

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(b)(2) (14 **Del.C.** §122(b)(2))  
14 **DE Admin. Code** 877

### FINAL

#### REGULATORY IMPLEMENTING ORDER

##### 877 Tobacco Policy

#### I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

Pursuant to 14 **Del.C.** §122(b)(2), the Secretary of Education intends to amend 14 **DE Admin. Code** 877 Tobacco Policy. The Department has reviewed the regulation to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years and concluded that the regulation should be amended. Amendments include adding a purpose and definitions, expanding the scope of the regulation to include smoking, and aligning the regulation with 16 **Del.C.**, Chapter 29, Delaware's Clean Indoor Air Act.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on December 1, 2019, in the form hereto attached as *Exhibit "A"*. Comments were received from the State Council for Persons with Disabilities suggesting the Department include language in the regulation that this regulation does not limit any treatment rights afforded under 16 **Del.C.** Chapter 49A (The Delaware Medical Marijuana Act) related to prohibiting the use/smoking of medical marijuana on school grounds. The regulation is limited to smoking tobacco and tobacco related products so including reference to medical marijuana in this regulation is not necessary.

#### II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 877 Tobacco Policy in order to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years, to add a purpose and definitions, expand the scope of the regulation to include smoking, and align the regulation with 16 **Del.C.**, Chapter 29, Delaware's Clean Indoor Air Act.

#### III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 877 Tobacco Policy. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 877 Tobacco Policy attached hereto as *Exhibit "B"* is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 877 Tobacco Policy 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** 877 Tobacco Policy amended hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 877 Tobacco Policy 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 January 15, 2020. 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 15<sup>th</sup> day of January 2020.

Department of Education

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

Approved this 15<sup>th</sup> day of January 2020

877 Tobacco and Smoking Policy

#### 1.0 Purpose

- 1.1 The purpose of this regulation is to specify for district and charter schools the elements of a required Tobacco and Smoking Policy, including specifying areas where the policy is in effect, and outlining reporting requirements and timelines.
- 1.2 This regulation aligns with 16 Del.C., Chapter 29, Delaware's Clean Indoor Air Act, and 11 Del.C., Chapter 5, Subchapter V.

## **2.0 Definitions**

The following words and terms, when used in this regulation, have the following meaning unless the context clearly indicates otherwise:

**"Electronic Smoking Device"** means any product containing or delivering nicotine or any other similar substance intended for human consumption that can be used by a person to simulate Smoking through inhalation of vapor or aerosol from the product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen, or under any other product name or descriptor or as this term may be amended by 16 Del.C. §2902.

**"Smoking"** means:

- a. The burning of a lighted cigarette, cigar, pipe or any other matter or substance that contains tobacco; or
- b. The use of an Electronic Smoking Device which creates an aerosol or vapor, in any manner or in any form or as this term may be amended by 16 Del.C. §2902.

**"Tobacco Product"** means:

- a. Any product that is made from or derived from tobacco or that contains nicotine, including: cigarettes, cigars, pipe tobacco, hookah tobacco, chewing tobacco, snuff, snus, or smokeless tobacco and is intended for human consumption by any means including Smoking, heating, chewing, absorbing, dissolving, inhaling, or ingesting as this term may be amended by 11 Del.C. §1115; or
- b. A component or accessory used in the consumption of a Tobacco Product, including filters, rolling papers, and pipes or as this term may be amended by 11 Del.C. §1115.

Tobacco Product does not mean a drug, device, or combination product authorized for sale by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. §301 et seq.) or as this term may be amended by 11 Del.C. §1115.

**"Tobacco Substitute"** means:

- a. An Electronic Smoking Device employing a mechanical heating element, battery, or circuit to produce aerosol or vapor for inhalation into the body of an individual or as this term may be amended by 11 Del.C. §1115, or
- b. A liquid used in a device under paragraph a. above, including liquids that contain nicotine and liquids that do not contain nicotine or as this term may be amended by 11 Del.C. §1115.

Tobacco Substitute does not mean a drug, device, or combination product authorized for sale by the United States Food and Drug Administration under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. § 301 et seq.) or as this term may be amended by 11 Del.C. §1115.

## **4.03.0 Required Policy**

- 3.1 ~~In order to~~ To improve the health of ~~students and~~ students, school personnel, and visitors, each school district and charter school in Delaware shall have a policy Tobacco and Smoking Policy which at a minimum:
- 4.13.1.1 Prohibits smoking and the use of or distribution of tobacco products and electronic smoking devices in school buildings, on school grounds, in school leased or owned vehicles, even when they are not used for student purposes, and at all school affiliated functions.
- 4.23.1.2 Includes procedures for communicating the policy to students, school staff, parents, guardians or ~~Relative Caregivers~~ relative caregivers, families, visitors and the community at large.
- 4.33.1.3 Makes provisions for or refers individuals to voluntary cessation education and support programs that address the physical and social issues associated with nicotine addiction.

## **2.04.0 The Tobacco and Smoking Policy Shall Apply to**

- 2.14.1 Any building, property or vehicle leased, owned or operated by a school district, charter school or assigned contractor.
- 2.14.1.1 School bus operators under contract shall be considered staff for ~~the purpose of~~ this policy.
- 2.24.2 Any private building or other property including automobiles or other vehicles used for school activities when students and staff are present.

- ~~2.34.3~~ Any ~~non-educational~~ non-educational groups utilizing school buildings or other educational assets.
- ~~2.44.4~~ Any individual or a volunteer who supervises students off school grounds.

**3.05.0 No School or School District Property May Be Used for the Advertising of any Tobacco Product, Tobacco Substitute or Electronic Smoking Device**

**4.06.0 Reporting Requirements and Timelines**

- ~~4.16.1~~ Each ~~public~~ school district and charter school shall have an electronic copy of its current ~~tobacco policy~~ Tobacco and Smoking Policy on file with the Department of Education.
- ~~4.26.2~~ Each ~~public~~ school district and charter school shall provide an electronic copy of any ~~tobacco policy~~ Tobacco and Smoking Policy within ninety (90) days of such ~~revision(s)~~ revisions regardless of whether said revisions were made as a result of changes to ~~Federal~~ federal, state or local law, regulations, guidance or policies.

**1 DE Reg. 1807 (05/01/98)**

**6 DE Reg. 1504 (05/01/03)**

**11 DE Reg. 1463 (05/01/08)**

**23 DE Reg. 651 (02/01/20) (Final)**