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 Number: 01-10-22  
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# Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

<b>Agency/Board/Commission:</b>	State Board of Education
<b>Division:</b>	N/A
<b>Contact Person:</b>	Angie Sanders
<b>Address:</b>	500 James Robertson Parkway, 5 <sup>th</sup> Floor, Nashville, TN 37243
<b>Phone:</b>	(615) 253-5707
<b>Email:</b>	Angela.C.Sanders@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

<b>ADA Contact:</b>	Angie Sanders
<b>Address:</b>	500 James Robertson Parkway, 5 <sup>th</sup> Floor, Nashville, TN 37243
<b>Phone:</b>	(615) 253-5707
<b>Email:</b>	Angela.C.Sanders@tn.gov

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	500 James Robertson Parkway		
Address 2:	Davy Crockett Building, Conference Room 1C, 1 <sup>st</sup> Floor		
City:	Nashville, TN		
Zip:	37243		
Hearing Date :	03/21/2022		
Hearing Time:	10:30 AM	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

**Additional Hearing Information:**

**\*\*Anyone wishing to participate electronically may access the hearing using the following information:\*\***  
**URL:** <https://bit.ly/3fvu7MM>  
**Password:** SBERules  
**Phone:** 1-415-655-0001  
**Access Code:** 2305 132 1487

Please check the State Board’s website at <https://www.tn.gov/sbe/meetings.html> for any additional information regarding this rulemaking hearing. **If limitations on in-person gatherings due to COVID-19 prevent this hearing from occurring in-person, such information will be posted on the State Board’s website and all attendees will utilize the above information to participate**

**electronically.**

Oral comments are invited at the hearing.

In addition, written comments may be submitted via email at [angela.c.sanders@tn.gov](mailto:angela.c.sanders@tn.gov) or mailed to:

Tennessee State Board of Education

Attention: Angie Sanders

Davy Crockett Tower, 5<sup>th</sup> Floor

500 James Robertson Parkway

Nashville, Tennessee 37243.

Written comments must be received by 4:30 PM CT on March 23, 2022 in order to ensure consideration. **Email comments are preferred as mail is running very slow and may not arrive in time.** For further information, please contact Angie Sanders by e-mail at [angela.c.sanders@tn.gov](mailto:angela.c.sanders@tn.gov).

If attending the hearing in-person, please bring identification so that you may be checked into the building by security. Conference room 1C is located on the first floor.

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

<b>Chapter Number</b>	<b>Chapter Title</b>
0520-01-03	Academic and Instructional Requirements
<b>Rule Number</b>	<b>Rule Title</b>
0520-01-03-.15	Universal Student Screeners and State-Adopted Benchmark Assessments

**AMENDMENT**

**RULES  
OF  
THE STATE BOARD OF EDUCATION**

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

0520-01-03-.01	Purpose	0520-01-03-.08	Repealed
0520-01-03-.02	Uniform Grading System	0520-01-03-.09	Special Education Programs and Services
0520-01-03-.03	Academic Program Requirements	0520-01-03-.10	Repealed
0520-01-03-.04	Repealed	0520-01-03-.11	
0520-01-03-.05	Virtual Education	through	
0520-01-03-.06	Graduation Requirements	0520-01-03-.13	Repealed
0520-01-03-.07	Civics	0520-01-03-.14	Summer Learning Program Requirements
		0520-01-03-.15	Universal Student Screeners and State-Adopted Benchmark Assessments

**0520-01-03-.15 UNIVERSAL STUDENT SCREENERS AND STATE-ADOPTED BENCHMARK ASSESSMENTS.**

- (1) Definitions. As used in this rule:
- (a) “Nationally Normed” means screener scores, classifications, and score distribution percentiles are reported and calibrated using a representative National Sample.
  - (b) “National Sample” means a sample of students that represents the population of U.S. students. For universal screeners, a national sample consists of at least one hundred fifty (150) students in each of at least three (3) of nine (9) US Census Bureau divisions sampled before the year 2020. Part of completing the sample may include any needed statistical transformations required to achieve demographic representativeness. Such a sampling must be able to produce valid and reliable scores for classifying and identifying students.
  - (c) "Significant Reading Deficiency" means:
    - 1. For students in kindergarten through grade three (K-3), that a student's score on a Universal Reading Screener is in the 15<sup>th</sup> percentile or below on a Nationally Normed Universal Reading Screener. Students in Kindergarten through grade three (K-3) who have a significant reading deficiency are considered below proficient in English language arts and shall be regarded as priority students for purposes of implementing the Tennessee Learning Loss Remediation and Student Acceleration Act.
  - (d) “At Risk for Significant Reading Deficiency” means:
    - 1. For students in Kindergarten through grade three (K-3), that a student’s score on a Universal Reading Screener is between the 16<sup>th</sup> and 40<sup>th</sup> percentile on a Nationally Normed Universal Reading Screener. Students in Kindergarten through grade three (K-3) who are at risk for significant reading deficiency are considered below proficient in English language arts and shall be regarded as priority students for purposes of implementing the Tennessee Learning Loss Remediation and Student Acceleration Act.

- (e) "Universal Reading Screener" means a uniform tool that screens and monitors a student's progress in foundational literacy skills of phonemic awareness, phonics, fluency, vocabulary, and comprehension.
  - (f) "Innovative Benchmark Assessment Pilot Program" means a program established, funded, and implemented by the Department as part of the Tennessee Learning Loss Remediation and Student Acceleration Act to provide the Tennessee universal math screener, the Tennessee universal reading screener, and state-adopted benchmark assessments to LEAs and public charter schools to more frequently measure student learning and address student learning loss.
  - (g) "Pre-test" means state mandated assessment provided to students upon entry to summer programming required by the Tennessee Learning Loss Remediation and Student Acceleration Act to determine current knowledge on prioritized math and English language arts content. The assessment shall be used to determine adequate growth for purposes of determining eligibility for promotion from third (3<sup>rd</sup>) to fourth (4<sup>th</sup>) grade beginning in the 2022-2023 school year.
  - (h) "Post-test" means state mandated assessment provided to students upon exit of summer programming required by the Tennessee Learning Loss Remediation and Student Acceleration Act to determine knowledge gained on prioritized math and English language arts content. The assessment will be used to determine adequate growth for purposes of determining eligibility for promotion from third (3<sup>rd</sup>) to fourth (4<sup>th</sup>) grade beginning in the 2022- 2023 school year.
- (2) Pursuant to the Tennessee Literacy Success Act, each LEA and public charter school shall annually administer a Universal Reading Screener to each student in kindergarten through grade three (K-3) during each of the three (3) administration windows established by the Department.
  - (3) Student performance on a Universal Reading Screener shall be used to identify students in Kindergarten through grade three (K-3) with a Significant Reading Deficiency or students who are At Risk for Significant Reading Deficiency. Students in Kindergarten through grade three (K-3) with a Significant Reading Deficiency or students who are At Risk for Significant Reading Deficiency are considered below proficient in English language arts and shall be regarded as priority students for purposes of implementing the Tennessee Learning Loss Remediation and Student Acceleration Act.
  - (4) Each LEA and public charter school's foundational literacy skills plan shall include the chosen Universal Reading Screener.
  - (5) All Universal Reading Screeners shall be Nationally Normed. LEAs and public charter schools may choose from the following Universal Reading Screener options:
    - (a) A Nationally Normed Tennessee Universal Reading Screener provided by the Department at no cost to LEAs and public charter schools;
    - (b) A Universal Reading Screener from an approved list of Nationally Normed Universal Reading Screeners identified by the Department and approved by the State Board in State Board Policy 3.302; or
    - (c) LEAs and public charter schools may request from the State Board approval to use a locally identified Universal Reading Screener. LEAs and public charter schools requesting

approval from the State Board to use a locally identified Universal Reading Screener shall submit a revised foundational literacy skills plan to the Department by June 1 prior to the school year in which the LEA or public charter school wishes to use the locally identified screener. The request shall identify the Universal Reading Screener and provide written documentation outlining the evidence that the Universal Reading Screener meets the requirements identified in parts (1) through (6) below. The Department shall review each request and make recommendations to the State Board for approval by July 31 of each year. Each request shall provide proof, including technical reports and assessment specifications, that the Universal Reading Screener meets the following criteria:

1. Is Nationally Normed;
2. Complies with dyslexia screening requirements established in T.C.A. § 49-1-229;
3. Complies with the universal screening norms and identification requirements established in Tennessee's RTI<sup>2</sup> framework manual;
4. Produces scores that meet the Department's criteria to reliably and validly identify students with a Significant Reading Deficiency or students who are At Risk for Significant Reading Deficiency, identifies priority students for purposes of implementation of the Tennessee Learning Loss Remediation and Student Acceleration Act, and can measure student growth from one administration window to another;
5. Produces results that allow for the reliable generation of individual growth scores for teachers teaching pre-Kindergarten through grade two (pre-K-2) to use as an alternative growth model in accordance with the Tennessee Literacy Success Act and the Tennessee Learning Loss Remediation and Student Acceleration Act; and
6. Provides a full dataset of student and educator data that can be submitted electronically to the Department three (3) times a year in a manner that complies with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g), T.C.A. § 10-7-504, the Data Accessibility, Transparency and Accountability Act (Title 49, Chapter 1, Part 7), and all other applicable state and federal privacy laws in a format that meets the Department's data standard.

(d) All Universal Reading Screeners approved by the State Board for use by LEAs and public charter schools shall be listed in State Board Policy 3.302. A Universal Reading Screener may be removed from the approved list in State Board Policy 3.302 by the State Board if the Universal Reading Screener does not continue to meet the requirements set forth in paragraphs (c)(1)-(6) of this rule, or the Tennessee Literacy Success Act, such that any LEA or public charter school that utilizes the Universal Reading Screener is unable to maintain compliance with the Literacy Success Act.

1. The Department shall provide to the State Board a Universal Reading Screener mid-year performance report after the data submission window closes for the second administration of the Universal Reading Screener, and an end of year performance report after the data submission window closes for the third administration of the Universal Reading Screener. The mid-year and end of year performance reports must include the status of each approved Universal Reading Screener's compliance with the requirements set forth in paragraphs (c)(1)-(6) of this rule. Additionally, the mid-year and end of year performance report shall include objective criteria, as requested by the State Board, including the number

of districts that selected each vendor, the number of accurate data sets submitted by each vendor out of the total required data sets within the required window, whether all data sets were submitted for each district by each vendor, and the number of errors in the data set by vendor. The mid-year and end of year performance report shall also include information regarding any written notices sent to an LEA or public charter school as set forth in subparagraph 2. below.

2. After every administration of the Universal Reading Screener, the Department shall send written notice to any LEA or public charter school that utilizes a Universal Reading Screener vendor that does not comply with the requirements set forth in paragraphs (c)(1)-(6) of this rule, as required to comply with the Tennessee Literacy Success Act. The notice shall clearly state that the LEA or public charter school's vendor is out of compliance with this rule or the Tennessee Literacy Success Act, reasons for non-compliance, and that the State Board is authorized to take action to remove the Universal Reading Screener vendor from the approved list based on such non-compliance. The notice shall also be sent to the Universal Reading Screener vendor and the chair of the State Board. LEAs and public charter schools that receive a notice of non-compliance from the Department shall work with their Universal Reading Screener vendor to remedy the non-compliance with this rule and the Literacy Success Act.
  3. If the LEA or public charter school does not come into compliance with this rule or the Tennessee Literacy Success Act by utilizing a Universal Reading Screener vendor that is in compliance with this rule by delivery of the mid-year performance report, or by the delivery of the end of year performance report, the Executive Director of the State Board may bring a recommendation to the State Board that the Universal Reading Screener be removed from the approved list in State Board Policy 3.302. The recommendation shall provide specific information to the State Board regarding the non-compliance and notice that was provided to the LEA or public charter school and Universal Reading Screener vendor as outlined in the mid-year or end of year performance report submitted to the State Board by the Department. The Universal Reading Screener vendor and the LEA or public charter school may request to speak at the Board meeting when the recommendation is presented by providing notice to the State Board in compliance with State Board Policy 1.400. The Board may vote to remove the Universal Reading Screener vendor from the approved list, to keep the Universal Reading Screener on the approved list, or to defer the vote to a later date.
- (6) Approved Universal Reading Screeners may be used by LEAs and public charter schools to comply with dyslexia screening requirements established in T.C.A. § 49-1-229 and with the universal screening requirements established in Tennessee's RTI<sup>2</sup> framework manual.
  - (7) LEAs and public charter schools may need to find an alternate tool to measure reading proficiency if a student has a documented disability in an Individualized Education Program (IEP) or section 504 plan that indicates the student has a language or physical barrier to using one (1) of the approved Universal Reading Screeners outlined in paragraph (5) of this rule.
  - (8) Each LEA and public charter school shall submit electronically to the Department the full dataset for each Universal Reading Screener administered to students three (3) times per school year. All student information must be maintained in accordance with the Family Educational Rights and Privacy Act (FERPA) (20 U.S.C. § 1232g), T.C.A. § 10-7-504, the Data Accessibility, Transparency

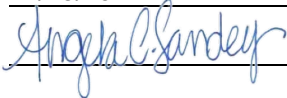
and Accountability Act (Title 49, Chapter 1, Part 7) and all other applicable state and federal privacy laws in a format that meets the Department's data standard.

- (9) LEAs and public charter schools may choose to administer a Universal Reading Screener to pre-Kindergarten students.
- (10) The Department shall implement an Innovative Benchmark Assessment Pilot Program pursuant to the Tennessee Learning Loss Remediation and Student Acceleration Act to provide the Tennessee Universal Reading Screener, the Tennessee universal math screener, and state-adopted benchmark assessments to LEAs and public charter schools to more frequently measure student learning and address student learning loss.
- (11) Pursuant to Tennessee Learning Loss Remediation and Student Acceleration Act, LEAs and public charter schools may use the state-adopted benchmark assessments, the Tennessee universal math screener, the Tennessee Universal Reading Screener, or a Universal Reading Screener approved by the State Board to identify priority students for after-school learning mini-camps, learning loss bridge camps, and summer learning camps.
  - (a) For grades Kindergarten through three (K-3), the Tennessee Universal Reading Screener provided by the Department, the Tennessee universal math screener provided by the Department, or a Universal Reading Screener approved by the State Board shall serve as the state-adopted benchmark assessments required to be used by LEAs and public charter schools in implementing the Tennessee Learning Loss Remediation and Student Acceleration Act.
  - (b) For grades four (4) through eight (8), a locally adopted benchmark assessment approved by the Department for use by the LEA or public charter school shall serve as the state-adopted benchmark assessments used by LEAs and public charter schools in implementing the Tennessee Learning Loss Remediation and Student Acceleration Act. Each LEA or public charter school shall request from the Commissioner of Education approval to use locally adopted benchmark assessments as the state adopted benchmark assessment. Each request shall include:
    1. The name of each locally adopted benchmark assessment requested for use; and
    2. The performance category for each locally adopted benchmark assessment that the LEA or public charter school will use to identify priority students, to implement the Tennessee Learning Loss Remediation and Student Acceleration Act.
  - (c) Any student in Kindergarten through grade three (K-3) scoring in the 40<sup>th</sup> percentile or below on a Nationally Normed universal math screener shall be considered below proficient in math and regarded as a priority student for purposes of implementing the Tennessee Learning Loss Remediation and Student Acceleration Act.
- (12) Pursuant to the Tennessee Learning Loss Remediation and Student Acceleration Act, LEAs and public charter schools shall use the state-provided pre- and post-test to monitor student growth in summer programming during the summer of 2021 and every summer thereafter.

**Authority:** T.C.A. §§ 49-6-1501 et seq. and 49-1-901 et seq. **Administrative History:** Emergency rule filed May 27, 2021; effective through November 23, 2021.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 1/25/2022

Signature: 

Name of Officer: Angela C. Sanders

Title of Officer: General Counsel

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Filed with the Department of State on: 1/26/2022

  
Tre Hargett  
Secretary of State

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