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 Rule ID(s): 10060  
 File Date: 3/12/2024  
 Effective Date: 6/10/2024

# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

**Agency/Board/Commission:** State Board of Education  
**Division:** N/A  
**Contact Person:** Angie Sanders  
**Address:** 500 James Robertson Parkway, 8<sup>th</sup> Floor  
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**Revision Type (check all that apply):**

- Amendment  Content based on previous emergency rule filed on \_\_\_\_\_  
 New  Content is identical to the emergency rule  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that **ALL** new rule and repealed rule numbers are listed in the chart below. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
0520-01-03	Academic and Instructional Requirements
Rule Number	Rule Title
0520-01-03-.16	Promotion and Retention

## AMENDMENT

**AMEND** the rules of the State Board of Education Chapter 0520-01-03 Academic and Instructional Requirements, Section .16 Promotion and Retention, so that as amended, the revised Rule Section .16 shall read:

### RULES OF THE STATE BOARD OF EDUCATION

#### CHAPTER 0520-01-03 ACADEMIC AND INSTRUCTIONAL REQUIREMENTS

##### **0520-01-03-.16 PROMOTION AND RETENTION.**

- (1) The academic program implemented in each public school shall be designed to help students achieve the expectations of the grade-level State Board approved Tennessee Academic Standards and meet the requirements for promotion to the next grade.
- (2) Promotion to the next grade level shall be based on the successful completion of required academic work or demonstration of satisfactory progress in each of the relevant academic areas.
- (3) Each LEA and public charter school governing body shall develop and implement promotion and retention policies for students in grades Kindergarten through eight (K-8) in accordance with T.C.A. § 49-6-3115, this Rule, and the State Board's Promotion and Retention Policy 3.300. The LEA or public charter school's promotion and retention policy shall include a right for the parent or legal guardian to appeal a decision to retain a student.
- (4) Schools shall identify students who demonstrate difficulty in achieving the requirements for promotion to the next grade level and therefore may be at risk for retention by February 1. However, a student may be identified as at risk for retention after February 1 if reasons for identifying a student as at risk for retention are identified in a lawfully adopted local board policy that identifies limited situations in which students may be identified as at risk for retention. Schools shall notify the parent or legal guardian of any student who is identified as at risk for retention within fifteen (15) calendar days of identification.
- (5) Factors used to identify students who are at risk for retention shall, at a minimum, include:
  - (a) The student's ability to perform at the expectations of the current grade-level standards;
  - (b) The results of local assessments, screening, or monitoring tools;
  - (c) State assessments, as applicable;
  - (d) Home Literacy Reports provided in accordance with T.C.A. § 49-1-905;
  - (e) The overall academic achievement of the student;
  - (f) The student's likelihood of success with more difficult material if promoted to the next grade;
  - (g) The student's attendance record; and
  - (h) The student's maturity.

- (6) Schools shall develop and implement an individualized promotion plan for any student identified as at risk for retention to help the student avoid retention.
- (a) The individualized promotion plan shall be developed in coordination with the student's teachers, IEP or 504 team, if applicable, and may also include input from the student's parents, school counselor, or other appropriate school personnel. All promotion plans shall include evidence-based promotion strategies and shall be tailored to the student's learning needs. Each promotion plan shall also include expectations and measurements that can be used to verify that a student has made sufficient progress to be promoted to the next grade level. Promotion plans for students in grades three (3) and four (4) shall include the additional requirements for promotion set forth in paragraph (7) of this Rule.
  - (b) A copy of a student's promotion plan shall be provided to his or her parent or legal guardian, and the school shall offer to parents or legal guardians the opportunity for a parent-teacher conference to discuss the promotion plan.
  - (c) If a student is not making progress on his or her promotion plan, then the promotion strategies shall be modified to support the student in the goal of promotion to the next grade level. A student who demonstrates sufficient academic progress with the strategies included in his or her promotion plan during the school year shall be promoted to the next grade level unless retention is required as set forth in paragraph (7) of this Rule.
  - (d) If a student has not demonstrated sufficient academic progress as defined in his or her promotion plan by the end of the school year, the student shall be eligible to enroll in a summer reading or learning program if such program is available. For a student in grade three (3) who is identified for retention in accordance with paragraph (7) of this Rule and attends a summer reading or learning program, the program must be conducted in accordance with T.C.A. § 49-6-3115 and T.C.A. §§ 49-6-1501-1511.
  - (e) If the student was enrolled in a summer reading or learning program, a decision for retention shall be made and communicated to the parent or legal guardian in writing at least ten (10) calendar days prior to the start of the next school year, or, if the student was not enrolled in a summer reading or learning program, a decision for retention shall be made and communicated to the parent or legal guardian in writing at least thirty (30) calendar days prior to the start of the next school year. The notification to the student's parent or legal guardian of the retention decision shall be in writing and sent electronically and shall include information regarding the parent or legal guardian's right to appeal the retention decision in alignment with the LEA or public charter school's promotion and retention policy.
  - (f) Retention shall be considered only when it is in the best interests of the student, or if retention is required by paragraph (7) for students in grades three (3) and four (4). Retention decisions affecting a student receiving special education services shall be made in consultation with the student's Individualized Education Program (IEP) or 504 team and in accordance with the provisions of the IEP or 504 plan.
  - (g) If a retention decision has been made, then the school shall develop an individualized academic remediation plan for the retained student within thirty (30) calendar days after the beginning of the next school year. A copy of the academic remediation plan shall be provided to the student's parent or legal guardian within ten (10) calendar days of development of such plan.
    - 1. The academic remediation plan shall be developed in coordination with the student's teachers, IEP or 504 team, if applicable, and may also include input from the student's parents, school counselor, or other appropriate school personnel.
    - 2. The academic remediation plan shall be implemented to help the retained student attain and demonstrate learning proficiency and shall include at least one (1) of the

following strategies:

- (i) Adjustment to the current instructional strategies or high quality instructional materials;
  - (ii) Additional instructional time;
  - (iii) Individual tutoring;
  - (iv) Modification to the student's classroom assignment to ensure the student receives instruction from a teacher with a level of overall effectiveness of above expectations (level 4) or significantly above expectations (level 5); or
  - (v) Attendance or truancy interventions.
- (h) A student shall not be retained more than one (1) time in any given grade level.
- (i) Retention shall not:
- 1. Be used without an academic remediation plan;
  - 2. Be used as a punitive or disciplinary measure;
  - 3. Be based solely on English language proficiency, for students who are identified as English learners;
  - 4. Be based on the student's disability or suspected disability; or
  - 5. Be based solely on a student's maturity.
- (j) This Rule 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.), or Section 504 of the Rehabilitation Act (29 U.S.C. § 794).
- (k) The progress of a retained student shall be closely monitored and reported to the student's parent or legal guardian a minimum of three (3) times during the school year in which the student is retained.
- (l) Beginning with the 2023-2024 school year, a student who is retained in any of the grades kindergarten through three (K-3) shall be assigned a tutor to provide the student with tutoring services for the entirety of the upcoming school year based on tutoring requirements established by the Department.
- (7) Each LEA and public charter school shall comply with the following additional requirements for promotion and retention of students in grade three (3) and four (4), in accordance with T.C.A. § 49-6-3115. Each LEA and public charter school shall notify parents or legal guardians of all students in grade three (3) and grade four (4) of the following promotion and retention requirements at the beginning of each school year:
- (a) A student in grade three (3) 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's achieving a performance level rating of "on track" or "mastered" (otherwise known as "met expectations" or "exceeded expectations") on the ELA portion of the student's most recent Tennessee comprehensive assessment program (TCAP) test.

(b) Notwithstanding paragraph (7)(a):

1. A student in grade three (3) who is not proficient in ELA, as determined by the student's achieving a performance level rating of "approaching" on the ELA portion of the student's most recent TCAP test, may be promoted to the fourth (4<sup>th</sup>) grade if:
  - (i) Pathway 1: The student is an English language learner and has received less than two (2) full school years of ELA instruction;
  - (ii) Pathway 2: The student was previously retained in any of the grades kindergarten through three (K-3);
  - (iii) Pathway 3: The student is retested in accordance with Department guidelines before the beginning of the next school year and scores proficient in ELA;
  - (iv) Pathway 4: 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, as required under T.C.A. § 49-6-1502(4)(F), demonstrates adequate growth, as defined in the State Board's Promotion and Retention Policy 3.300;
  - (v) Pathway 5: The student receives high-dosage, low-ratio tutoring for the entirety of the upcoming school year from a Tennessee accelerating literacy and learning corps (TN ALL Corps) tutor. For the purposes of this Rule, "high-dosage, low-ratio tutoring" means a minimum of two (2) thirty (30) minute sessions per week with a one to three (1:3) teacher to student ratio. TN ALL Corps high dosage, low ratio tutoring may be provided through the following options, in accordance with T.C.A. § 49-6-1507:
    - (I) A tutor recruited and trained through the Department's TN ALL Corps grant program;
    - (II) A district recruited tutor who has completed the Department's TN ALL Corps training; or
  - (vi) Pathway 6: Beginning with third (3<sup>rd</sup>) grade students in the 2023-24 school year, the student demonstrates proficiency in ELA standards based on the student scoring at or above the fiftieth (50<sup>th</sup>) percentile on the most recently administered state-provided benchmark assessment, if the benchmark assessment is administered to the student in a test environment, in accordance with Department guidance, and the student's LEA or public charter school agrees to provide tutoring services to the student for the entirety of the student's fourth (4<sup>th</sup>) grade year.
    - (I) If a student is promoted to the fourth (4<sup>th</sup>) grade pursuant to this Pathway 6, then the student's LEA or public charter school shall notify the student's parent or guardian, in writing, of the benefits of enrolling their student in a learning loss bridge camp and encouraging the parent or guardian to do so.
    - (II) For the purposes of Pathway 6, "state-provided benchmark assessment" means the Tennessee Universal Reading Screener provided by the Department.

- (III) The tutoring services provided to the student for the entirety of the student's fourth (4<sup>th</sup>) grade year must be high-dosage, low ratio tutoring. For the purposes of this Rule, "high-dosage, low-ratio tutoring" means a minimum of two (2) thirty (30) minute sessions per week with a one to three (1:3) teacher to student ratio. TN ALL Corps high dosage, low ratio tutoring may be provided through the following options, in accordance with T.C.A. § 49-6-1507:
    - I. A tutor recruited and trained through the Department's TN ALL Corps grant program.
    - II. A district recruited tutor who has completed the Department's TN ALL Corps training.
2. A student in grade three (3) who is not proficient in ELA, as determined by the student's achieving a performance level rating of "below" on the ELA portion of the student's most recent TCAP test may be promoted to the fourth (4<sup>th</sup>) grade if:
- (i) Pathway 1: The student is an English language learner and has received less than two (2) full school years of ELA instruction;
  - (ii) Pathway 2: The student was previously retained in any of the grades kindergarten through three (K-3);
  - (iii) Pathway 3: The student retested in accordance with Department guidelines before the beginning the next school year and scores proficient in ELA; or
  - (iv) Pathway 4: 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 receives high-dosage, low-ratio tutoring for the entirety of the upcoming school year from a Tennessee accelerating literacy and learning corps (TN ALL Corps) tutor. For the purposes of this Rule, "high-dosage, low-ratio tutoring" means a minimum of two (2) thirty (30) minute sessions per week with a one to three (1:3) teacher to student ratio. TN ALL Corps high dosage, low ratio tutoring may be provided through the following options, in accordance with T.C.A. § 49-6-1507:
    - (I) A tutor recruited and trained through the Department's TN ALL Corps grant program.
    - (II) A district recruited tutor who has completed the Department's TN ALL Corps training.
- (c) A student who is promoted to the fourth (4<sup>th</sup>) grade pursuant to paragraph (7)(b)(1)(v) or (7)(b)(2)(iv) of this Rule must show adequate growth on the fourth (4<sup>th</sup>) grade ELA portion of the TCAP test as further defined in State Board Promotion and Retention Policy 3.300, before the student may be promoted to the fifth (5<sup>th</sup>) grade.
  - (d) Notwithstanding paragraph (c), a student shall not be retained in fourth (4<sup>th</sup>) grade more than once.
  - (e) The requirements set forth in paragraphs (7)(a)-(d) do 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.) or Section 504 of the Rehabilitation Act (29 U.S.C. § 794).

1. In accordance with T.C.A. § 49-6-3115, an LEA or public charter school shall not retain a student with a disability or a suspected disability that impacts their ability to read.
  2. Retention and promotion decisions shall be made on a case-by-case basis and in consultation with the student's IEP and/or 504 team to determine whether the student's performance on the ELA TCAP was due to the student's disability. Such consultation includes, but is not limited to, a review of evaluation and eligibility data, input from the student's teachers and parents, benchmark assessments, and classroom performance.
- (f) Appeals to the Department.
1. The parent or legal guardian of a student who is identified for retention in third (3<sup>rd</sup>) grade pursuant to paragraph (7)(a) based on the student's achieving a performance level rating of "approaching" on the ELA portion of the student's most recent TCAP test, may appeal directly to the Department. A parent or legal guardian may provide written consent, on a form provided by the Department to LEAs and public charter schools, for a school principal, guidance counselor, teacher, or other administrator of the student's school to file an appeal for the student on behalf of the parent or legal guardian. The LEA or public charter school shall fully inform the parent or legal guardian of the student's pathways to fourth (4<sup>th</sup>) grade promotion prior to the parent or legal guardian signing the consent form. Signed consent forms shall be collected by the LEA or public charter school either electronically or on paper and shall be maintained for monitoring purposes by the LEA or public charter school.
    - (i) A decision to retain a student for any other reason, as set forth in paragraphs (1)-(6) of this rule may be appealed at the local level only, pursuant to the LEA or public charter school's promotion and retention policy.
  2. The appeal process for a student who is identified for retention in third (3<sup>rd</sup>) grade pursuant to paragraph (7)(a) based on the student's achieving a performance level rating of "approaching" on the ELA portion of the student's most recent TCAP test shall be administered by the Department. Information regarding the appeals process and timelines shall be posted on the Department's website. All appeals shall be submitted on the appeal forms provided by the Department and posted on its website. If an appeal is not submitted on the appropriate appeal form, the appeal shall be denied.
  3. The Department shall open the appeals window no later than five (5) business days after the Department releases individual student results to LEAs and public charter schools for the ELA portion of the 3<sup>rd</sup> grade TCAP. All appeals shall be submitted within the appeals window determined by the Department. The Commissioner's designee(s) shall review all properly submitted appeals, make a determination, and issue an electronic notification of the decision to the parent or legal guardian within fourteen (14) calendar days of receiving the appeal. An extension of the fourteen (14) calendar day timeline is permitted if the Commissioner determines exceptional circumstances exist with respect to a particular appeal requiring the Department to request additional information necessary to make a determination.
  4. The Commissioner's designee(s) may overturn the identification of a student as at risk for retention in third (3<sup>rd</sup>) grade pursuant to paragraph (7)(a) and allow the student to be promoted to the fourth (4<sup>th</sup>) grade if one (1) or more of the following grounds is met:

- (i) Ground 1:
  - (I) The parent or legal guardian of the student agrees they were provided notice of all requirements of a Ground 1 appeal and agrees that their student will comply with all requirements of a Ground 1 appeal if the Commissioner's designee overturns the identification of the student as at risk for retention in 3<sup>rd</sup> grade;
  - (II) For the 2023-24 academic year, the student scores at or above the fortieth (40<sup>th</sup>) percentile on a State Board- approved universal reading screener identified in State Board Universal Reading Screener Policy 3.302 and administered by the LEA or public charter school;
  - (III) For the 2024-25 academic year and thereafter, the student scores at or above the fortieth (40<sup>th</sup>) percentile on the Tennessee Universal Reading Screener provided by the Department and administered by the LEA or public charter school;
  - (IV) The principal of the student's school agrees to develop an academic remediation plan for the student. The academic remediation plan shall be developed in coordination with the student's teachers, IEP or 504 team, if applicable, and may also include input from the student's parents, school counselor, or other appropriate school personnel. The academic remediation plan shall include evidence-based strategies tailored to the student's learning needs. These evidence-based strategies shall include at least one (1) of the following:
    - I. Adjustment to current instructional strategies or high quality instructional materials;
    - II. Additional instructional time;
    - III. Modification to the student's classroom assignment to ensure the student receives instruction from a teacher with a level of overall effectiveness of above expectations (level 4) or significantly above expectations (level 5); or
    - IV. Placement of the student in a classroom with a reduced class size.
  - (V) The student's current ELA teacher and school principal provide a unanimous recommendation that the student be promoted to the 4<sup>th</sup> grade; and
  - (VI) The student's LEA or public charter school agrees to provide high-dosage low-ratio tutoring services to the student for the entirety of the student's fourth (4<sup>th</sup>) grade year. "High-dosage, low-ratio tutoring" means a minimum of two (2) thirty (30) minute sessions per week with a one to three (1:3) teacher to student ratio. TN ALL Corps high dosage, low ratio tutoring may be provided through the following options, in accordance with T.C.A. § 49-6-1507:
    - I. A tutor recruited and trained through the Department's



TN ALL Corps grant program.

II. A district recruited tutor who has completed the Department's TN ALL Corps training.

(ii) Ground 2:

(I) The parent or legal guardian of the student identified as at risk for retention in third (3<sup>rd</sup>) grade pursuant to paragraph (7)(a), or the school personnel authorized to file an appeal on behalf of the parent or legal guardian, documents that a catastrophic situation occurred on the third (3<sup>rd</sup>) grade ELA TCAP test date or within sixty (60) calendar days leading up to the third (3<sup>rd</sup>) grade ELA TCAP test administration (and any makeup opportunities) that impacted the student and impeded the student's ability to demonstrate the student's current level of knowledge on the test. Examples of a catastrophic situation include, but are not limited to, a death in the immediate family, loss of a family home, or significant medical diagnosis.

5. If the Commissioner overturns the identification of a student as at risk for retention in third (3<sup>rd</sup>) grade pursuant to a successful Ground 1 appeal under this subparagraph (f), the student may enroll in summer programming opportunities provided by the student's LEA or public charter school if the LEA or public charter school determines sufficient space is available.

6. If the Commissioner overturns the identification of a student as at risk for retention in third (3<sup>rd</sup>) grade pursuant to a successful Ground 2 appeal under this subparagraph (f), the student may enroll in summer programming and/or tutoring opportunities provided by the student's LEA or public charter school, if the LEA or public charter school determines sufficient space is available.

**Authority:** T.C.A. §§ 49-1-302, 49-6-1501 et seq., 49-6-3115, and 49-6-3001. **Administrative History:** New rule filed September 6, 2022; effective December 5, 2022.

\* If a roll-call vote was necessary, the vote by the Agency on these rulemaking hearing rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Bob Eby	X				
Darrell Cobbins				x	
Jordan Mollenhour	X				
Ryan Holt	X				
Warren Wells	X				
Lillian Hartgrove	X				
Nate Morrow	X				
Larry Jensen	X				
Krissi McInturff	X				
Laurel Cox	X				
Victoria Harpool, Designee for Steven Gentile, Executive Director, Tennessee Higher Education Commission <b>Non-Voting Ex-Officio</b>					

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the State Board of Education on 03/04/2024, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 10/30/2023

Rulemaking Hearing(s) Conducted on: (add more dates). 12/21/2023

Date: 3/5/2024

Signature: 

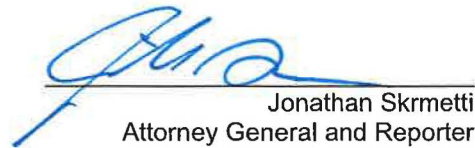
Name of Officer: Angie Sanders

Title of Officer: General Counsel

Agency/Board/Commission: State Board of Education

Rule Chapter Number(s): 0520-01-03

All rulemaking hearing rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

  
Jonathan Skrmetti  
Attorney General and Reporter  
March 11, 2024  
Date

**Department of State Use Only**

Filed with the Department of State on: 3/12/2024

Effective on: 6/10/2024

  
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Tre Hargett  
Secretary of State

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Mar 12 2024, 4:05 pm

Secretary of State  
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## **Public Hearing Comments**

The Tennessee State Board of Education held a public rulemaking hearing on Rule 0520-01-03-.16 on December 21, 2023, at 500 James Robertson Parkway, Nashville, TN and via Webex. No public comments were submitted at the hearing or in writing during the comment period regarding this rule.

Revisions were made in response to feedback from State Board members at the November 2023 State Board meeting. These revisions include requiring that LEAs and public charter schools notify all 3<sup>rd</sup> and 4<sup>th</sup> grade students of the promotion and retention requirements outlined in T.C.A. § 49-6-3115 and this rule. Revisions were also made to specify that students granted an appeal may enroll in summer programming and/or tutoring opportunities subject to available space in their LEA or public charter school.

Informal comments were received from directors of schools, the Tennessee Organization of School Superintendents, and the Tennessee School Boards Association outside of the comment period urging to the State Board to retain a Ground 1 appeal that addresses students who score in the 40<sup>th</sup> percentile on a State Board-approved Universal Reading Screener. This change was incorporated into the rule to provide a Ground 1 appeal that allows students who score in the 40<sup>th</sup> percentile on a State Board-approved Universal Reading Screener to be promoted to the 4<sup>th</sup> grade via an appeal if the student and the LEA agree to additional requirements including development of an academic remediation plan for the student, tutoring for the entirety of the 4<sup>th</sup> grade year, and recommendation from the student's ELA teacher and principal that the student be promoted to the 4<sup>th</sup> grade.

**Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

This rule does not affect small businesses.

**Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228, "On any rule and regulation proposed to be promulgated, the proposing agency shall state in a simple declarative sentence, without additional comments on the merits or the policy of the rule or regulation, whether the rule or regulation may have a projected financial impact on local governments. The statement shall describe the financial impact in terms of increase in expenditures or decrease in revenues."

This rule has no fiscal impact on local governments.

### **Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The State Board's Promotion and Retention Rule 0520-01-03-.16 outlines promotion and retention requirements for K-8 students. The rule details pathways to 4<sup>th</sup> grade promotion for 3<sup>rd</sup> grade students who score "approaching" or "below" on the ELA portion of the TCAP in accordance with T.C.A. § 49-6-3115, appeal pathways, and requirements for certain 4<sup>th</sup> grade students to be promoted to 5<sup>th</sup> grade.

These rule revisions align 4<sup>th</sup> grade promotion pathways and the appeals process with Chapter 338 of the Public Acts of 2023 (PC 338). PC 338 required that any student retained in grades K-3 be assigned a tutor for the entirety of the upcoming school year. Additionally, PC 338 amended T.C.A. § 49-6-3115 to include an additional promotion pathway for 3<sup>rd</sup> grade students who score "approaching" on the ELA portion of the TCAP. Starting in the 2023-24 school year, 3<sup>rd</sup> grade students who score "approaching" may be promoted to the 4<sup>th</sup> grade if the student scored within the 50<sup>th</sup> percentile on the most recently administered state-provided benchmark assessment and the student is provided tutoring services for the entirety of 4<sup>th</sup> grade. PC 338 also amended the parent appeals process to allow a school principal, guidance counselor, teacher, or other administrator to file an appeal for a student with written consent from the parent.

Other revisions to the appeals process were made, including the following:

- Specifies that the Department of Education will open the appeals window no later than five (5) business days after releasing individual student results to LEAs and public charter schools for the 3<sup>rd</sup> grade ELA portion of the TCAP.
- Authorizes the Commissioner to extend the 14-day timeline of notifying a student's parent or legal guardian of an appeal decision if there are circumstances that require the Department to request additional information.
- Clarifies the criteria for a catastrophic situation appeal and specifies that documentation for an appeal must show a catastrophic situation occurred on the test date or within sixty (60) days leading up to the 3<sup>rd</sup> grade TCAP administration or any makeup opportunities.
- Amends the Ground 1 appeal by adding additional requirements for the appeal including development of an academic remediation plan, tutoring for the 4<sup>th</sup> grade year, and recommendation from the student's teacher and principal that the student be promoted.
- Specifies that students granted an appeal may enroll in summer programming and/or tutoring opportunities subject to available space in their LEA or public charter school.

Revisions were also made to require that LEAs and public charter schools notify all 3<sup>rd</sup> and 4<sup>th</sup> grade students of the promotion and retention requirements outlined in law and rule at the beginning of each school year.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

Chapter 1 of the Public Acts of 2021, First Extraordinary Session (PC1), known as the Tennessee Learning Loss Remediation and Student Acceleration Act, authorized the State Board of Education to promulgate rules for implementation of the Act.

T.C.A. § 49-6-3115(d)(1) requires the State Board of Education to promulgate rules to establish an appeal process, to be administered by the Department, for a student who is identified for retention in third (3<sup>rd</sup>) grade based on the student's achieving a performance level of "approaching" on the ELA portion of the TCAP test.

T.C.A. § 49-1-302 states the State Board of Education has the power to set rules and policies for the completion of elementary, middle, and high school, to govern courses of study in public schools, and for evaluating individual student progress and achievement.

Chapter 338 of the Public Acts of 2023 made various revisions to the 3<sup>rd</sup> grade promotion pathways and appeals process set forth in T.C.A. § 49-6-3115.

- (C) Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

Tennessee Department of Education and State Board of Education are directly affected by this rule and both urge adoption. Local Education Agencies and public school parents and students are also directly affected by this rule. The State Board was not contacted by any public school parents or students urging adoption or rejection of this rule. The State Board was contacted by directors of schools, the Tennessee Organization of School Superintendents, and the Tennessee School Boards Association. Their comments are summarized in the public comments portion of this filing form.

- (D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

None.

- (E) An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

None.

- (F) Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Angie Sanders (State Board of Education)  
[Angela.C.Sanders@tn.gov](mailto:Angela.C.Sanders@tn.gov)

Nathan James (State Board of Education)  
[Nathan.James@tn.gov](mailto:Nathan.James@tn.gov)

Jack Powers (Department of Education)  
[Jack.Powers@tn.gov](mailto:Jack.Powers@tn.gov)

Robin Yeh (Department of Education)  
[Robin.Yeh@tn.gov](mailto:Robin.Yeh@tn.gov)

- (G) Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

Angie Sanders (State Board of Education)  
[Angela.C.Sanders@tn.gov](mailto:Angela.C.Sanders@tn.gov)

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Robin Yeh (Department of Education)  
[Robin.Yeh@tn.gov](mailto:Robin.Yeh@tn.gov)

(H) Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

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(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

None.

**RULES  
-OF  
THE STATE BOARD OF EDUCATION**

**CHAPTER 0520-01-03  
ACADEMIC AND INSTRUCTIONAL REQUIREMENTS**

**TABLE OF CONTENTS**

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**0520-01-03-.16 PROMOTION AND RETENTION.**

- (1) The academic program implemented in each public school shall be designed to help students achieve the expectations of the grade-level State Board approved Tennessee Academic Standards and meet the requirements for promotion to the next grade.
- (2) Promotion to the next grade level shall be based on the successful completion of required academic work or demonstration of satisfactory progress in each of the relevant academic areas.
- (3) Each LEA and public charter school governing body shall develop and implement promotion and retention policies for students in grades Kindergarten through eight (K-8) in accordance with T.C.A. § 49-6-3115, this Rule, and the State Board's Promotion and Retention Policy 3.300. The LEA or public charter school's promotion and retention policy shall include a right for the parent or legal guardian to appeal a decision to retain a student.
- (4) Schools shall identify students who demonstrate difficulty in achieving the requirements for promotion to the next grade level and therefore may be at risk for retention by February 1. However, a student may be identified as at risk for retention after February 1 if reasons for identifying a student as at risk for retention are identified in a lawfully adopted local board policy that identifies limited situations in which students may be identified as at risk for retention. Schools shall notify the parent or legal guardian of any student who is identified as at risk for retention within fifteen (15) calendar days of identification.
- (5) Factors used to identify students who are at risk for retention shall, at a minimum, include:
  - (a) The student's ability to perform at the expectations of the current grade-level standards;
  - (b) The results of local assessments, screening, or monitoring tools;
  - (c) State assessments, as applicable;
  - (d) Home Literacy Reports provided in accordance with T.C.A. § 49-1-905;
  - (e) The overall academic achievement of the student;
  - (f) The student's likelihood of success with more difficult material if promoted to the next grade;
  - (g) The student's attendance record; and
  - (h) The student's maturity.
- (6) Schools shall develop and implement an individualized promotion plan for any student identified as at risk for retention to help the student avoid retention.
  - (a) The individualized promotion plan shall be developed in coordination with the student's teachers, IEP or 504 team, if applicable, and may also include input from the student's parents, school counselor, or other appropriate school personnel. All promotion plans shall include evidence-based promotion strategies and shall be tailored to the student's learning needs. Each promotion plan shall also include expectations and measurements that can be used to verify that a student has made sufficient progress to be promoted to the next grade level. Promotion plans for students in grades three (3) and four (4) shall include the additional requirements for promotion set forth in paragraph (7) of this Rule.

- (b) A copy of a student's promotion plan shall be provided to his or her parent or legal guardian, and the school shall offer to parents or legal guardians the opportunity for a parent-teacher conference to discuss the promotion plan.
- (c) If a student is not making progress on his or her promotion plan, then the promotion strategies shall be modified to support the student in the goal of promotion to the next grade level. A student who demonstrates sufficient academic progress with the strategies included in his or her promotion plan during the school year shall be promoted to the next grade level unless retention is required as set forth in paragraph (7) of this Rule.
- (d) If a student has not demonstrated sufficient academic progress as defined in his or her promotion plan by the end of the school year, the student shall be eligible to enroll in a summer reading or learning program if such program is available. For a student in grade three (3) who is identified for retention in accordance with paragraph (7) of this Rule and attends a summer reading or learning program, the program must be conducted in accordance with T.C.A. § 49-6-3115 and T.C.A. §§ 49-6-1501-1511.
- (e) If the student was enrolled in a summer reading or learning program, ~~then~~ a decision for retention shall be made and communicated to the parent or legal guardian in writing at least ten (10) calendar days prior to the start of the next school year, or, if the student was not enrolled in a summer reading or learning program, a decision for retention shall be made and communicated to the parent or legal guardian in writing at least thirty (30) calendar days prior to the start of the next school year. The notification to the student's parent or legal guardian of the retention decision shall be in writing and sent electronically and shall include information regarding the parent or legal guardian's right to appeal the retention decision in alignment with the LEA or public charter school's promotion and retention policy.
- (f) Retention shall be considered only when it is in the best interests of the student, or if retention is required by paragraph (7) for students in grades three (3) and four (4). Retention decisions affecting a student receiving special education services shall be made in consultation with the student's Individualized Education Program (IEP) or 504 team and in accordance with the provisions of the IEP or 504 plan.
- (g) If a retention decision has been made, then the school shall develop an individualized academic remediation plan for the retained student within thirty (30) calendar days after the beginning of the next school year. A copy of the academic remediation plan shall be provided to the student's parent or legal guardian within ten (10) calendar days of development of such plan.
  - 1. The academic remediation plan shall be developed in coordination with the student's teachers, IEP or 504 team, if applicable, and may also include input from the student's parents, school counselor, or other appropriate school personnel.
  - 2. The academic remediation plan shall be implemented to help the retained student attain and demonstrate learning proficiency and shall include at least one (1) of the following strategies:
    - (i) Adjustment to the current instructional strategies or high quality instructional materials;
    - (ii) Additional instructional time;
    - (iii) Individual tutoring;
    - (iv) Modification to the student's classroom assignment to ensure the student receives instruction from a teacher with a level of overall effectiveness of above expectations (level 4) or significantly above expectations (level 5); or
    - (v) Attendance or truancy interventions.

(h) A student shall not be retained more than one (1) time in any given grade level.

~~(h)(i)~~ Retention shall not:

1. Be used without an academic remediation plan;
2. Be used as a punitive or disciplinary measure;
3. Be based solely on English language proficiency, for students who are identified as English learners;
4. Be based on the student's disability or suspected disability; or
5. Be based solely on a student's maturity.

~~(h)(j)~~ This Rule 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.), or Section 504 of the Rehabilitation Act (29 U.S.C. § 794).

~~(h)(k)~~ The progress of a retained student shall be closely monitored and reported to the student's parent or legal guardian a minimum of three (3) times during the school year in which the student is retained.

~~(k)(l)~~ Beginning with the 2023-2024 school year, a student who is retained in any of the grades kindergarten through three (K-3) shall be assigned a tutor to provide the student with tutoring services for the entirety of the upcoming school year based on tutoring requirements established by the Department.

(7) Each LEA and public charter school shall comply with the following additional requirements for promotion and retention of students in grade three (3) and four (4), in accordance with ~~the Tennessee Learning Loss Remediation and Student Acceleration Act and T.C.A. § 49-6-3115~~ Each LEA and public charter school shall notify parents or legal guardians of all students in grade three (3) and grade four (4) of the following promotion and retention requirements at the beginning of each school year:

(a) A student in grade three (3) 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's achieving a performance level rating of "on track" or "mastered" ~~(otherwise known as "met expectations" or "exceeded expectations")~~ on the ELA portion of the student's most recent Tennessee comprehensive assessment program (TCAP) test.

(b) Notwithstanding paragraph (7)(a):

1. A student in grade three (3) who is not proficient in ELA, as determined by the student's achieving a performance level rating of "approaching" on the ELA portion of the student's most recent TCAP test, may be promoted to the fourth (4<sup>th</sup>)-grade if:
  - (i) Pathway 1: The student is an English language learner and has received less than two (2) full school years of ELA instruction;
  - (ii) Pathway 2: The student was previously retained in any of the grades kindergarten through three (K-3);
  - (iii) Pathway 3: The student is retested in accordance with Department guidelines before the beginning of the next school year and scores proficient in ELA;
  - (iv) Pathway 4: 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, as required under T.C.A. § 49-6-1502(4)(F), demonstrates adequate growth, as defined in the State Board's Promotion and Retention Policy 3.300; ~~or~~

(v) Pathway 5: The student receives high-dosage, low-ratio tutoring for the entirety of the upcoming school year from a Tennessee accelerating literacy and learning corps (TALLC/TN ALL Corps) tutor. For the purposes of this Rule, "high-dosage, low-ratio tutoring" means a minimum of two (2) thirty (30) minute sessions per week with a one to three (1:3) teacher to student ratio. TN ALL Corps/TALLC high dosage, low ratio tutoring may be provided through the following options, in accordance with T.C.A. § 49-6-1507:

(i) A tutor recruited and trained through the Department's TN ALL Corps grant program;

(ii) A district recruited tutor who has completed the Department's TN ALL Corps training; or

(vi) Pathway 6: Beginning with third (3<sup>rd</sup>) grade students in the 2023-24 school year, the student demonstrates proficiency in ELA standards based on the student scoring at or above the fiftieth (50<sup>th</sup>) percentile on the most recently administered state-provided benchmark assessment, if the benchmark assessment is administered to the student in a test environment, in accordance with Department guidance, and the student's LEA or public charter school agrees to provide tutoring services to the student for the entirety of the student's fourth (4<sup>th</sup>) -grade year.

(i) If a student is promoted to the fourth (4<sup>th</sup>) grade pursuant to this Pathway 6, then the student's LEA or public charter school shall notify the student's parent or guardian, in writing, of the benefits of enrolling their student in a learning loss bridge camp and encouraging the parent or guardian to do so.

(ii) For the purposes of Pathway 6, "state-provided benchmark assessment" means the Tennessee Universal Reading Screener provided by the Department.

(iii) The tutoring services provided to the student for the entirety of the student's fourth (4<sup>th</sup>) grade year must be high-dosage, low ratio tutoring. For the purposes of this Rule, "high-dosage, low-ratio tutoring" means a minimum of two (2) thirty (30) minute sessions per week with a one to three (1:3) teacher to student ratio. TN ALL Corps high dosage, low ratio tutoring may be provided through the following options, in accordance with T.C.A. § 49-6-1507:

I. A tutor recruited and trained through the Department's TN ALL Corps grant program;

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II. A district recruited tutor who has completed the Department's TN ALL Corps training.

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2. A student in grade three (3) who is not proficient in ELA, as determined by the student's achieving a performance level rating of "below" on the ELA portion of the student's most recent TCAP test may be promoted to the fourth (4<sup>th</sup>) grade if:

(i) Pathway 1: The student is an English language learner and has received less than two (2) full school years of ELA instruction;

(ii) Pathway 2: The student was previously retained in any of the grades kindergarten through three (K-3);

(iii) Pathway 3: The student retested in accordance with Department guidelines before the beginning the next school year and scores proficient in ELA; or

- (iv) Pathway 4. 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 receives high-dosage, low-ratio tutoring for the entirety of the upcoming school year from a Tennessee accelerating literacy and learning corps (~~TALLC~~TN ALL Corps) tutor. For the purposes of this ~~Rule~~, "high-dosage, low-ratio tutoring" means a minimum of two (2) thirty (30) minute sessions per week with a one to three (1:3) teacher to student ratio. ~~TALLC-TN ALL Corps~~ high dosage, low ratio tutoring may be provided through the following options, in accordance with T.C.A. § 49-6-1507:
  - (I) A tutor recruited and trained through the ~~D~~department's TN ALL Corps grant program.
  - (II) A district recruited tutor who has completed the ~~D~~department's TN ALL Corps training.
- (c) A student who is promoted to the fourth (4<sup>th</sup>) grade pursuant to paragraph (7)(b)(1)(v) or (7)(b)(2)(iv) of this Rule, must show adequate growth on the fourth (4<sup>th</sup>) grade ELA portion of the TCAP test as further defined in State Board Promotion and Retention Policy 3.300, before the student may be promoted to the fifth (5<sup>th</sup>) grade.
- (d) Notwithstanding paragraph (c), a student shall not be retained in fourth (4<sup>th</sup>) grade more than once.
- (e) The requirements set forth in paragraphs (7)(a)-(d) do 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.) or Section 504 of the Rehabilitation Act (29 U.S.C. § 794).
  1. In accordance with T.C.A. § 49-6-3115, an LEA or public charter school shall not retain a student with a disability or a suspected disability that impacts their ability to read.
  2. Retention and promotion decisions shall be made on a case-by-case basis and in consultation with the student's IEP and/or 504 team to determine whether the student's performance on the ELA TCAP was due to the student's disability. Such consultation includes, but is not limited to, a review of evaluation and eligibility data, input from the student's teachers and parents, benchmark assessments, and classroom performance.
- (f) Appeals to the Department.
  1. The parent or legal guardian of a student who is identified for retention in third (3<sup>rd</sup>) grade pursuant to paragraph (7)(a) based on the student's achieving a performance level rating of "approaching" on the ELA portion of the student's most recent TCAP test, may appeal directly to the Department. A parent or legal guardian may provide written consent, on a form provided by the Department to LEAs and public charter schools, for a school principal, guidance counselor, teacher, or other administrator of the student's school to file an appeal for the student on behalf of the parent or legal guardian. The LEA or public charter school shall fully inform the parent or legal guardian of the student's pathways to fourth (4<sup>th</sup>) grade promotion prior to the parent or legal guardian signing the consent form. Signed consent forms shall be collected by the LEA or public charter school either electronically or on paper and shall be maintained for monitoring purposes by the LEA or public charter school.
    - (i) A decision to retain a student for any other reason, as set forth in paragraphs (1)-(6) of this rule may be appealed at the local level only, pursuant to the LEA or public charter school's promotion and retention policy.
  2. The appeal process for a student who is identified for retention in third (3<sup>rd</sup>) grade pursuant to paragraph (7)(a) based on the student's achieving a performance level rating of "approaching" on the ELA portion of the student's most recent TCAP test shall be administered by the Department. Information regarding the appeals process and timelines shall be posted on the Department's website. All appeals shall be submitted on the appeal forms provided by the Department and posted on its website.

If an appeal is not submitted on the appropriate appeal form, the appeal shall be denied.

3. An appeal shall be submitted by a parent or legal guardian to the Department within fourteen (14) calendar days of receipt of the notice from the LEA or public charter school that the student is identified as at risk for retention based on the student's achieving a performance level rating of "approaching" on the ELA portion of the student's most recent TCAP test. The notice that the student is at risk for retention shall be deemed received on the day it is electronically sent. The Department shall open the appeals window no later than five (5) business days after the Department releases individual student results to LEAs and public charter schools for the ELA portion of the 3<sup>rd</sup> grade TCAP. All appeals shall be submitted within the appeals window determined by the Department. The Commissioner's designee(s) shall review all properly submitted appeals, make a determination, and issue an electronic notification of the decision to the parent or legal guardian within fourteen (14) calendar days of receiving the appeal. An extension of the fourteen (14) calendar day timeline is permitted if the Commissioner determines exceptional circumstances exist with respect to a particular appeal requiring the Department to request additional information necessary to make a determination.
4. The Commissioner's designee(s) may overturn the identification of a student as at risk for retention in third (3<sup>rd</sup>) grade pursuant to paragraph (7)(a) and allow the student to be promoted to the fourth (4<sup>th</sup>) grade if one (1) or more of the following grounds is met:

(i) Ground 1:

5. (I) The parent or legal guardian of the student agrees they were provided notice of all requirements of a Ground 1 appeal and agrees that their student will comply with all requirements of a Ground 1 appeal if the Commissioner's designee overturns the identification of the student as at risk for retention in 3<sup>rd</sup> grade.

(II) For the 2023-24 academic year, [The student demonstrated growth scores at or above the fortieth (40<sup>th</sup>) percentile on national norm as demonstrated in the student's composite score from a State Board-approved universal reading screener identified in State Board Universal Reading Screener Policy 3.302 and or the Tennessee universal reading screener administered by the LEA or public charter school;

(III) and For the 2024-25 academic year and thereafter, the student scores at or above the fortieth (40<sup>th</sup>) percentile on the Tennessee Universal Reading Screener provided by the Department and administered by the LEA or public charter school;

(IV) The principal of the student's school agrees to develop an academic remediation plan for the student. The academic remediation plan shall be developed in coordination with the student's teachers, IEP or 504 team, if applicable, and may also include input from the student's parents, school counselor, or other appropriate school personnel. The academic remediation plan shall include evidence-based strategies tailored to the student's learning needs. These evidence-based strategies shall include at least one (1) of the following:

I. Adjustment to current instructional strategies or high quality instructional materials;

II. Additional instructional time;

III. Modification to the student's classroom assignment to ensure the student receives instruction from a teacher with a level of overall

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~~effectiveness of above expectations (level 4) or significantly above expectations (level 5); or~~

~~IV. Placement of the student in a classroom with a reduced class size.~~

~~(V) The student's current ELA teacher and school principal provide a unanimous recommendation that the student be promoted to the 4<sup>th</sup> grade; and~~

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~~(VI) The student's LEA or public charter school agrees to provide high-dosage low-ratio tutoring services to the student for the entirety of the student's fourth (4<sup>th</sup>) grade year. "High-dosage, low-ratio tutoring" means a minimum of two (2) thirty (30) minute sessions per week with a one to three (1:3) teacher to student ratio. TN ALL Corps high dosage, low ratio tutoring may be provided through the following options, in accordance with T.C.A. § 49-6-1507:~~

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~~I. A tutor recruited and trained through the Department's TN ALL Corps grant program.~~

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~~(i)II. A district recruited tutor who has completed the Department's TN ALL Corps training.~~

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~~(ii) The student demonstrated growth in standards mastery based on the student's scores on a state-approved standards-based benchmark assessment administered by the student's school; or~~

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~~6.(ii) Ground 2:~~

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~~(I) The parent or legal guardian of the student identified as at risk for retention in third (3<sup>rd</sup>) grade pursuant to paragraph (7)(a), or the school personnel authorized to file an appeal on behalf of the parent or legal guardian, documents that a catastrophic situation occurred on the third (3<sup>rd</sup>) grade ELA TCAP test date or within during the days sixty (60) calendar days leading up to the third (3<sup>rd</sup>) grade ELA TCAP test administration (and any makeup opportunities) that impacted the student and impeded the student's ability to demonstrate the student's current level of knowledge perform on the test. Examples of a catastrophic situation include, but are not limited to, a death in the immediate family, loss of a family home, or significant medical diagnosis.~~

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~~5. If the Commissioner overturns the identification of a student as at risk for retention in third (3<sup>rd</sup>) grade pursuant to a successful Ground 1 appeal under this subparagraph (f), the student may enroll in summer programming opportunities provided by the student's LEA or public charter school if the LEA or public charter school determines sufficient space is available.~~

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~~6. If the Commissioner overturns the identification of a student as at risk for retention in third (3<sup>rd</sup>) grade pursuant to a successful Ground 2 appeal under this subparagraph (f), the student may enroll in summer programming and/or tutoring opportunities provided by the student's LEA or public charter school, if the LEA or public charter school determines sufficient space is available.~~

~~(i)~~

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Authority: T.C.A. §§ 49-1-302, 49-6-1501 et seq., 49-6-3115, and 49-6-3001. Administrative History: New rule filed September 6, 2022; effective December 5, 2022.