

“Sexting” and the Schools



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“Sexting” can be defined as the act of sending pictures of a sexual nature or sexually suggestive text between cell phones. Other electronic media such as social networking sites like Facebook and MySpace may also be used to “sext.” Sexting most frequently occurs between students, but staff and students sometimes engage in sexting one another. According to one nationwide study conducted by the National Campaign to Support Teen and Unplanned Pregnancy, more than 20 percent of teens admit to participating in sexting. Sexting has become a common problem and may lead to a number of legal issues in our schools.

Sexting presents a variety of issues for schools

Sexting can quickly lead to sexual harassment or bullying. It may also lead to crimes such as possession of child pornography or child abuse. In one Ohio case, a female student sent photos to her boyfriend and in turn, the photos were sent to hundreds of other students in her school. The girl was harassed in person and through her MySpace and Facebook accounts. She then committed suicide.

Staff members must safeguard themselves, too. In one Virginia case, an assistant principal was charged with possession of child pornography after investigating a sexting case at his school. In Washington, parents have sued a school district for suspending two girls after finding semi-nude photos of the girls on other students’ cell phones.

Sexting may create student records under FERPA

Sexting can also lead to issues regarding confidentiality of student records. For example, if a sexual explicit text message regarding a student is maintained by the district for purposes of disciplining another student, a “student record” for purposes of FERPA may have been created for both students. If it is a student record of the student to be disciplined, that student’s parents or that student, if he is 18 or older, may have a right to access the photos or consent to disclosure to third parties.

Sexting may violate of Board policies

Sexting, in addition to being a crime, may also be a violation of Board of Education policies. Depending on the exact nature of the misconduct, the student or students may violate Board policies regarding sexual harassment, hazing, use of technology, extortion, recording, or possession of sexually explicit, vulgar or violent material.

School response to sexting incidents

In responding to incidents of sexting, district officials should first determine if a crime is involved such as possession of child pornography. If so, it should be reported to law enforcement immediately. The evidence of the crime should be turned over to law enforcement officials. If it is maintained by the district, it may be a “student record” for purposes of FERPA as described above. District officials must also determine if the misconduct also constitutes a violation of the district’s student code of conduct. If so, it should be disciplined as such. For disciplinary purposes, the actual evidence of the sexting need not be maintained as evidence by the district for the district to discipline the misconduct so long as credible evidence is available, such as the testimony of school officials with first-hand knowledge of the misconduct.

Schools should train staff and students

Aside from appropriately responding to specific incidents of sexting, districts should initiate programs to raise awareness of the issue. These training programs should explain the detrimental consequences for both the victims and the perpetrators of sexting. A comprehensive approach that includes the entire school community, not merely the students, is best. Staff and administration must also be trained as to how to appropriately respond to incidents of sexting.