

**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)

**PROPOSED**

**PUBLIC NOTICE**

**Education Impact Analysis Pursuant To 14 Del.C. Section 122(d)**

**508 Multi-Tiered System of Support (MTSS)**

**A. TYPE OF REGULATORY ACTION REQUIRED**

New Regulation

**B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION**

Pursuant to 14 **Del.C.** §§121(a)(1) and 3110, and the Individuals with Disabilities Education Act (2004), as amended, 20 U.S.C. §1400 *et seq.*, the Secretary of Education seeks the consent of the State Board of Education to establish a new regulation 14 **DE Admin. Code** 508 Multi-Tiered System of Support (MTSS). This new regulation guides local education agencies (LEAs) regarding scientific, evidence-based interventions that are required to identify needed supportive services for all students, including special education services available under the Individuals with Disabilities Education Act. Therefore, this new regulation is closely aligned with process and procedure language in 14 **DE Admin. Code** 925.

LEAs in Delaware may also know this framework as the Positive Behavior Intervention Supports (PBIS), Positive Behavior Supports (PBS) or RTI (Response to Intervention).

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before March 3, 2020 to the Department of Education, Office of the Secretary, Attn: Regulation Review, 401 Federal Street, Suite 2, Dover, Delaware 19901 or email to [DOEregulations.comment@doe.k12.de.us](mailto:DOEregulations.comment@doe.k12.de.us). A copy of this regulation may be viewed online at the Registrar of Regulation's website, [http://regulations.delaware.gov/services/current\\_issue.shtml](http://regulations.delaware.gov/services/current_issue.shtml) or obtained at the Department of Education's Office of the Secretary, located at the address above.

**C. IMPACT CRITERIA**

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation is intended to help improve student achievement as measured against state achievement standards by ensuring local education agencies abide by processes that are scientific and evidence-based.

2. Will the new regulation help ensure that all students receive an equitable education? The new regulation intends to continue to help ensure all students receive an equitable education.

3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation does not specifically address students' health and safety; however, students' behavioral and social emotional skills are addressed.

4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation continues to help ensure that all students' legal rights are respected.

5. Will the new regulation preserve the necessary authority and flexibility of decision making at the local board and school level? The new regulation does not change the decision making at the local board and school level.

6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The new regulation does not place any unnecessary reporting or administrative requirements or mandates on decision makers.

7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The new regulation does not change the decision making authority and accountability for addressing the subject to be regulated.

8. Will the new regulation be consistent with and not an impediment to the implementation of other state educational policies, in particular to state educational policies addressing achievement in the core academic subjects of mathematics, science, language arts and social studies? The new regulation is consistent with and not an impediment to the implementation of other state educational policies.

9. Is there a less burdensome method for addressing the purpose of the regulation? There is no less burdensome method for addressing the purpose of the regulation.

10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no expected material costs to implementing this new regulation.

## **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 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:

"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.

"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.

"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.

### **3.0 Instructional Resources**

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.

### **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 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.
- 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, but is not limited to, specific baseline data, learning targets, type and frequency of intervention and data collection.
- 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.
- 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 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%) 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 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 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 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 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**

- 7.1 LEA shall provide a description of the methods used to implement and evaluate the effectiveness of the program upon the request of the Department.
- 7.2 This regulation will go into effect August 1, 2020.