

CHAPTER 379
FORMERLY
SENATE BILL NO. 193

AN ACT TO AMEND TITLES 14 AND 29 OF THE DELAWARE CODE RELATING TO THE CONDUCT OF DELAWARE PUBLIC SCHOOL STUDENTS

WHEREAS, the Third Circuit Court of Appeals recently clarified in J.S. ex. rel. Snyder v. Blue Mountain School District and Layshock ex. rel. Layshock v. Hermitage School District the First Amendment restrictions on school districts' ability to regulate public school students' off-campus speech; and

WHEREAS, those clarifications have established general guidelines for legally defensible school district policies restricting cyberbullying of students by other students; and

WHEREAS, an important element in justifying regulation of students' off-campus speech is the likelihood that such speech will result in a material and substantial disruption of the school environment; and

WHEREAS, the Lieutenant Governor and Attorney General are conducting public hearings to determine which specific off-campus activities have resulted in material and substantial disruptions within Delaware public schools; and

WHEREAS, the Lieutenant Governor and Attorney General will be drafting a narrow cyberbullying policy based upon testimony elicited at those hearings, targeted specifically at off-campus activity that is likely to cause material and substantial disruption within public schools; and

WHEREAS, the State of Delaware should promulgate a uniform cyberbullying policy that can be relied upon by local school districts and charter schools;

NOW, THEREFORE: BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 14, Section 4112D(d)(1) of the Delaware Code by making additions as shown by underlining as follows:

The Delaware Department of Education shall collaborate with the Department of Justice to develop a model policy, that may change from time to time, that is applicable to kindergarten through grade 12, and post this policy on their website, in order to assist the school district and charter schools. In addition, the Department of Education shall promulgate a uniform cyberbullying policy, which shall be based upon a model prepared by the Department of Justice and public comment upon that model. This uniform cyberbullying policy shall be formally adopted as written by each charter school and school district within 90 days of becoming final.

Section 2. Amend Title 29, Section 2515 of the Delaware Code by making additions as shown by underlining as follows:

(c) Notwithstanding any other provision of this Title, a public school district or charter school that is a defendant in a legal action because of its adoption or use of the cyberbullying policy required under Title 14, Section 4112D(d)(1) shall have the option of being represented by the Department of Justice if (i) the State of Delaware or one of its agencies is a party to the same action based upon the state's requirement that the district or school adopt the cyberbullying policy at issue; (ii) the Department's representation of both entities is permissible under the Rules of Professional Conduct; and the Department determines that enforcement of the cyberbullying policy by the school or district was done in good faith and in the public interest. Communications and documents regarding the Department's obligation to represent a school or district under this subsection and/or a school or district's decision whether to accept representation by the Department are privileged and not subject to disclosure.

Approved July 27, 2012