

# DEPARTMENT OF EDUCATION

## OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))  
14 **DE Admin. Code** 624

### FINAL

#### REGULATORY IMPLEMENTING ORDER

##### 624 School District/Charter School Policy Prohibiting Cyberbullying

###### I. Summary of the Evidence and Information Submitted

The Secretary of Education seeks to establish a new regulation 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying. This regulation is a result of Senate Bill 193 of the 146<sup>th</sup> General Assembly, which requires that the Delaware Department of Education shall collaborate with the Delaware Department of Justice to develop a model cyberbullying policy. This legislation and this subsequent regulation expands upon the policy found in 14 **Del.C.** §4112D and also explicitly prohibits cyberbullying by students directed at other students. Incidents of cyberbullying shall be treated by each school district and charter school in the same manner as incidents of bullying, and notice of each school district and charter school's policy against cyberbullying shall be provided to students, staff, and faculty in the same manner as notice of the school district and charter school's policy against bullying. The proposed regulation was published in the October *Register of Regulations*. Section 2.1 and 2.4 of the regulation were amended subsequent to public comments received.

Notice of the revised proposed regulation was published in the *News Journal* and the *Delaware State News* on January 5, 2013, in the form hereto attached as *Exhibit "A"*. Comments were received from Governor's Advisory Council for Exceptional Citizens and the State Council for Persons with Disabilities and from the American Civil Liberties Union of Delaware. After considering the comments, the Department, working with the Attorney General's Office, decided not to further revise the proposed regulation.

###### II. Findings of Facts

The Secretary finds that it is appropriate to promulgate 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying as required by legislation passed by the 146<sup>th</sup> General Assembly and based upon the model provided by the Department of Justice.

###### III. Decision to Amend the Regulation

For the foregoing reasons, the Secretary concludes that it is appropriate to establish 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying attached hereto as *Exhibit "B"* is hereby established. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying 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** 624 School District/Charter School Policy Prohibiting Cyberbullying established hereby shall be in the form attached hereto as *Exhibit "B"*, and said regulation shall be cited as 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying 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 21, 2013. 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 21st day of February 2013.

**Department of Education**

Mark T. Murphy, Secretary of Education

Approved this 21<sup>st</sup> day of February 2013

**624 School District/Charter School Policy Prohibiting Cyberbullying**

**1.0 Cyberbullying Forbidden**

In addition to the policy prohibiting bullying put in place by school districts and charter schools pursuant to 14 Del.C. §4112D(b)(2), each school district and charter school shall also prohibit cyberbullying (as defined herein) by students directed at other students. Incidents of cyberbullying shall be treated by each school district and charter school in the same manner as incidents of bullying, and notice of each school district's and charter school's policy against cyberbullying shall be provided to students, staff, and faculty in the same manner as notice of the school district's and charter school's policy against bullying.

**2.0 Definition of Cyberbullying**

- 2.1 Cyberbullying means the use of uninvited and unwelcome electronic communication directed at an identifiable student or group of students, through means other than face-to-face interaction, which (1) interferes with a student's physical well-being; or (2) is threatening or intimidating; or (3) is so severe, persistent, or pervasive that it is reasonably likely to limit a student's ability to participate in or benefit from the educational programs of the school district or charter school. Communication shall be considered to be directed at an identifiable student or group of students if it is sent directly to that student or group, or posted in a medium that the speaker knows is likely to be available to a broad audience within the school community.
- 2.2 Whether speech constitutes cyberbullying will be determined from the standpoint of a reasonable student of the same grade and other circumstances as the victim.
- 2.3 The place of origin of speech otherwise constituting cyberbullying is not material to whether it is considered cyberbullying under this policy, nor is the use of school district or charter school materials.
- 2.4 Upon implementation of this policy, and again at the beginning of each academic year, each school district and charter school shall inform students in writing of mediums where posting of speech will be presumed to be available to a broad audience within the school community, regardless of privacy settings or other limitations on those postings. From implementation of this policy through the end of the 2013-2014 school year, postings on Facebook, Twitter, MySpace, YouTube, and Pinterest shall be included in each district's **[and charter school's]** list of mediums where posting of speech will be presumed to be available to a broad audience within the school community, regardless of privacy settings or other limitations on those postings.
- 2.5 Nothing in this policy shall limit in any way a school district's or charter school's ability to regulate student conduct, including bullying, in any manner provided for by existing law, regulation, or policy.

**16 DE Reg. 955 (03/01/13) (Final)**