



3/1/2020

To whom it may concern:

On behalf of the Delaware Association of School Psychologists (DASP), we have reviewed the proposed new regulation 14 Del.C. Section 122(d) 508 Multi-Tiered Systems of Support (MTSS). Our organization is strongly in favor of utilizing an MTSS framework for academic supports, behavioral supports, and safety practices that keep students safe, supported, and healthy. We are appreciative of the work that went into the development of these important regulations.

In preparation for this public comment, we reviewed not only the proposed regulations, but also pertinent federal legislation (specifically, the Individuals with Disabilities Education Act [IDEA] and the Every Student Succeeds Act [ESSA]), and resources on MTSS from the National Association of School Psychologists. We also solicited feedback from our membership.

Overall, we are in favor of the general spirit of the proposed regulations. We strongly support the addition of MTSS regulations to the Delaware Code in its own section distinct from the special education regulations. It shows that the State understands that MTSS is a framework for the provision of general education services. It also demonstrates that the intention of the MTSS framework is to provide support for ALL students, and not merely in existence to serve as a means to determine eligibility for special education services. We believe the proposed regulations will put further emphasis on the importance of building strong Tier 1 general education supports, which is critical for a well-functioning MTSS. We are also in favor of the inclusion of social-emotional and behavioral skills as areas to be targeted for support through MTSS. Students cannot adequately benefit from their education if they are not “ready to learn,” and we believe that instruction in social-emotional and behavioral skills would help increase our students’ readiness to learn.

However, we also have some questions and concerns regarding the funding of the proposed language.

- The impact statement for the proposed regulations states that there “are no expected material costs [to the State and to the local school boards] to implementing this new regulation.” We simply do not understand how this could be the case. Current RtI regulations refer only to supports for reading and math; however, the proposed regulations include several new areas that need to be addressed in MTSS, such as written expression, listening comprehension, oral expression, and social-emotional and behavior skills. This implies the need to acquire benchmarking/progress-monitoring tools and curricular resources needed to have adequate supports at Tiers 1, 2, & 3 for each of these additional areas. Our members report that resources for these additional skill areas are largely not currently available in their schools; therefore, it seems that there would be significant financial implications for school districts to acquire the assessment and instructional resources needed to implement the proposed regulations. In our estimation, there would also be additional financial implications related to staffing. In order to

implement existing RtI regulations, additional staff have been required to support coordination of a tiered intervention system and to provide instruction (such as instructional coaches, interventionists, etc.). We anticipate that similar levels of additional staffing would be required to support these additional areas as well.

We also have some questions and concerns regarding implementation of these regulations.

- In 7.2, it states that these regulations will take effect August 1, 2020. We fear that our schools would not be able to have all of the required elements in place to be ready to implement the regulations with fidelity by this date. As stated earlier, the proposed regulations represent a shift in focus of implementation, and would require additional assessment and instructional/curricular resources that are not currently available. This timeline would require districts to make very quick decisions about which benchmarking/progress-monitoring tools and instructional materials they would need to purchase to have them ready for implementation at the beginning of the school year. Given that this would likely represent a large financial outlay, we want to ensure that districts have time to make such purchases thoughtfully. This timeline also does not allow much time for training of staff in the new curricula. We are concerned that the combination of not planning for additional resource/funding allocations and rushing the implementation timeline is going to result in implementation failure. We believe that MTSS is too important to the success of our students to risk an unsuccessful implementation, and would favor a more incremental roll-out or use of carefully selected “pilot schools” to attempt small-scale implementation before scaling up to full, state-wide implementation.
- The language copied from the existing RtI regulations refers to what happens if a substantial number (20%) of students within a classroom score below benchmark, but it does not seem to apply to situations in which a student scores below benchmark in multiple areas. For example, if a student scores below benchmarks in reading, math, written expression, listening comprehension, and oral expression, it appears that they would require at least Tier 2 interventions in all 5 areas. While these regulations do not specify what constitutes Tier 2 vs. Tier 3 (other than Tier 3 interventions are of “increased intensity”), it is plausible that this student could spend a not-inconsequential percentage of their school day receiving supplemental instruction in Tier 2 or Tier 3 groups, which would likely come at the expense of their access to Tier 1 instruction in other areas. Some guidance as to what the practices should be if a student scores below benchmark in multiple areas would be greatly appreciated, as the current absence of guidance seems to place schools/districts into a legally-precarious predicament. While this may not be something that is addressed in regulatory language, such guidance should be included at a minimum in an accompanying Technical Assistance document.
- Additionally, we are concerned about the implementation of assessment and intervention of social-emotional and behavioral skills in an MTSS system.
  - If social-emotional and/or behavioral skills are the subject of discussion in terms of assessment and/or intervention, we believe that least one member of the problem-solving team referred to in 5.1 should be a qualified school-based mental health provider, such as a school psychologist, school counselor, and/or school social worker. This is not indicated in the proposed regulatory language.
  - We want to ensure that there is an understanding of the ethical implications involved in screening social-emotional and behavioral skills. Our members report that universal behavioral and/or social-emotional screening is generally not something that schools are currently doing.
    - One of the reasons that this screening is not yet occurring in many schools is that it would be ethically irresponsible to screen for problems if the school lacks

the personnel capacity to follow-up with and intervene on in a timely fashion. While schools generally have a full-time school counselor, their assigned duties within a school may mean that very little of their actual time is allocated for the provision of school-based mental health interventions. Schools may also have limited or no access to other school-based mental health practitioners to assist in support, such as school psychologists or school social workers. We definitely have concerns about how these regulations will tax the capacity of school mental and behavioral health providers, and want to ensure that if this screening is to occur that we have sufficient resources allocated to respond. We advocate for the staffing of school-based mental health provider positions such as school psychologist, school counselors, and school social workers at their nationally recommended ratios to provide this capacity.

- Another reason that this screening is not yet occurring is that the fledgling MTSS systems present in many schools are not being implemented with sufficient fidelity to be ready to undertake the demands of universal social-emotional/behavioral screening. Project AWARE is currently working to develop guidance for districts regarding implementation of universal mental health screening, and one of the recommendations prior to adopting a new screening tool is to be accustomed to using existing data sources (such as attendance, discipline referrals and grades) to identify students in need of social-emotional/behavioral intervention. Our members indicate that not all school teams are doing this first step with fidelity at this time. We believe that full-scale implementation of mental/behavioral health screening is something that should not occur until schools have mastered use of existing data for this purpose.
- We also want to ensure that the regulatory language around MTSS for social-emotional and behavioral skills is consistent with the work currently being done around development and roll-out of Delaware’s Social-Emotional Learning (SEL) standards. If there was not collaboration between the stakeholder group that assisted in the development of the proposed MTSS regulations and the DOE SEL Collaborative, we recommend that implementation of MTSS for social-emotional and behavioral skills be suspended until such collaboration occurs.

Finally, we have some concerns regarding the use of the term, “evidence-based.” It is a term that appears to be utilized in two different ways; in both circumstances it may not serve the purpose intended.

- When used in regards to the decision-making processes involving movement between intervention tiers (e.g., 5.2), this term appears to be used in lieu of the term “data-based decision-making,” which is an essential practice of any MTSS system, and should really be reflected as such in the regulations.
- This term is also used in regards to which instructional practices should be utilized within MTSS (e.g., 1.0 & 5.4.1), and notably differs from language found within federal regulations that touch on elements of MTSS, such as those found in IDEA and ESSA. These documents do not use the term “evidence-based,” rather they use terminology such as “based on peer-reviewed research to the extent practicable” or “scientific, research-based interventions.” Using the term “evidence-based” in lieu of one of those terms represents a fairly significant difference in which instructional practices actually meet that standard. In the MTSS literature, the term “research-based” refers to parts/components of programs or methods that are based on practices

demonstrated to be effective through research. In other words, a phonics-based reading program would be considered to be “research-based” as phonics-based instruction is a well-supported approach to reading instruction for struggling readers. However, when the term “evidence-based” is used in the MTSS literature, it refers to entire programs/methods that have been demonstrated to be effective through high-quality, independent empirical research. So, if that aforementioned phonics-based reading program does not have at least 2 independent empirical studies indicating that it is effective in producing positive learning outcomes, it would NOT be considered to be “evidence-based.” Our concern is that by using the term “evidence-based,” we are holding school districts to a standard that may be impractical given the state of educational research in all of the areas K-12 listed in 1.0. While “evidence-based” should certainly be a standard that we aspire to, we think that “research-based” or “evidence-based to the extent practicable” would be more realistic at this time.

We appreciate the hard work of the members of the stakeholder group that assisted in the development of the proposed regulations and thank them for their efforts in serving the best interests of all Delaware students. We also thank the Department of Education for consideration of our comments and recommendations. We remain available for consultation regarding this important initiative that will provide Delaware students with comprehensive supports.

Sincerely,

The Delaware Association of School Psychologists (DASP)

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