

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

PROPOSED

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

624 School District/Charter School Policy Prohibiting Cyberbullying

A. TYPE OF REGULATORY ACTION REQUIRED

New Regulation

B. SYNOPSIS OF SUBJECT MATTER OF THE REGULATION

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 146th 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 cyberbullying. 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.

Persons wishing to present their views regarding this matter may do so in writing by the close of business on or before February 5, 2013 to Susan Haberstroh, Regulation Review, Department of Education, 35 Commerce Way, Suite 1, Dover, Delaware 19904. A copy of this regulation is available from the above address or may be viewed at the Department of Education business office.

C. IMPACT CRITERIA

1. Will the new regulation help improve student achievement as measured against state achievement standards? The new regulation is intended to improve the school climate thus resulting in helping to improve student achievement.
2. Will the new regulation help ensure that all students receive an equitable education? The new regulation is intended to help ensure all students receive and equitable education.
3. Will the new regulation help to ensure that all students' health and safety are adequately protected? The new regulation is intended to ensure all students' health and safety are adequately protected, specifically in the area of cyberbullying.
4. Will the new regulation help to ensure that all students' legal rights are respected? The new regulation is intended to help ensure 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 is intended to preserve the necessary authority and flexibility of decision making at the local board and school level, but does provide for more specificity of actions required in instances of bullying.
6. Will the new regulation place unnecessary reporting or administrative requirements or mandates upon decision makers at the local board and school levels? The legislation and this subsequent regulation does require additional reporting.
7. Will the decision making authority and accountability for addressing the subject to be regulated be placed in the same entity? The decision making authority and accountability for addressing bullying and cyberbullying does not change because of this regulation.
8. Will the amended 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 regulation is consistent with other state educational policies.
9. Is there a less burdensome method for addressing the purpose of the regulation? The regulation is aligned with the legislation.
10. What is the cost to the State and to the local school boards of compliance with the regulation? There are no anticipated additional costs to the State or to the local school boards for compliance with this regulation.

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 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. 694 (01/01/13) (Prop.)