

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)

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, 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. 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 Response to Intervention (RTI).

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on February 1, 2020, in the form hereto attached as *Exhibit "A"*. Comments were received from Autism Delaware, a curriculum leaders group, school psychologists, local education agency representatives including a school principal and a Director of Behavioral Health, the Delaware Association of School Psychologists, parent Karen Mackie and a charter school representative.

Comments received which were pertinent to the proposed new regulation related to how the regulation would be implemented. Specifically, those who commented were interested in the ways in which multi-tiered supports would be provided to students, including evidence-based interventions, the screening process, timeframe for reviewing effectiveness of interventions, parental-involvement, determining interventions for English Learners, clarification of tiers, progress monitoring, and further clarification regarding the problem solving team and documentation.

Response: The Department wishes to clarify the intent of Regulation 508. Currently, regulations addressing multi-tiered system of support (MTSS) are contained within **DE Admin. Code** 925. **DE Admin. Code** 925's stated purpose is to address children with disabilities. MTSS regulations address general education core academic and non-academic instruction for every student, including those with disabilities. By removing regulations addressing MTSS from **DE Admin. Code** 925, the Department hopes to reduce the confusion that arose by having a general education regulation contained within a special education regulation. The regulation itself is not intended to address implementation of practice. An implementation support guide will be available on the Department's website upon the effective date of the regulation.

Additionally, the Department of Education noted that a clarification was made to Tier 2 interventions by renumbering and clarifying subsections 6.1.2.1.2 through 6.1.2.1.3. Also, the effective date of the regulation has been removed as this will be dependent upon the effective date of the amended regulation found in **DE Admin. Code** 925.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to establish 14 **DE Admin. Code** 508 Multi-Tiered System of Support in order to guide 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 Response to Intervention (RTI).

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to establish 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 "B"* is hereby established. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 508 Multi-Tiered System of Support hereby established 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 established hereby shall be in the form attached hereto as *Exhibit "B"*, 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 November 19, 2020. The effective date of this Order shall be July 1, 2021.

IT IS SO ORDERED the 19th day of November 2020.

Department of Education

Susan S. Bunting, Ed.D., Secretary of Education

Approved this 19th day of November 2020

State Board of Education

/s/ Whitney Townsend Sweeney, President

/s/ Wali W. Rushdan, II, Vice President

/s/ Candice Fifer

/s/ Vincent Lofink

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

/s/ Provey Powell, Jr.

***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 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. [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, but is not limited to, include]~~ specific baseline data, learning targets, type and frequency of ~~[intervention and data collection]~~ **intervention, data collection, and anything else 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 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 **[no more than]** six to eight school weeks of Tier 2 ~~[intervention]~~ **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.
- ~~6.1.2.1.2~~ **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~~ **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**

- ~~[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.]**