



# Technology and the Law: The Dangers of Sexting in Schools

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Communication through technology occupies an increasingly greater role in our lives, whether by way of cell phones and other handheld communication devices, such as Blackberries and iPods, or Internet access using computers. Not surprisingly, students and young adults have devised unanticipated applications for technology that raise significant legal implications for school business officials and other education leaders.

The most recent and most troublesome misuse of technology involves sexting—the practice of sending or posting sexually explicit images or text messages via cell phones and other handheld devices. While photographing and exploiting nudity or sexually graphic materials have certainly been around since the proverbial time immemorial, today, in the cyber age of instantaneous far-reaching communication, images can be sent immediately and irretrievably.

Based on the speed of electronic communications, questions arise about whether students or their parents fully comprehend the ramifications of their actions when young people engage in sexting and its potentially dire consequences.

## Some Background

Sexting, an offshoot of sending written messages known as texting, is a relatively new phenomenon that emerged due to the rapid spread and use of cell phones and handheld technology devices. Not surprisingly, reports vary on how widespread sexting is. Most recently, the Pew Research Center (Lenhart 2009) reported that 4% of cell phone–using teens have sent sexually suggestive nude or nearly nude images of themselves by means of text messaging. Conversely, according to another widely read study, Sex and Tech

(National Campaign 2008), 20% of teenagers (aged 13–19) have used electronic means to send or post nude or seminude photos or videos of themselves online. Yet even though 75% of teenagers acknowledged that sexting could have “serious negative consequences,” they continue to engage in the practice (National Campaign 2008, p. 3).

Given the widespread use of technology and the significant percentage of young adults who admit to sexting, it is likely that teachers also participate, even absent litigation involving educators. Thus, although this column focuses on students rather than teachers, education leaders should address sexting with faculty and staff, reminding them that although their private lives are their own business, taking part in sexting can affect their employment. They could face work-related penalties up to and including dismissal and the revocation of their licenses or certifications for conduct unbecoming educators or insubordination if doing so violates explicit board policies. Moreover, educators could face criminal sanctions for transmitting inappropriate images.

In the most tragic incidents involving sexting to date, two female students committed suicide. In July 2008, after 18-year-old Jessica Logan e-mailed a nude photo of herself to a boyfriend, he passed it on to four of her friends who apparently forwarded the picture to other students. Over the ensuing weeks, Jessica’s picture was viewed by hundreds of teenagers in local high schools (Kranz 2009). In the days leading up to Jessica’s suicide, she was inundated with humiliating taunts, causing her to take her own life.

More recently, in September 2009, 13-year-old Hope Witsell committed suicide

three months after she sent a picture of her naked breasts to a boy she liked and he forwarded the image to others. Like Jessica, Hope was taunted at school once the picture became public knowledge. Following a summer during which she went to counseling, Hope served a one-week suspension at the start of the school year in August for sending the picture. When the harassment did not abate, she took her own life (Meacham 2009).

## Legal Issues

The fact that those who transmitted pictures of Jessica and Hope are likely to escape criminal charges does not mean that others who engage in sexting will be protected. The Iowa Supreme Court, for example, upheld the criminal conviction of an 18-year-old for disseminating obscene material to a minor after he sent a picture of his genitals with the text message “I love you” to a 14-year-old female who attended his high school (*State v. Canal* 2009). The supreme court ruled that the lower court was right in applying its own community standards in finding that the photograph of the student’s genitals was obscene.

As a result of his conviction, the senior faced a \$250 civil fine and a one-year probation with the state department of corrections, was required to register as a sex offender, and had to be evaluated to determine whether he needed treatment.

In other cases, students received felony convictions and/or were required to register as sex offenders for distributing child pornography when they transmitted naked pictures of minors (Muscarelli 2009). These young people certainly were unaware that such serious penalties could be imposed and that devastating labels could follow them throughout their lives.

On the other hand, a federal trial court in Pennsylvania granted a request from parents for a temporary

restraining order that prevented a county district attorney from charging their high school-aged daughters with felonies for possession and distribution of child pornography for having photographs of “scantly clad, semi-nude and nude teenage girls” (*Miller v. Shumanick* 2009, p. 637) on their cell phones.

The students faced long prison terms, having to register with public officials as sex offenders for at least 10 years and having their names and pictures posted on a public Website. Rather than be subject to these penalties, the plaintiffs challenged the district attorney’s offer of a plea bargain that would have required the students to serve probation and attend a program of counseling and education about the negative effect of their sexting.

The trial court granted the plaintiffs’ request for the temporary restraining order, essentially terminating the legal proceedings. In deciding that the parents had the reasonable likelihood of success on their claims and that the students would have been harmed irreparably if the case proceeded, the court contended that requiring the students to attend the program would have violated their right against compelled speech. In other words, the court thought that obligating the students to write essays about why their behavior was wrong violated their rights because they argued that they did not believe that their actions broke the law.

The court added that since the district attorney’s threat to prosecute the students for refusing to accept the plea bargain was retaliatory, the plaintiffs were entitled to the temporary restraining order.

An earlier incident involved students at a nonpublic religious school. The Alabama Supreme Court affirmed a grant of summary judgment in favor of education officials who expelled four female ninth graders for taking nude photographs of themselves and e-mailing them to

a male friend; the male did not disseminate the pictures to others (*S.B. v. St. James School* 2006).

The court held that the students’ claims for breach of contract, invasion of privacy, and due process were without merit insofar as they failed to present evidence supporting their allegations of wrongdoing by school officials.

## Policy Recommendations

Aware of the legal challenges that student sexting can present, school business officials, acting in conjunction with other education leaders and their boards, should develop policies to educate students, their parents, and staff on the severity and potentially long-term harmful consequences of sexting.

Keeping in mind that the best intervention is prevention, policies should raise awareness of and provide professional development sessions for educators since they are on the front line of dealing with sexting and other abuses associated with technology.

The following suggestions should help school business officials and other education leaders as they devise policies that address sexting.

Policies should include provisions to educate students, parents, and staff on the social and emotional effects of sexting, as well as its legal consequences. Policies, then, should use a variety of approaches such as schoolwide assemblies or programs, classroom instruction, electronic notices, classes for parents, and professional development sessions for staff.

In developing policies on sexting, education leaders should take the following steps:

1. Assemble a team—including board members, the board attorney, administrators (including school business officials), teachers, counselors, staff, parents, students, and community members—to develop policies on

sexting. It is particularly important to involve parents because, as reflected in *Miller v. Shumanick* (2009), if parents are unwilling to support board policies against sexting, then school officials may have a difficult time enforcing school rules.

2. Review preexisting practices and policies on student discipline and the acceptable use of technology in schools, emphasizing proactive dimensions, such as education about the risks associated with sexting. Policies should stress that their goal is to help students understand the harmful effect that sexting can have on their lives and those of their friends as they provide assistance, including counseling, to address this growing concern. Of course, policies should include clearly defined sanctions so students are aware of the consequences of their actions.
3. The substantive provisions of policies should address the needs of various constituencies in school communities.

**Students:** Policies should explain why it is important for students to avoid sexting. This explanation is crucial because students may fail to appreciate the effect of what can happen once they hit the send button. They cannot retrieve information once it has been transmitted.

Policies should help students understand the long-term implications of criminal convictions and being labeled sex offenders for transmitting inappropriate images. This information should be presented regularly at school assemblies, in health classes, at guidance sessions, and in small-group peer and individual counseling sessions so students are informed about the potential long-term ramifications of sexting.

Policies should address the social, emotional, legal, and disci-

plinary consequences of sexting. They should inform students that potential sanctions for sexting go beyond traditional school penalties, such as detentions, suspensions, or even expulsions; rather, they can result in criminal sanctions and being identified as being sex offenders if sexting involves images of minors who are under the age of 16.

Policies should include opportunities for counseling services through community service agencies.

**Parents:** Policies should encourage parents to restrict the amount of time their children spend on cell phones, text messaging, and computer use.

Policies should include plans to keep parents informed through meetings of parent-teacher groups, in newsletters, on Websites, and at inservice sessions led by qualified counselors.

**Faculty and staff:** Policies should afford regular professional development opportunities for faculty and staff that focus on the social, emotional, and legal consequences of sexting. Sessions should prepare educators to recognize warning signs that students may be at risk of harassment or suicide as a result of having transmitted their pictures to peers.

4. Education leaders should work with their attorneys to make certain that their sexting policies are updated at least annually to ensure that they are consistent with rapidly developing changes in the law and technology. The need for school boards to keep sexting policies current is particularly important because laws vary from one jurisdiction to the next in defining, for example, possession of child pornography, or being identified as sex offenders.

## Working Together

Sexting is one of the most challenging issues confronting today's education leaders. School business officials and other education leaders must take steps to work with parents to devise policies aimed at eradicating this harmful practice.

To the extent that education leaders can develop policies to fight the ill effects of sexting and other forms of cyberbullying, schools will become safer environments where all students can learn.

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