COUNTY OF ERIE

MICHAEL A. SIRAGUSA
COUNTY ATTORNEY

MARK C. POLONCARZ
COUNTY EXECUTIVE

DEPARTMENT OF LAW

MICHELLE M. PARKER
FIRST ASSISTANT COUNTY ATTORNEY

JEREMY C. TOTH
SECOND ASSISTANT COUNTY ATTORNEY

March 12, 2012

Hon. Robert Graber, Clerk
Erie County Legislature
92 Franklin Street, 4th Floor
Buffalo, New York 14202

RE: Local Law No. 2-2012
A Local Law to Prohibit Cyber-Bullying in Erie County of Erie, New York
Our File No. 22-20110024

Dear Hon. Graber:

Enclosed please find an original of the above-referenced local law for filing in your office.

Thank you.

Very truly yours,

MICHAEL A. SIRAGUSA
Erie County Attorney

By: _____
Gregory P. Kammer
Assistant County Attorney

GPK/dkw
Enclosure

Local Law Filing

(Use this form to file a local law with the Secretary of State.)

Text of law should be given as amended. Do not include matter being eliminated and do not use italics or underlining to indicate new matter.

☒ **County** ☐ **City** ☐ **Town** ☐ **Village**
(Select one:)

of Erie

Local Law No. 1 **of the year 20**12

A local law to prohibit Cyber-Bullying in Erie County
(Insert Title)

Be it enacted by the Erie County Legislature **of the**
(Name of Legislative Body)

☒ **County** ☐ **City** ☐ **Town** ☐ **Village**
(Select one.)

of Erie **as follows:**

SECTION 1. LEGISLATIVE INTENT.

Bullying is a long-standing problem among school-aged children in Erie County and throughout the nation. With increasing accessibility to electronic means of communication, bullying has transformed from a predominantly school-based issue to a broader societal problem.

Researchers have demonstrated that bullying has long-term consequences. Further, bullying goes beyond the classroom to bullying on the job, on athletic teams, on college campuses and the internet.

Experts have suggested that one tool for schools to use in combatting bullying is to maintain and enforce consistent policies against bullying and harassment, including cyber-bullying. Such enforcement is not always possible if bullying occurs away from school or by a non-student.

Perpetrators of cyber-bullying are often more extreme in the threats and taunts they inflict on their victims, as they do not actually see their victim's emotional reaction to the abuse and believe that they are anonymous. Victims of cyber-bullying suffer very real and serious harm as a result of these incidents, often showing signs of depression, anxiety, social isolation, nervousness when interacting with technology, low self-esteem and declining school performance. In some cases, victims attempt or commit suicide in part because of cyber-bullying they've endured.

Several states have enacted laws criminalizing cyber-bullying. To date, the New York State Legislature has failed to take action on this problem. Erie County should not wait for New York State to act and should implement

(If additional space is needed, attach pages the same size as this sheet, and number each.)

Legislation to discourage and prevent cyber-bullying from occurring.

Therefore, the purpose of this law is to ban cyber-bullying in Erie County.

SECTION 2. DEFINITIONS.

As used in this article, the following terms to have the meanings indicated:

A. County – the County of Erie, New York.

B. Cyber-bullying – shall mean harassment or bullying accomplished by publishing, communicating or causing a communication to be initiated or displayed through electronic means, including, but not limited to, electronic mail, internet-based communication, pager service, cell phone, or electronic text messaging.

C. Harassment or Bullying – shall include a course of conduct or repeated creation and/or the dissemination of any intentional written, visual, verbal, or physical act or conduct targeting at a specific other person which is severe, persistent, pervasive or repeated, and serves no legitimate purpose, and that a reasonable person under the circumstances would know could result in, and does in fact result in:

   a) Placing such other person in actual or reasonable fear of physical harm to himself or herself, or to a member of such person's immediate family or a third party with whom such person is acquainted; or

   b) Placing such other person in actual or reasonable fear of damage to the property of such person or to a member of such person's immediate family or a third party with whom such person is acquainted; or

   c) A substantial detrimental effect on such other person's physical, mental or emotional health.

D. Minor – shall mean any natural person or individual under the age of eighteen (18).

E. Person – shall mean any natural person or individual.

F. Publishing – shall include issuing, printing, reproducing, distributing, circulating or any other means of publicizing or communicating to other individuals, including by electronic means.

G. Student – shall mean any person who is enrolled in a primary, secondary, or post-secondary educational institution located within the County.

SECTION 3. PROHIBITIONS.

No person shall engage in cyber-bullying against any minor or student person when such minor or student is located in the County of Erie

SECTION 4. PENALTIES.

Any person who knowingly violates the provisions of this local la shall be guilty of an unclassified misdemeanor punishable by a fine of up to $1,000.00 and/or up to one year imprisonment.

SECTION 5. APPLICABILITY.

This law shall apply to all actions occurring on or after the effective date of this law.

SECTION 6. REVERSE PREEMPTION.

This law shall be null and void on the day that statewide or federal legislation goes into effect, incorporating either the same or substantially similar provisions as are contained in this local law or in the event that a pertinent state or federal administrative agency issues and promulgates regulations preempting such action by the County of Erie. The County Legislature may determine via mere resolution whether or not identical or substantially similar statewide legislation has been enacted for the purposes of triggering the provisions of this section.

SECTION 7. EFFECTIVE DATE.

This local law shall become effective immediately upon the filing with the Secretary of State pursuant to Section 27 of the Municipal Home Rule Law.

SECTION 8. SEVERABILITY.

If any clause, sentence, paragraph, subdivision, section or part of this Local Law or the application thereof, to any person, individual, corporation, firm, partnership, entity or circumstance, shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional such order of judgment shall not affect, impair, or invalidate the remainder thereof, but shall e confined in its operation to the clause, sentence, paragraph, subdivision, section or part of this Local Law or in its application to the person, individual, corporation, firm, partnership, entity, or circumstance directly involved in the controversy in which such judgment or order shall be rendered.

SPONSORED BY
LEGISLATOR EDWARD A. RATH III

(Complete the certification in the paragraph that applies to the filing of this local law and strike out that which is not applicable.)

1. (Final adoption by local legislative body only.)
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20_____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20_____, in accordance with the applicable provisions of law.
(Name of Legislative Body)

2. (Passage by local legislative body with approval, no disapproval or repassage after disapproval by the Elective Chief Executive Officer*.)
I hereby certify that the local law annexed hereto, designated as local law No. 1 of 20 12 of the (County)(City)(Town)(Village) of Erie was duly passed by the Erie County Legislature on February 16, 20 12, and was (approved)(not approved)(repassed after disapproval) by the Erie County Executive and was deemed duly adopted on March 8, 20 1 2, in accordance w ith the applicable provisions of law.
(Name of Legislative Body) *(Elective Chief Executive Officer*)*

3. (Final adoption by referendum.)
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20_____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20_____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20_____.
(Name of Legislative Body) *(Elective Chief Executive Officer*)*

Such local law was submitted to the people by reason of a (mandatory)(permissive) referendum, and received the affirmative vote of a majority of the qualified electors voting thereon at the (general)(special)(annual) election held on _____ 20_____, in accordance with the applicable provisions of law.

4. (Subject to permissive referendum and final adoption because no valid petition was filed requesting referendum.)
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20_____ of the (County)(City)(Town)(Village) of _____ was duly passed by the _____ on _____ 20_____, and was (approved)(not approved) (repassed after disapproval) by the _____ on _____ 20_____. Such local law was subject to permissive referendum and no valid petition requesting such referendum was filed as of _____ 20_____, in accordance with the applicable provisions of law.
(Name of Legislative Body) *(Elective Chief Executive Officer*)*

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* Elective Chief Executive Officer means or includes the chief executive officer of a county elected on a county-wide basis or, if there be none, the chairperson of the county legislative body, the mayor of a city or village, or the supervisor of a town where such officer is vested with the power to approve or veto local laws or ordinances.

5. (City local law concerning Charter revision proposed by petition.)
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the City of _____ having been submitted to referendum pursuant to the provisions of section (36)(37) of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of such city voting thereon at the (special)(general) election held on _____ 20 , became operative.

6. (County local law concerning adoption of Charter.)
I hereby certify that the local law annexed hereto, designated as local law No. _____ of 20____ of the County of _____State of New York, having been submitted to the electors at the General Election of November _____ 20____, pursuant to subdivisions 5 and 7 of section 33 of the Municipal Home Rule Law, and having received the affirmative vote of a majority of the qualified electors of the cities of said county as a unit and a majority of the qualified electors of the towns of said county considered as a unit voting at said general election, became operative.

(If any other authorized form of final adoption has been followed, please provide an appropriate certification.)
I further certify that I have compared the preceding local law with the original on file in this office and that the same is a correct transcript therefrom and of the whole of such original local law, and was finally adopted in the manner indicated in paragraph 2 above.

Clerk of the county legislative body, City, Town or Village Clerk or officer designated by local legislative body

(Seal)

Date: 3/9/12

(Certification to be executed by County Attorney, Corporation Counsel, Town Attorney, Village Attorney or other authorized attorney of locality.)

STATE OF NEW YORK
COUNTY OF Erie

I, the undersigned, hereby certify that the foregoing local law contains the correct text and that all proper proceedings have been had or taken for the enactment of the local law annexed hereto.

Signature
Assistant County Attorney
Title

County
~~City~~
~~Town~~
~~Village~~
of Erie

Date: 3/9/12

A Public Hearing was held on the foregoing Local Law Intro. No. 10-2011 on **Friday, March 2, 2012**, due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, MARK C. POLONCARZ, County Executive of Erie County, do hereby APPROVE and SIGN said Local Law this 8th day of March, 2012.

Mark C. Poloncarz

A Public Hearing was held on the foregoing Local Law Intro. No. 10-2011 on **Friday, March 2, 2012**, due notice thereof having been published in the official newspapers of the County of Erie designated for this purpose, and after due deliberation thereon, I, MARK C. POLONCARZ, County Executive of Erie County, do hereby DISAPPROVE and VETO said Local Law this ____ day of March, 2012.

Mark C. Poloncarz