

Frequently Asked Questions on the Promotion and Retention of Third Grade Students

The Tennessee General Assembly passed two key pieces of legislation during the 1st Extraordinary Session of 2021—the *Tennessee Literacy Success Act* and the *Tennessee Learning Loss Remediation and Student Acceleration Act*—to help ensure Tennessee students could recover from the challenges of the COVID-19 pandemic and close gaps in students' learning. As part of this legislation, the General Assembly revised the state's law regarding the promotion of students from third grade, T.C.A. § 49-6-3115. The statute was also revised during the regular 2021 legislative session. T.C.A. § 49-6-3115, which applies to the 2022-23 school year, ensures students who are determined to need additional supports in reading, receive them before being promoted to fourth grade. The following FAQ's provide guidance to local education agencies (LEAs) and public charter schools to use as they implement this new law.

1. How does T.C.A. § 49-6-3115 impact LEA and public charter school decisions on the promotion and retention of students?

While promotion and retention decisions generally are determined by the LEA or public charter school in accordance with State Board of Education and local promotion and retention policies, the new law requires that, beginning with the 2022-23 school year, a third grade student, determined NOT to be proficient in English language arts (ELA), may not be promoted to the next grade level, without certain conditions being met, which could include the student receiving additional interventions in reading.

2. Are there exemptions to the requirement that a third grade student, determined not to be proficient in ELA, be retained unless certain conditions are met?

Yes. Students meeting certain conditions set forth in T.C.A. § 49-6-3115 are automatically exempt from the retention requirements in the law. Additionally, T.C.A. § 49-6-3115 does not supersede an LEA's or public charter school's obligation to comply with the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.), Section 504 of the Rehabilitation Act (29 U.S.C. § 794), or any other state or federal civil rights laws. A student meeting one of the listed exemptions below may be promoted without further action:

- A student who is an English language learner and has received less than two (2) years of ELA instruction;
- A student who was previously retained in any of the grades kindergarten through three (K-3);
or
- A student who has a disability or a suspected disability that impacts reading.

3. Who determines whether an individual student meets one of the exemptions provided in question #2?

LEAs and public charter schools must determine whether an individual student meets one of the exemptions. All decisions regarding exemptions must be made on a case-by-case basis considering the unique needs and circumstances of the individual student. Most of the exemption decisions will be easily and quickly determined by an LEA or public charter school, but some will require a more in-depth analysis that will need to include conversations among parents and local educators with knowledge of the student after a review all of the individual student's records. For example, the determination of whether a student has a disability or a suspected disability that impacts reading must be determined locally by parents and educators with knowledge of the student, just like the development of IEPs, Section 504 plans, or other supports designed for students by a school district.

4. When may a third grade student who has been determined not to be proficient in ELA and who does not meet one of the exemptions provided in question #2 be promoted to the next grade level under the new law?

Just because a student has been determined not to be proficient in reading does not mean that student may not be promoted to the next grade level. T.C.A. § 49-6-3115 provides that if certain conditions are met, a student may still be promoted. These conditions are meant to provide an additional opportunity for the student to demonstrate proficiency in reading or provide the additional resources and interventions necessary to improve the student's reading proficiency.

- A. A student who is not proficient in ELA, as determined by the student achieving a performance level rating of "approaching" on the ELA portion of the student's most recent TCAP test, may be promoted if:
 - i. The student is retested before the beginning of the next school year and scores proficient in ELA; or
 - ii. The student attends a learning loss bridge camp before the beginning of the upcoming school year, maintains a ninety percent (90%) attendance rate at the camp, and the student's performance on the post-test administered to the student at the end of the learning loss bridge camp demonstrates adequate growth, as determined by the department; or
 - iii. The student is assigned a tutor through the Tennessee Accelerating Literacy and Learning Corps (TN ALL Corps) to provide the student with tutoring services for the entirety of the upcoming school year based on tutoring requirements established by the department.
- B. A student who is not proficient in ELA, as determined by the student achieving a performance level rating of "below" on the ELA portion of the student's most recent TCAP test, may be promoted if:
 - i. The student retested before the beginning of the next school year and scores proficient in ELA; or
 - ii. The student attends a learning loss bridge camp before the beginning of the upcoming school year and maintains a ninety percent (90%) attendance rate at the

camp and is assigned a tutor through the TN ALL Corps to provide the student with tutoring services for the entirety of the upcoming school year based on tutoring requirements established by the department.

Please note that the law requires a student who is promoted to the fourth grade pursuant to (A) (iii) or (B) (ii) above, must show adequate growth on the fourth grade ELA portion of the TCAP test, as determined by the department, before the student may be promoted to the fifth grade but a student may not be retained in the fourth grade more than once.

5. Is there an appeal procedure available for a third grade student who has been determined to not be proficient in ELA and therefore may not be promoted to the next grade level without meeting one of the conditions listed in question #4?

Yes, for students who have achieved the performance level of “approaching” on the ELA portion of the TCAP. Pursuant to T.C.A. § 49-6-3115(d), the State Board of Education is responsible for promulgating rules to establish an appeals process, to be administered by the department, for a student who is identified for retention in third grade based on the student achieving a performance level rating of “approaching” on the ELA portion of the student's most recent TCAP test. The law and subsequent rules require that if an appeal is filed, the filing must be made by the student's parent or guardian.

6. How does a school district make a promotion decision for a third grade student who does not have a score on the ELA portion of the TCAP?

Based on the language of T.C.A. § 49-6-3115 (a), if a third grade student does not take the TCAP or generate a score on the ELA portion of the TCAP and does not qualify for an exemption described in question #2 above, the student should be treated as if the student is not proficient in ELA. The law states, “beginning with the 2022-23 school year, a student in the third grade shall not be promoted to the next grade level unless the student is determined to be proficient in English language arts (ELA) based on the student achieving a performance level rating of “on track” or “mastered” on the ELA portion of the student's most recent Tennessee comprehensive assessment program (TCAP) test.” To be promoted, the student would have to meet one of the conditions provided in question #4 above or if applicable, appeal the decision pursuant to question # 5 above.

7. What is the Tennessee Department of Education’s role in implementing this new law?

The department’s specific role in implementing this law is limited to reviewing appeals in accordance with the State Board of Education rule and providing a report to the General Assembly. The department will focus on providing technical assistance to LEAs and public charter schools on the interventions that improve a student’s reading proficiency while also allowing the student to meet the conditions for promotion listed in question #4.

The goal or mission of this new law is not to retain students. It is to provide every student with the necessary interventions to improve the student's reading proficiency as soon as possible. The department is confident that LEAs and public charter schools will be laser-focused on that mission.