessment; and
  - (B) The particular alternate assessment selected is appropriate for the child[.]

...

9. As the District acknowledges, the District failed to provide special education and related services in conformity with Students' IEPs by not administering to seven Students<sup>29</sup> the spring 2018 MCA with the accommodations listed in their IEPs, in violation of 34 C.F.R. § 300.17. The District was obligated to implement the Students' IEPs in effect at the time of the administration of the spring 2018 MTAS and MCA. Although, subsequent to the January 2018 administrative meeting, School staff recalled parents agreeing with School staff's decisions that their Students should take the MTAS, no Notice of Team Meetings or IEP amendments were provided to demonstrate such a revision occurred.
10. Read together, the Individuals with Disabilities Education Act (IDEA) and ESSA require students' IEP teams to determine when a student with a significant cognitive disability must participate in an alternate statewide assessment – here, the MTAS. 20 U.S.C. § 6311(b)(2)(D)(ii)(I); 34 C.F.R. 300.160(c)(1).
11. That determination must limit MTAS participation to those students with the most significant cognitive disabilities who cannot participate in the regular statewide assessment—here, the MCA, even with accommodations, consistent with finding the student meets the MDE MTAS Eligibility Guidelines' five inclusive requirements. 20 U.S.C. § 6311(b)(2)(D)(ii)(I); 34 C.F.R. § 300.160.
12. If, consistent with the MDE MTAS Eligibility Guidelines, the IEP team determines a student must take the MTAS instead of the MCA, the IEP team is required to include in the student's IEP a statement of why the student cannot participate in the MCA, and why the MTAS is appropriate for the student. 20 U.S.C. § 6311(b)(2)(D)(ii)(I); 34 C.F.R. § 320(a)(6)(ii).
13. Here, the District acknowledges Students' IEP teams did not properly determine, consistent with the MDE MTAS Eligibility Guidelines, when a student with a significant cognitive disability shall participate in the MTAS. The District also failed to properly document in Students' IEPs why the Student cannot

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<sup>29</sup> These Students include: Student 12, Student 13, Student 18, Student 19, Student 21, Student 22, and Student 24.



participate in the MCA, and why the MTAS is appropriate for the Student. The District thus violated 20 U.S.C. § 6311(b)(2)(D)(ii)(I) and 34 C.F.R. § 300.320(a)(6)(ii)(A) and (B) for, at a minimum, the following reasons:

- a. First, consistent with 34 C.F.R § 300.160(c)(1) and 20 U.S.C. § 6311(b)(2)(D)(ii)(I), the first inclusive requirement set forth in the MDE MTAS Eligibility Guidelines requires the IEP team to “first [consider] the student’s ability to access the [MCA], with or without accommodations.” This consideration is required to be documented in the Students’ IEP by 34 C.F.R. § 300.320(a)(6)(ii)(A) in the statement why the Student cannot participate in the MCA. However, for 20 Students who participated in the spring 2018 MTAS,<sup>30</sup> the District failed to demonstrate the Students’ IEP teams considered the Students’ ability to access the MCA, with or without accommodations, and document that determination in the Student’s IEP.
  - i. For example, a review of Students’ IEPs demonstrate that eight of the 20 Students participated in the spring 2018 MTAS while also participating in district-wide assessments without accommodations.<sup>31</sup> Additionally, 11 of the 20 Students participated in the spring 2018 MTAS while also participating in district-wide assessments with accommodations, such as extended testing segments over multiple testing sessions or frequent breaks.<sup>32</sup> Although School staff explained that some of the eight Students were actually receiving accommodations for district-wide assessments that were not set forth in their IEP, the District provided no evidence that the 19 Students’ IEP teams considered whether these district-wide assessment accommodations would be appropriate for their participation in the spring 2018 MCA. Only one Student’s IEP indicated she was going to participate in an alternate district-wide assessment,<sup>33</sup> but both her IEP and the District’s records fail to demonstrate whether the IEP team considered her ability to access the MCA, with or without accommodations. Likewise, the Decision Making Process for the MTAS that School administration created in November 2018 contain no information for any of the 20 Students showing the IEP teams considered the Student’s ability to access the MCA, with or without accommodations.

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<sup>30</sup> These Students include the following 19 Students whose IEPs in effect at the time they participated in the spring 2018 MTAS indicated they were to participate in the MTAS and the one Student whose IEP in effect at the time he participated in the spring 2018 MTAS indicated statewide assessments were not administered at his grade level: Student 1, Student 2, Student 3, Student 4, Student 5, Student 6, Student 7, Student 8, Student 9, Student 10, Student 11, Student 14, Student 15, Student 16, Student 17, Student 20, Student 23, Student 25, Student 26, and Student 27. This particular analysis does not address the Students whose IEPs in effect during the administration of the spring 2018 MTAS stated they should take the MCAs with accommodations but were improperly administered the MTAS.

<sup>31</sup> These Students include: Student 2, Student 3, Student 7, Student 11, Student 14, Student 15, and Student 26.

<sup>32</sup> These Students include: Student 1, Student 4, Student 5, Student 6, Student 8, Student 9, Student 10, Student 16, Student 17, Student 20, Student 23, and Student 27.

<sup>33</sup> This Student is Student 25.

- b. Second, consistent with 34 C.F.R § 300.160(c) and 20 U.S.C. § 6311(b)(2)(D)(ii)(I), the third inclusive requirement set forth in the MDE MTAS Eligibility Guidelines requires the IEP team to “[determine] the student’s cognitive functioning to be significantly below age expectations [and] the student’s disability has a significant impact on his or her ability to function in multiple environments, including home, school and community.” This consideration is required to be documented in the Students’ IEP by 34 C.F.R. § 300.320(a)(6)(ii)(B) in the statement why the MTAS is appropriate for the Student. However, for 20 Students,<sup>34</sup> the District failed to demonstrate the Students’ IEP teams determined the Student’s cognitive functioning to be significantly below age expectations and that the Student’s disability has a significant impact on his or her ability to function in multiple environments, including home, school, and community, and document that determination in the Student’s IEP.
- i. Relating to cognitive functioning, the District failed to show the Students’ IEP teams determined the Students’ cognitive functioning was significantly below age expectations. For example, although the Students’ IEPs contained statements to the effect that Students were academically below age expectations in specific subject areas, the District provided no evidence the IEP team considered the Students’ overall cognitive functioning as compared to same-aged peers, such as considering their Full Scale IQ, General Ability Index, percentile ranks, or level of cognitive functioning, as set forth in their evaluation reports. As School staff stated, their focus in identifying Students eligible to take the MTAS during the January 2018 administrative meeting was on the Students’ academic performance, rather than the Students’ cognitive functioning, as compared to their same-aged peers. Similarly, the SAC reported data considered at the January 2018 administrative meeting included the Student’s present levels of performance in reading and math, including the Student’s average words per minute in reading and number of known sight words. That the Students’ IEP teams failed to consider the Students’ cognitive functioning is evidenced by, for example, the February 2018 IEP of one Student who participated in the spring 2018 MTAS in both math and reading,<sup>35</sup> which documents why he cannot participate in the MCA and the MTAS is appropriate, in pertinent part, as he “is at least one grade level below in math.” Yet, as noted in an email to the Student’s Case Manager by the District’s DPS, “Being below grade level is not a reason to take the MTAS[.]”
- ii. Relating to impact on functioning in multiple environments, the District failed to show the Students’ IEP teams considered whether the Student’s disability has a significant impact on

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<sup>34</sup> These Students include the following 19 Students whose IEPs in effect at the time they participated in the spring 2018 MTAS indicated they were to participate in the MTAS and the one Student whose IEP in effect at the time he participated in the spring 2018 MTAS indicated statewide assessments were not administered at his grade level: Student 1, Student 2, Student 3, Student 4, Student 5, Student 6, Student 7, Student 8, Student 9, Student 10, Student 11, Student 14, Student 15, Student 16, Student 17, Student 20, Student 23, Student 25, Student 26, and Student 27. This particular analysis does not address the Students whose IEPs in effect during the administration of the spring 2018 MTAS stated they should take the MCAs with accommodations but were improperly administered the MTAS.

<sup>35</sup> This Student is Student 9.

his or her ability to function in multiple environments. For 12 Students, their IEPs in effect at the time they participated in the spring 2018 MTAS contain no statement relating to statewide assessments about whether their disability impacts their ability to function in multiple environments.<sup>36</sup> For two Students, their IEPs in effect at the time they participated in the spring 2018 MTAS contained statements relating to statewide assessments that the Student's disability impacts their functioning solely at school, with no information provided regarding other environments.<sup>37</sup> For six Students, their IEPs in effect at the time they participated in the spring 2018 MTAS contained statements relating to statewide assessments simply mentioning their disability impacts their ability to function in multiple environments, but providing no specific information.<sup>38</sup> Likewise, although School administration provided evidence in the Decision Making Process for the MTAS documents that Students' disabilities impacted their school environments, it failed to provide any specific information for any Student that IEP teams considered whether Students' disabilities impacted their ability to function in the home and community environments.

## Decision

The District violated 34 C.F.R. § 300.17 when it failed to provide special education and related services in conformity with the Students' IEPs by failing to administer the MCAs with the accommodations listed in the Students' IEPs and instead administered the MTAS to the Students during spring of 2018.

The District violated 20 U.S.C. § 6311(b)(2)(D)(ii)(I) and 34 C.F.R. § 300.320(a)(6)(ii)(A) and (B) when it failed to properly apply the MDE MTAS Eligibility Guidelines in determining Students' eligibility to participate in the spring 2018 MTAS, and document in the Student's IEPs why the Student cannot participate in the MCA and why the MTAS is appropriate for Students.

## Corrective Action

The District's proposed corrective action is accepted, with the following modifications:

1. Within 15 calendar days of the complaint decision, the District will contact MDE's corrective action specialist [REDACTED] to discuss the District's training needs around statewide assessment eligibility determinations, consistent with the IDEA and ESSA and their implementing regulations. By June 1, 2019, MDE will provide the training to all District special education staff and administration.
2. To the extent not already done, within 15 calendar days of the date of this complaint decision, the District will reconvene the IEP teams of each of the 27 Students identified in this complaint decision to

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<sup>36</sup> These Students include: Student 1, Student 3, Student 5, Student 7, Student 8, Student 10, Student 11, Student 14, Student 15, Student 17, Student 25, and Student 26.

<sup>37</sup> These Students include: Student 2 and Student 16.

<sup>38</sup> These Students include: Student 4, Student 6, Student 9, Student 20, Student 23, and Student 27.

determine appropriate statewide assessment eligibility for the upcoming spring 2019 statewide assessments. Within 15 calendar days of this complaint decision or of such IEP team meetings, whichever is later, the District is required to submit to MDE's corrective action specialist [REDACTED] [REDACTED] for review the Students' names, a copy of their revised IEPs, IEP team meeting notes, LCI forms, the Students' most recent evaluation reports, and any other documentation IEP teams considered, for all Students the IEP teams determine cannot participate in the MCA, even with accommodations, and must participate in the MTAS.

The authority to review complaints is given in the federal regulations to the IDEA, 34 C.F.R. §§ 300.151-153. Questions about the corrective action should be directed to the corrective action specialist [REDACTED]

Sincerely,

Marikay Canaga Litzau, J.D.  
Director of Compliance and Assistance  
Minnesota Department of Education

MCL/kr

Enclosure