

DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 4164(d) (14 **Del.C.** §4164(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

Pursuant to 14 **Del.C.** §§4161 and 4164(d), the Secretary of Education intends to amend 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying. This regulation is being amended to remove an outdated school year reference, update a statutory reference and to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years.

Notice of the proposed regulation was published in the *News Journal* and *Delaware State News* on October 1, 2019, in the form hereto attached as *Exhibit "A"*. Comments were received from the Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD) regarding: (1) the Delaware Code citation being incorrectly cited regarding to the bullying statute, and (2) a recommendation to change Section 2.4 to have the Department include a specific enumerated list of social media technology where posting of speech would be commonly accessible within the community. The Department corrected the Delaware Code citation that provides statutory authority for bullying, including cyberbullying, and added language clarifying social media platforms.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying in order to remove an outdated school year reference, update a statutory reference and to comply with 29 **Del.C.** §10407 which requires regulations to be reviewed on a recurring basis every four years.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 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 amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 624 School District/Charter School Policy Prohibiting Cyberbullying 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** 624 School District/Charter School Policy Prohibiting Cyberbullying amended 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 December 13, 2019. 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 13th day of December 2019.

Department of Education

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

Approved this 13th day of December 2019

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) ~~§4164(d)~~ **§§4161 and 4164**, 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, 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 **[the]** 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.~~ **[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. Postings on social media sites or forums similar to the enumerated examples above will also 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)

23 DE Reg. 561 (01/01/20) (Final)