

**A JOINT STATEMENT OF BOARDS OF EDUCATION EXPRESSING CONCERN WITH
THE 80% TCAP TESTING PARTICIPATION REQUIREMENT OF SENATE BILL 7001 AND
THE THIRD GRADE RETENTION PROVISION OF HOUSE BILL 7004, AS AMENDED**

I. BACKGROUND

On December 29, 2020, Tennessee Governor Bill Lee called for the Tennessee General Assembly to convene for a special legislative session on January 19, 2021, to address urgent issues facing Tennessee students and schools in the 2021-22 school year, which the Governor identified as learning loss, funding, accountability, literacy, and teacher pay. Among other legislation, the General Assembly passed Senate Bill 7001 (the Accountability to Inform Bill) and House Bill 7004 (the Tennessee Learning Loss Remediation and Student Acceleration Act).

Senate Bill 7001 (the Accountability to Inform Bill)

Sections 11 and 12 of Senate Bill 7001 provide that *if* 80 percent or more of a Local Education Agency's ("LEA") students enrolled in grades 3-12 participate in the TCAP tests administered in 2020-2021 school year, *then* student performance and student growth data generated from those TCAP tests will not be used to assign a letter grade to a school, identify a school as a priority school, or assign a school to the achievement school district. Sections 11 and 12 of Senate Bill 7001 also authorize the Commissioner of Education, at the Commissioner's discretion, to grant an LEA a waiver from the 80 percent participation requirement, but do not set forth the bases upon which that waiver may be granted.

Though not addressed in Senate Bill 7001, currently the TCAP tests administered in the 2020-2021 school year may be administered *in-person* only.

House Bill 7004 (the Tennessee Learning Loss Remediation and Student Acceleration Act)

Section 2 of House Bill 7004, as amended, provides that, subject to certain exceptions and an as-yet unestablished appeal process for certain students, beginning with the 2022-2023 school year, a student in the third grade will 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" on the ELA portion of the student's most recent TCAP test.

II. THE BOARDS' CONCERNS

The undersigned Boards appreciate the Governor's and the General Assembly's attention to education-related issues. Nevertheless, the Boards have concerns regarding certain provisions of Senate Bill 7001 and House Bill 7004, that, respectfully, require swift legislative action.

Senate Bill 7001

Because currently there is no option for students to take TCAP tests remotely, the undersigned Boards believe it will be extremely difficult for our districts to achieve 80% testing

participation during the 2020-2021 school year. The percentage of our students enrolled in full-time remote instruction varies from district to district. Nevertheless, to achieve 80% testing participation, our districts likely will be forced to encourage some percentage of our full-time remote learners to come into schools or other testing sites to take the TCAP tests in-person, despite those students having chosen a state-approved remote learning modality out of concern for their health and the health of others in their family and the larger community. The Boards do not expect all students enrolled in full-time remote instruction will agree to take these tests in-person, nor do the Boards believe those students should be required to do so. Of additional concern is the possibility that cohorts or classes of students may be excluded from school due to quarantines required by illness from or exposure to COVID-19. These absences would also impact a district's ability to meet the 80% participation threshold.

The Boards recognize Senate Bill 7001 includes a mechanism by which the Commissioner of Education may, at the Commissioner's discretion, waive the 80% participation requirement. However, Senate Bill 7001 does not set forth the bases upon which a waiver may be granted, the timeline for obtaining a waiver, what information must be provided to obtain a waiver, or what efforts the districts must show they have taken to obtain a waiver. Considering the circumstances in which our districts find themselves this year, our districts cannot wait on guidance regarding these waivers before preparing for our students to take these tests.

The consequences of schools receiving a poor or failing letter grade, being declared a priority school, or being assigned to the achievement school district can be dire. Certainly, such consequences are disproportionate to a school's inability to achieve 80% *in-person* TCAP testing participation during a year marked by a pandemic, particularly when remote learners are participating in state-approved remote learning plans.

House Bill 7004

The last time TCAP assessments were administered (the 2018-2019 school year), 63% of third graders in the state (approximately 46,000 Tennessee students) did not achieve an "on track" or "mastered" performance level rating on the ELA portion of the TCAP. See Tennessee Department of Education, "2019 TNReady Scores, State-Level Results," available at https://www.tn.gov/content/dam/tn/education/accountability/2019/state_assessment_file_suppressed.csv (see Row 328, Columns O and P) (last visited January 28, 2021). In other words, based on 2018-2019 data, almost two-thirds of third graders in the state would be subject to retention unless they meet one of the exceptions in the law.

Additionally, the TNReady category of "on track" does not mean "on grade level." Indeed, a high level of performance is required to achieve the Tennessee Department of Education's "on track" rating. "Performance at [the on-track] level demonstrates that the student has a *comprehensive* understanding and has a *thorough* ability to apply the grade/course-level knowledge and skills defined by the Tennessee Academic Standards." See Tennessee Department of Education, "TCAP English Language Arts Grades 3-5 Assessment Fact Sheet," available at https://www.tn.gov/content/dam/tn/education/testing/overviews/3-5%20ELA%20Assessment%20Overview_noyear.pdf (last visited January 31, 2021) (emphasis added).

Accordingly, under House Bill 7004, even third graders who are performing at grade level could be subject to retention. It is also concerning that the sole metric used for initially determining which students may be subject to retention is performance on one high stakes test rather than a comprehensive assessment of those students' performance in third grade as a whole, balanced with consideration of possible negative life-long effects retention can have on children.

Additionally, the third-grade retention provision of House Bill 7004 is unclear in certain respects. For example, the Bill does not give guidance as to what "adequate growth as determined by the department" means for purposes of promoting a third-grader who achieved a performance level rating of "approaching" on the ELA portion of the student's most recent TCAP test and who attends a learning loss bridge camp before the beginning of the upcoming school year. Even more concerning, House Bill 7004 does not provide details regarding retention or promotion of students with an IEP. Instead, the Bill only states the legislation does not supersede IDEA or Section 504.

III. SUGGESTED SOLUTIONS

Senate Bill 7001

To remedy the concerns regarding Senate Bill 7001 set forth above, the undersigned Boards respectfully request the General Assembly pass, without delay, legislation (1) requiring the Commissioner of Education to make available a remote testing option for TCAP tests administered in the 2020-2021 school year (and providing that students who take the TCAP tests remotely are counted in any required testing participation percentage), (2) significantly lowering or eliminating any required in-person TCAP testing participation percentage for the 2020-2021 school year, or (3) placing a moratorium on TCAP testing for the 2020-2021 school year.

House Bill 7004

To remedy the concerns regarding House Bill 7004 set forth above, the undersigned Boards respectfully request the General Assembly pass, without delay, legislation (1) providing that the decision on whether to retain a student in third grade shall be made based upon a comprehensive assessment of a student's performance in third grade as a whole, which may include but is not solely determined by the student's performance level rating on the ELA portion of the student's most recent TCAP test and (2) providing additional clarity on third grade retention, particularly related to students with IEPs.

GERMANTOWN BOARD OF EDUCATION

By: Amy S Goff

Its: Board Chairman

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