

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Sections 121(a)(1) and 3110 (14 **Del.C.** §§121(a)(1) & 3110)
14 **DE Admin. Code** 508

FINAL

REGULATORY IMPLEMENTING ORDER

508 Multi-Tiered System of Support (MTSS)

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §121(a)(1) and §3110, the Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 508 Multi-Tiered System of Support. This regulation is being amended to comply with House Bill 301 with House Amendment 1 of the 151st General Assembly which requires the establishment and implementation of mental health education programs for kindergarten through grade 12. This regulation will be effective July 1, 2023 and should be implemented for the 2023-2024 school year.

Notice of the proposed regulation was published in the *Delaware Register of Regulation* on January 1, 2023. The Department of Education received two comments relative to the proposed amendments which suggested the Department consider the following:

- (1) Provide more details and guidance about other referrals or interventions that may be necessary if a child is struggling to meet identified benchmarks in social and emotional learning and mental health.

Response: *The Department believes the regulation supports other referrals and interventions for a child who may be struggling to meet identified benchmarks in social and emotional learning and mental health. The MTSS process does not prohibit, and rather encourages, the use of in school supports in tandem with any outside services. The purpose of the local education agency's (LEA) problem-solving team is to hold meetings as often as needed, but at least every 6-8 weeks, to measure progress, gather details, and make adjustments to provide further guidance for the student. Therefore, no further change is needed to the regulation.*

- (2) MTSS regulations are not being implemented as intended, with respect to the purpose and scope of MTSS, and that MTSS is not intended to preclude access to needed services when warranted. Therefore, it is recommended that regulation require the Department to issue additional guidance, education and oversight, including monitoring for compliance of MTSS.

Response: *The Department is working with curriculum directors, special education directors, and other school leaders to better understand the scope of MTSS, determine LEA needs, and provide additional professional learning. The Department is asking LEAs to bring teams to statewide meetings to allow for a better understanding of the educator's implementation strategies, strengths, and challenges. A tiered approach of support for implementation will be addressed by the Department based on identified needs and therefore changes to the regulation are not needed.*

- (3) Additionally, the Department removed the hyphen from the term "social-emotional" and correctly referred to it as "social and emotional."

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 508 Multi-Tiered System of Support to comply with House Bill 301 with House Amendment 1 of the 151st General Assembly which requires the establishment and implementation of mental health education programs for kindergarten through grade 12. This regulation will be effective July 1, 2023 and should be implemented for the 2023-2024 school year.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 508 Multi-Tiered System of Support. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 508 Multi-Tiered System of Support attached hereto as *Exhibit "A"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code**

508 Multi-Tiered System of Support hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 508 Multi-Tiered System of Support amended hereby shall be in the form attached hereto as *Exhibit "A"*, and said regulation shall be cited as 14 **DE Admin. Code** 508 Multi-Tiered System of Support in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on February 16, 2023. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 16th day of February 2023.

Department of Education

Mark A. Holodick, Ed.D., Secretary of Education

Approved this 16th day of February 2023

State Board of Education:

/s/ Shawn Brittingham, President

/s/ Rev. Provey Powell, Jr.

Vincent Lofink, Vice President (Absent)

/s/ Wali W. Rushdan, II

/s/ Candice Fifer

/s/ Deborah Stevens

/s/ Audrey J. Noble, Ph.D.

***Please note: Electronic signatures ("/s/") were accepted pursuant to 6 Del.C. §12A-107(d).**

508 Multi-Tiered System of Support (MTSS)

1.0 Purpose

Each local education agency shall implement procedures to determine when a student requires scientific, evidence-based interventions within a Multi-Tiered System of Support (MTSS) for: 1) Written Expression, 2) Reading, 3) Oral Expression, 4) Listening Comprehension, 5) Mathematics, 6) Behavior, and 7) ~~[Social-Emotional]~~ **Social and Emotional** Skills.

2.0 Definitions

The following words and ~~terms are applicable unless a specific regulation, statute or the context in which they are used clearly indicates otherwise~~ terms, when used in this regulation, have the following meaning:

"Department" means the Delaware Department of Education.

"Evidence-based" means strategies, activities, or approaches which have been shown through scientific research and evaluation to be effective at preventing or delaying a negative outcome.

"Evidence-informed" means practices that are consciously informed by evidence derived from formal research produced by researchers, practitioner inquiry (investigation), or routinely collected school or local system-level data through collaborative planning, testing, implementing and evaluating of approaches for improving practices.

"Local Education Agency" or "LEA" means a reorganized traditional school district, vocational-technical school district, or Charter School, legally constituted and established under Delaware law for either administrative control or direction of public elementary or secondary schools.

"Mental Health" means an individual's emotional, psychological, and social wellbeing and is based on how one thinks, feels and acts, including how one handles stress, relates to others, and makes healthy choices. Specifically, positive mental health in childhood includes reaching developmental and emotional milestones and learning healthy social and emotional skills to enhance wellbeing and employ strategies for coping adaptively with challenges.

“Multi-Tiered System of Support” or “MTSS” means a framework that is designed to meet the needs of the whole child through an integrated multi-level prevention system that optimizes team-based leadership and data-driven decision making to meet the academic and non-academic needs of all students. High quality core academic instruction and non-academic practices are provided as universal supports to all children. Evidence-based intervention and supports are matched to student needs and informed by ongoing progress monitoring and additional formative assessments.

“Parent” means a biological or adoptive parent of a child; a guardian generally authorized to act as the child's parent, or authorized to make educational decisions for the child (but not the State if the child is a ward of the State); an individual acting in the place of a biological or adoptive parent (including a grandparent, stepparent, or other relative) with whom the child lives and for whom a Caregiver's School Authorization executed in compliance with 14 **Del.C.** §202 is on file; an individual who is otherwise legally responsible for the child's welfare; or a surrogate parent who has been appointed in accordance with 14 **DE Admin. Code** 926.19.0.

“Social and Emotional Learning” or “SEL” means the process through which students acquire the knowledge, attitudes, and skills needed to understand and manage emotions, set and achieve positive goals, feel and show empathy for others, establish and maintain positive relationships, and make responsible decisions.

3.0 Instructional Resources

- 3.1 LEAs shall evaluate and select instructional resources for Tier 1, and interventions for Tier 2 and Tier 3, for academic, ~~behavioral and social-emotional skills which are of high quality, evidence-based and aligned with the State's appropriate content standards.~~ areas and the non-academic areas of behavioral, ~~[social-emotional]~~ **social and emotional** skills, and mental health which are of high quality, evidence-based or may be evidence-informed for the non-academic areas and aligned with the State's appropriate content standards or the Department's adopted competencies for mental health and SEL.
- 3.2 Social and Emotional Learning (Effective beginning with the 2023-2024 school year). LEAs shall provide age-appropriate and developmentally-appropriate instructional programming in social [and] emotional learning for each grade K to 12 that demonstrate alignment to the Department's adopted SEL competencies.
- 3.3 Mental Health (Effective beginning with the 2023-2024 school year). LEAs shall provide age-appropriate and developmentally-appropriate instructional programming in mental health for each grade K to 12 that demonstrate alignment to the Department's adopted mental health competencies.

4.0 Assessment

Screening, diagnostic assessment and progress monitoring processes shall be used as part of MTSS procedures. Any tools used shall be norm-referenced, criterion-referenced, or curriculum-based as appropriate.

5.0 Problem Solving Team

- 5.1 LEAs ~~will~~ shall have a school-based problem-solving team at each of their schools consisting of three to five core members and shall include at least one of the student's classroom teachers. Additional members may be added as needed.
- 5.2 The team shall review student data to identify individual student needs and make evidence-based decisions.
- 5.3 Using the student data, the problem-solving team will design an intervention plan as outlined in Section 7.0, which shall include specific baseline data, learning targets, type and frequency of intervention, data collection, and ~~anything else~~ any other information the problem-solving team considers necessary.
- 5.4 The team shall collect progress monitoring data at regular intervals. Data collection must include documentation of fidelity of implementation, consisting of differentiated, evidence-based instruction, pacing and appropriateness of instructional groupings.
- 5.5 The team shall hold meetings after the six to eight-week intervention cycle to monitor progress toward identified targets, the fidelity of implementation and determine the next steps. Teams may meet earlier, as needed.
- 5.6 LEAs shall have a process for providing parents with the MTSS intervention plan and data collected as part of the MTSS framework as described in Section 7.0.

6.0 MTSS Framework and Procedures

- 6.1 The MTSS framework and procedures shall include the tiers, types and duration of services and interventions described in subsections 6.1.1 and 6.1.3.3.
 - 6.1.1 Tier 1 - Core classroom instruction which is aligned to Delaware adopted state standards and practices, shall be designed and delivered with fidelity to all students. Tier 1 core classroom instruction should be

high quality, evidence-based ~~and~~ or evidence-informed if non-academic, differentiated within flexible groupings and responsive to all students' needs. A multiple-gating procedure shall be implemented as follows:

- 6.1.1.1 The first stage is a universal screening, which shall be conducted within the first four weeks of the school year or within four weeks of the student's entry into school. Universal screening will take place at least two more times during the school year at spaced intervals. For students who are identified through universal screening as needing additional supports, a second stage of screening is conducted within the next two weeks to specify the areas of need.
- 6.1.1.2 The second stage involves additional data analysis to confirm that there are specific areas of need for Tier 2 supports.
- 6.1.1.3 If ~~twenty percent (20%)~~ 20% of students in a classroom are not meeting benchmark on any instructional screening, a school-based team, which may be an existing team, including a building level administrator, shall meet to consider the need for additional classroom, instructional and ~~systems level~~ systems-level supports and strategies.
- 6.1.1.4 Based on the results of the multiple-gating procedure, a problem-solving team shall design intervention plans for students who require Tier 2 support as described in subsection 6.1.2.
- 6.1.2 Tier 2 - Interventions shall be designed to be delivered in the student's primary, scheduled education setting, by the student's teacher or teachers, but may be delivered in other or additional settings or by other trained staff as appropriate to the specific intervention.
 - 6.1.2.1 After no more than six to eight school weeks of Tier 2 intervention, ~~six to eight school weeks of Tier 2 intervention~~ the problem-solving team shall conduct a review of the plan as described in Section 5.0 to determine whether additional assessments, as described in Section 4.0, are required, and whether changes to Tier 2 academic or non-academic methods are required; or the student should be provided Tier 3 intervention.
 - 6.1.2.1.1 If a student has made significant progress and is now on a trajectory to meet end-of-year benchmarks, a student may continue in Tier 2 intervention or be excused from Tier 2 intervention.
 - 6.1.2.1.2 After no more than six to eight school weeks of Tier 2 intervention, the problem-solving team shall conduct a review of the plan as described in Section 5.0 to determine whether additional assessments are required, changes to Tier 2 academic or non-academic methods are required.
 - 6.1.2.1.3 If a student has made no progress toward benchmarks, or has made progress but is not on a trajectory to meet end-of-year benchmarks, a student may continue in Tier 2 intervention with increased intensity (e.g. smaller group, increased time of academic or non-academic intervention) or receive Tier 3 interventions.
- 6.1.3 Tier 3 - Interventions shall be designed to be delivered in the student's primary (scheduled) education setting, by the student's teacher or teachers, but may be delivered in other or additional settings or by other trained staff as appropriate to the specific intervention.
 - 6.1.3.1 After no more than six to eight school weeks of Tier 3 intervention, ~~[six to eight school weeks of Tier 3 intervention]~~ the problem-solving team shall conduct a review of the plan as described in Section 5.0 to determine whether additional assessments are required, changes to Tier 3 academic or non-academic methods are required; or the student should be referred for an initial evaluation for special education.
 - 6.1.3.2 If a student has made significant progress towards established targets, a student may continue in Tier 3 intervention with a new target or be provided Tier 2 intervention.
 - 6.1.3.3 If a student has made no progress towards established targets, or has made progress, but is not on a trajectory to meet established targets, a student may continue in Tier 3 intervention with increased intensity (e.g. smaller group, increased time of academic or non-academic intervention) or be referred for an initial evaluation for special education services as outlined in Regulation 925.

7.0 Program Effectiveness

~~LEA~~ LEAs shall provide a description of the methods used to implement and evaluate the effectiveness of the program upon the request of the Department.

24 DE Reg. 663 (01/01/21)

26 DE Reg. 837 (04/01/23) (Final)