

Social, Legal and Ethical Research Paper

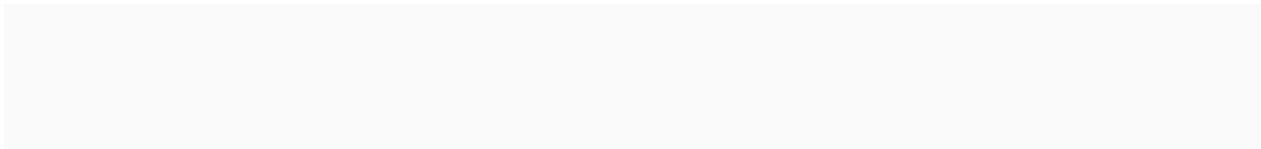
Wayne A. Beeman

Wilkes University

Dr. Ernie Williams

ED-577

5/20/17



The invention of mobile devices has brought a convenience to our world. We can access all kinds of information and anyone at any time from any place. We have also found many positive benefits through the connectivity of today's social media world, but there are many troubling issues that have risen. One of these issues is, "sexting." This involves the sharing or showing of sexually explicit photos, videos, email, text and chat by cell phone or online. This becomes overwhelmingly surprising when high numbers of sexting is committed among minors. According to Wallace (2015), "Nearly 30% said they included photos in their "sexts," and an astonishing 61% did not know that sending nude photos via text could be considered child pornography" (Wallace, 2015, January 2).

The youth today are using mobile devices to connect to social media. They bring their mobile devices to the public schools and are accessing them on school grounds for educational purposes but are also using them for a variety of personal reasons. These personal reasons are unstructured in an educational setting and can open the door to sexting. It becomes increasing critical that school districts are prepared to manage sexting conflicts. Even if sexting is not occurring on school grounds, it can effectively migrate to students that are connected or associated with those fallen victim to sexting. ultimately, effecting the staff of school districts.

The increasing drive for school district to be prepared for these types of events by having clear policies in place is critically important. Policies help prevent overstepping of legal boundaries and can ensure the proactive awareness and actions necessary among school districts to keep all individuals legally intact. Thus, alleviating lawsuits and preventing jail time or devastating financial loss to individuals or school districts.

At the school district the author of this research paper is employed are two possible policies that cover an issue with sexting. The policies prohibit the use of electronic devices

during the school day and using electronic devices in anyway that foster bullying methods. Though these policies are in place to provide proper understanding of offenses that may take place, they are not necessary enforced fully nor do they increase the scope of these policies. Actually these policies have become limited by the increase of technological devices and advances. For instances, during the school day students are not permitted to use their electronic devices on school grounds. However, with the recent initiative of the 1:1 electronic device at this author's school district seem to be in conflict with the current policies. Updating of these policies need to be considered. The policies lack the specific terminology of cell phone, iphone or ipad but do use a broader term referred to as electronic device(s). This terminology may cover the advancement of electronic devices, but not necessarily extensiveness of its effect upon the school body. Which according to Magid (2009):

“Technology makes it possible for youth to reach through both space and time to harass or bully classmates, regardless of physical location. For example, a group of kids could each be sitting in their own homes on a Saturday night, using their computers to contribute to a website or MySpace or Facebook social-networking page that demeans, harasses, defames, or impersonates a fellow student. The activity is taking place off campus, outside of school hours, and no school equipment is being used. Yet come Monday, that online activity could have a very real impact on campus” (Magid, 2009, p. 25).

Policies determine if a school district is liable when sexting takes place on campus. Whitman and Mattord (2011) states, “If an employee, acting with or without the authorization of the employer, performs an illegal or unethical act that causes some degree of harm, the employer can be held financially liable for that action” (Whitman and Mattord, 2011, pp. 91-92). Likewise,

if policies are not readily viewable or available, school districts may be liable for the offense that occurs. According to Whitman and Mattord (2011), “Policies function as laws, they must be implemented with the same care to ensure that they are complete, appropriate, and fairly applied to everyone in the workplace” (Whitman and Mattord, 2011, pp. 91-92).

To be a Superintendent of a school district requires an extensive overhead of responsibility and to be knowledgeable of policies to combat against issues such as sexting.

According to O'Donovan (2009), “Sexting can appear in many forms, and school officials must examine the details of each specific incident before deciding upon a course of action” O'Donovan (2009). Having a good understanding of the situation becomes vital in developing and initiating an incident response plan. First thing a Superintendent needs to do is to look over the current policies of the school district. Involving the school board and discuss terminology and the updating of the policies is beneficial to ensure preventative measures. Then begin putting into place the initiatives and protocols of the IRP. The IRP steps would provide the following when a member of a school district faces a sexting incident. The staff member should immediately report the incident to an administrator. The administrator will alert those on the organized sexting crisis intervention team. If any member of the school district is shown or sees a suspected picture displayed on a student electronic device, the electronic device should be confiscated and law enforcement immediately notified. The school administrator(s) would determine appropriate steps of contacting law enforcements and parental guardians. Additionally, the administrator would decide on school-based consequences with sexting issues. In addition to the IRP, a Disaster Recovery Plan is also necessary. Whitman and Mattard (2011) state, “The DRP encourages steps necessary before a situation occurs. The DR plan focuses more on preparations completed before and actions taken after the incident, whereas the IRP plan focuses

on intelligence gathering, information analysis, coordinated decision making, and urgent, concrete actions” (Whitman and Mattord, 2011, p. 148).

Putting good policies in place fosters proactivity to prevent, resolve, and mend the effects of highly problematic situations such as sexting. A case that provides a warning to every organization about making hasty decisions and can have devastating results. In 2009, at Freedom High School in South Riding, Virginia faced a rising pandemic involving a number of students sharing personal nude pictures via their cell phones. The acting principle at the time, Tim-Yi Oei, acted on the situation to find the cause and put remedial actions in place. Oei was about to embark on a situation of enormous proportions resulting in dire consequences. According to Zetter (2009), The principal of Freedom High School was “charged with possession of child pornography and related crimes — charges that threatened to brand him a sex offender and land him in prison for up to seven years” (Zetter, 2009). What was interesting are the choices that led up to this big profile case. Oei, by choosing to receive and save a “nude” photo on his electronic devices, was only beginning to realize the ramification of his decision. Many other charges were piled on his already increasing dilemma. Among his charges, according to Zetter (2009), was the “contributing to the delinquency of a minor, claiming Oei broke the law when he had the 16-year-old boy send the photo to his cell phone and advise him on how to, then, forward it to his desktop computer” (Zetter, 2009). Oei, was eventually exonerated, but not after much stress and court and lawyers fees reaching approximately \$150,000. Interesting enough, the prosecutor stood by his assessment of Oei and the photo involved. Jim Plowman is stated in the article written by Zetter (2009):

“The issue of whether it meets the definition under the statute ... goes to whether it is lewd,” he says. “This one I felt was [lewd] because of the focus of the picture, which was

the private areas. The judge felt it didn't meet the precedent case law for child pornography." Plowman insists he never intended to seek prison time for Oei"(Zetter, 2009).

I was a bit dismayed at the stance of the prosecutor. I felt he did not take into consideration the whole situation including the good-hearted intention of Oei. However, the author of this research paper now understands further that the prosecutor looked only at the law in this case. He was not concerned for the intentions or the reasoning behind the actions of the principal at the high school. He was only looking at the law. No emotional persuasion and no concern for good intentions, but only through the law did he make a decision to prosecute accordingly. For this is what he had been elected to do.

The overall opinion of this case is a bit shocking, at first. I was surprised to read the choices made by the assistant principal. Though Oei had good intentions, his choices were, at the time, unknowably poor. I was also surprised at how quickly the decisions that were made by Oei unraveled into terrible records of wrongs of additional charges in a short period of time. This case serves as a reminder that every choice needs to be carefully weighed and potential consequences considered. I do think the principle was rightly exonerated. I was displeased, seemingly, that Oei was the scapegoat at the school. There was no report of a known policy in place to combat the issue of sexting at the school. Additionally, The head principal had, according to Zetter (2009), "directed him to preserve a copy (of the sexting image) on his office computer for the investigation" Zetter, 2009). The head principal distanced herself from the situation and was unavailable for any comment about this case. Unfortunately, Oei was left standing alone.

This case arises questions about proper procedures if and when a student electronic device may or many not be confiscated or searched. I think it is permissible for an administrator to ask students to display the contents of his/her cellphone under certain conditions within the law. If an electronic devices policy has been initiated and is publicized and an administrator knows without a doubt with probable cause that a crime has been committed, then the administrator is correct in retrieving and accessing the student's phone. It is important to note for an administrator to confiscate a student(s) phone to access its contents becomes a challenging decision. According to Patchin (2011), "Students are protected by the Fourth Amendment to the U.S. Constitution. For a search of student property to be justified, there must exist: "reasonable grounds for believing that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school" (Patchin, 2011).

If the student is found to be with sexting content, an administrator is bound legally to report the incident to authorities. If an administrator does not report the incident, he/she is in violation of the law of Pennsylvania's Code of Professional Practice and Conduct of Educators. According to § 235.4. Practices (b)(10) states: "Professional educators shall exert reasonable effort to protect the student from conditions which interfere with learning or are harmful to the student's health and safety." Also, according to Whitman & Mattord (2011) states, "Whatever the cause of illegal, immoral, or unethical behavior, one thing is certain: it is the responsibility of information security personnel to do everything in their power to deter these acts and to use policy, education and training, and technology to protect information and systems" (Whitman and Mattor, 2011, p. 108). Additionally, contacting authorities will provide the necessary documentation to alleviate liability.

Much like preparing students for a future that is yet to exist, school districts much be proactively engaged to provide effective policies that foresee future Social, Legal and Ethical concerns that will diminish an educational environment that fosters safety, supportiveness, and well being of all students.



## REFERENCES

- Carter, L. E., White, J. L., Runner, R. W. (2012). Effective Responses to Teen Sexting A Guide for Judges and Other Professionals. Retrieved May 16th, 2017, from <https://www.futureswithoutviolence.org/userfiles/file/Judicial/Effective%20Responses%20to%20Teen%20Sexting.pdf>
- CNN, Wallace, K. (2015, January 2). Chances Are, Your Teen Has Sexted. Retrieved May 15, 2017, from <http://www.cnn.com/2014/11/18/living/teens-sexting-what-parents-can-do/>
- Magid, Larry. (2009, Summer). It Didn't Happen at School, But... *A Cable in the Classroom Publication*. Retrieved May 16, 2017, from <https://www.nais.org/Articles/Documents/THSummer09ItDidntHappenatSchool.pdf>
- O'Donovan, E. (2010, March 1). Sexting and Student Discipline. Retrieved May 15, 2017, from <https://www.districtadministration.com/article/sexting-and-student-discipline>
- Patchin, J. (2011). When Can Educators Search Student Cell Phones? Retrieved May 21, 2017, from <http://cyberbullying.org/when-can-educators-search-student-cell-phones>
- The Pennsylvania Code (2017). CODE OF PROFESSIONAL PRACTICE AND CONDUCT FOR EDUCATORS. § 235.4. Practices (b)(10). Retrieved on May 22, from <http://www.pacode.com/secure/data/022/chapter235/chap235toc.html>
- Whitman, M. E. & Mattord, H. J. (2011). *Principles of information security* (4<sup>th</sup> ed.). Boston, MA: Thompson Course Technology, pp. 91-92, 108, 148.
- Zetter, K. (2009). 'Sexting' Hysteria Falsely Brands Educator as Child Pornographer. Retrieved May 20, 2017, from <https://www.wired.com/2009/04/sexting-hysteri/>