

## Students

### **Administrative Procedure - Guidelines for Investigating Sexting Allegations**

Establishing procedures with local law enforcement agencies and State's attorneys to investigate allegations of sexting protects the Cooperative, its staff and its students from the broad legal implications that sexting allegations present. This administrative procedure contains three sections:

1. Glossary of Terms
2. Preparation of Guidelines for Investigating Sexting Allegations
3. Investigation and Management of Sexting Allegations

#### **Glossary of Terms**

**Electronic device:** any type of electronic communication device, defined in the Juvenile Court Act of 1987 at 705 ILCS 405/3-40(a). It includes, but is not limited to, a wireless telephone, personal digital assistant, or a portable or mobile computer, that is capable of transmitting images or pictures. This includes cellular telephones (see [www.thesaurus.com/](http://www.thesaurus.com/), listing cellular and wireless telephones as synonyms). For more discussion, see f/n 3 in administrative procedure 7:190-AP5, *Student Handbook - Electronic Devices*.

**Sexting:** a portmanteau word of sex and texting with no clear definition. It is commonly explained as the act of sending sexually explicit photos, images, or messages electronically, primarily by mobile phone or the internet. For purposes of this procedure, it also includes:

1. Indecent visual depiction, which under the Juvenile Court Act of 1987 means a depiction or portrayal in any pose, posture, or setting involving a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if such person is female, a fully or partially developed breast of the person (705 ILCS 405/3-40(a) (enacted to provide law enforcement officials an alternative to bringing child pornography charges against minors in possession of indecent visual depictions through placing them under the supervision of juvenile courts)), or
2. Non-consensual dissemination of private sexual images, which under the Criminal Code of 2012 is a crime that is committed when a person:
  - a. intentionally disseminates an image of another person:
    - i. who is at least 18 years of age; and
    - ii. who is identifiable from the image itself or information displayed in connection with the image; and
    - iii. who is engaged in a sexual act or whose intimate parts are exposed, in whole or in part; and
  - b. obtains the image under circumstances in which a reasonable person would know or understand that the image was to remain private; and
  - c. knows or should have known that the person in the image has not consented to the dissemination (720 ILCS 5/11-23.5(b)).

#### **Preparation of Guidelines for Investigating Sexting Allegations**

This section identifies best practices to create guidelines for investigating sexting allegations at the Cooperative-wide level. The Executive Director should discuss this procedure with local law enforcement agencies and State's attorneys to minimize the potential legal implications for students and administrators that managing sexting in school presents. Customize the procedure to each Cooperative's specific needs.

<b>Actor</b>	<b>Action</b>
Executive Director or designee	Convene a meeting with the Board Attorney, local law enforcement agencies, and State's attorney to determine best practices and procedures for investigating sexting in the Cooperative. Use the <b>Investigation and Management of Sexting Allegations</b> section (see below) as a template for

Actor	Action
	<p>discussion at the meeting and customize it to meet local considerations as necessary.</p> <p>Ask the Board Attorney to provide direction about searching student owned electronic devices in Step 2: Isolate Evidence / Confiscate Device in the <b>Investigation and Management of Sexting Allegations</b> section (see below).</p> <p>Searching electronic devices involves Fourth Amendment search and seizure and the federal Stored Communication Act (SCA) (18 U.S.C. §2701) issues. Generally asking for permission, calling the parents to come and look through the phone, or getting a warrant solves this issue. <b>Note:</b> See <i>Searching and Seizing Computers and Obtaining Electronic Evidence Manual</i> (Sept. 2009), Chapter 3, The Stored Communication Act, at:  <a href="https://www.justice.gov/file/442111/download">https://www.justice.gov/file/442111/download</a>  and Orin S. Kerr, <i>A User's Guide to the Stored Communications Act, and a Legislator's Guide to Amending It</i>, George Washington Law Review (Aug. 2004), at:  <a href="https://courses.ischool.berkeley.edu/i205/s10/readings/week10/kerr-storedcomm.pdf">courses.ischool.berkeley.edu/i205/s10/readings/week10/kerr-storedcomm.pdf</a>.</p> <p>Identify and list all State's attorneys and local law enforcement agencies with jurisdiction over the Cooperative's boundaries. Provide this list to all Program Administrators in the Cooperative.</p> <p>Provide the local State's attorney offices and law enforcement agencies with an annual list of school buildings and the names of each building's administrators that are located within their jurisdictions.</p> <p>Invite local State's attorney offices and law enforcement agencies to meet with Cooperative school officials to provide input on how the Cooperative should manage sexting.</p> <p>Add an agenda item about sexting to a Parent Teacher Advisory Committee meeting (see policy 2:150, <i>Committees</i>). Include information from discussions with State's attorneys and local law enforcement about the issue. Discuss local considerations for:</p> <ol style="list-style-type: none"> <li>1. Disciplinary actions and consequences in response to sexting; and</li> <li>2. Sexting education and prevention efforts.</li> </ol> <p>Consider adding information about the negative consequences of sexting to the Cooperative's sex education curriculum. See, U.S. Dept. of Justice (DOJ) Guide titled <i>Citizen's Guide to United States Federal Child Exploitation and Obscenity Laws</i>, at: <a href="http://www.justice.gov/criminal-ceos/citizens-guide-us-federal-child-exploitation-and-obscenity-laws">www.justice.gov/criminal-ceos/citizens-guide-us-federal-child-exploitation-and-obscenity-laws</a>;  MTV's four-part series titled <i>Sexting in America: When Privates Go Public</i>, available at: <a href="http://www.mtv.com/news/1631123/mtv-news-sexting-in-america-when-privates-go-public-premieres-on-valentines-day/">www.mtv.com/news/1631123/mtv-news-sexting-in-america-when-privates-go-public-premieres-on-valentines-day/</a>.</p> <p>Consider adding the above resources to 4:170-AP2, E4, <i>Exhibit-Letter to Parents/Guardians About Preventing and Reducing Incidences of Sexting</i>.</p>

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	<p>Convene a meeting with Program Administrators to inform them of the Cooperative's Investigation and Management of Sexting Allegations procedures (see below).</p> <p>Raise awareness of and increase educational opportunities about sexting as necessary. Follow the Parent Teacher Advisory Committee's recommendations for providing sexting education and prevention efforts. Invite the local State's attorney and local law enforcement to participate in the Cooperative's education and prevention efforts.</p>
Program Administrators	<p>Educate staff members about the procedures for <b>Investigation and Management of Sexting Allegations</b> (see below).</p> <p>Follow the Investigation and Management of Sexting Allegations.</p>

### Investigation and Management of Sexting Allegations

This section relies upon the Program Administrator or designee to manage several practical and legal implications when conducting sexting allegation investigations.

Actor	Action
Program Administrator or designee	<p><b>Step 1: Investigate</b></p> <p>Determine where actions took place.</p> <p>Contact parents/guardians of all students involved.</p> <p>Contact the Executive Director and request permission to contact the Board Attorney.</p> <p><b>Step 2: Isolate Evidence / Confiscate Device</b></p> <p>NEVER transfer or store depictions on personal or school electronic devices to minimize accusations of possession of child pornography. (See 720 ILCS 5/11-20.1 <u>et seq.</u>, 720 ILCS 5/11-23.5(c) (provides an exception on transfer of an image for a lawful purpose), and 18 U.S.C. §§2251, 2252, and 2252A). Also see the DOJ's Child Exploitation and Obscenity Section discussing child pornography issues, available at: <a href="http://www.justice.gov/criminal-ceos">www.justice.gov/criminal-ceos</a>.</p> <p>Contact the Board Attorney for guidance to determine whether to involve local law enforcement or manage the situation within the Cooperative's disciplinary policy.</p> <p>See Joshua D. Herman, <i>Criminal Law. Sexting: It's No Joke, It's a Crime</i>. Illinois Bar Journal, Volume 98, No. 4, P. 192 at f/n 42 (published April 2010), at: <a href="http://www.isba.org/ibj/2010/04/criminallaw">www.isba.org/ibj/2010/04/criminallaw</a>, (quoting an attorney in the Ill. Attorney General's High Tech Crimes Bureau who advises school administrators to immediately confiscate devices with such material on them and report the incident to law enforcement immediately, stating that possession of a sext message that is child pornography is no different than possessing a "kilo of cocaine.")</p> <p>Follow Board policy 7:140, <i>Search and Seizure</i> and 7:150-AP, <i>Agency and Police Interviews</i>.</p>

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	<p>Follow the Board Attorney's direction regarding searches of student owned technological devices. See Preparation of Guidelines for Investigating Sexting Allegations (above).</p> <p><b>Step 3: Follow the reporting requirements of Board policy 5:90, <i>Abused and Neglected Child Reporting</i>, when applicable</b></p> <p>A <i>sexted</i> image may constitute child abuse depending upon the visual depiction or image, the ages of the individuals involved, and other circumstances. See 325 ILCS 5/3 and 705 ILCS 405/2-3(2) which includes sex offenses defined at 720 ILCS 5/1-1 <i>et seq.</i> School personnel are granted broad immunities against civil and criminal claims for filing reports in good faith, even if the report is unfounded. In contrast, school personnel who willfully fail to report may be guilty of a Class A misdemeanor (325 ILCS 5/4(m)) and face suspension or revocation of their licenses, endorsements, or approvals (105 ILCS 5/21B-75, amended by P.A.s 102-552 and 102-702, eff. 7-1-23).</p> <p><b>Step 4: Determine appropriate disciplinary actions for all students involved in the incident</b></p> <p>Evaluate disciplinary options. Remember that a student who forwards sexts of himself or herself likely expected the depiction to remain private. As a result, consider the social stigma, bullying, harassment, and severe embarrassment issues involved in the issue.</p> <p>Provide an equivalent discipline to all students involved in the creation, dissemination and storage of the sexted image, whenever possible.</p> <p>See Sorenen, Vitale, and Haase, <i>Sexting at School: Lessons Learned the Hard Way</i>. National School Board Association, Council of School Attorney's Inquiry &amp; Analysis, f/n 40 (published February 2010), and available at: <a href="http://kycss.org/ns/wp-content/uploads/2020/11/SSI-Sexting-Handout-NSBA-Sexting-at-School-Lessons-Learned-the-Hard-Way.pdf">http://kycss.org/ns/wp-content/uploads/2020/11/SSI-Sexting-Handout-NSBA-Sexting-at-School-Lessons-Learned-the-Hard-Way.pdf</a>. It discusses several sex equality claims against school districts for punishing students differently when they are involved in the same incident.</p> <p>For situations that may require unequal punishment, contact the Executive Director so that he or she may consult the Board Attorney.</p> <p><b>Step 5: Prepare a plan to prevent harassment and bullying of involved students</b></p> <p>Remind the students and their parents/guardians of the Board policies 7:20, <i>Harassment of Students Prohibited</i>; 7:180, <i>Prevention of and Response to Bullying Intimidation and Harassment</i>; and 7:185, <i>Teen Dating Violence Prohibited</i>.</p> <p>Instruct involved students not to harass anyone involved in the sexting incident and keep the issues confidential.</p> <p>Consider involving the social worker or school counselor, if available, in the process to assist students.</p> <p>Follow 7:180, <i>Prevention of and Response to Bullying Intimidation and Harassment</i>, for students who violate the policy.</p>

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