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 District, 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/, listing cellular and wireless telephones as synonyms). For more discussion, see f/n 3 in sample administrative procedure 7:190-AP5, *Student Handbook - Electronic Devices*.

Sexting:[1] the act of creating, sending, sharing, viewing, receiving, or possessing sexually explicit messages, images, or videos electronically, regardless of whether they are authentic or computer-generated, through the use of a computer, electronic communication device, or cellular phone. It also includes:

1. Creating, sending, sharing, viewing, receiving, or possessing an *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,[2] 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 sexual abuse material~~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 (720 ILCS 5/11-23.5, amended by P.A. 103-825), is a crime that is committed when a person:
    a. intentionally disseminates an image of another person:
        i. who is identifiable from the image itself or personal identifying information[3] displayed or disseminated in connection with the image, or the identity is known to the person who disseminated the image; and

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[1] Ensure the definition of *sexting* in this administrative procedure aligns with the definition that appears in policy 7:190, *Student Behavior*.

[2] 705 ILCS 405/3-40(a) assumes sex is binary and does not address transgender females or individuals who identify as nonbinary. Consult the board attorney about this definition if an involved student is transgender or nonbinary.

[3] *Personal identifying information* is defined in 720 ILCS 5/16-0.1 and includes a person's name, address, date of birth, telephone number, among other items. See 720 ILCS 5/11-23.5, amended by P.A. 103-825, for definitions of other terms in this provision, including *image*, *sexual act*, and *intimate parts*.

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ii. 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.

3. *Non-consensual dissemination of sexually explicit digitized depictions*,[4] which under the Criminal Code of 2012 (720 ILCS 5/11-23.7, added by P.A. 103-825), is a crime that is committed when a person:

a. intentionally disseminates a sexually explicit digitized depiction of another person who is identifiable from the image itself or personal identifying information displayed or disseminated in connection with the image, or the identity is known to the person who disseminated the image; and

b. knows or should have known the person in the image has not consented to the dissemination.

Preparation of Guidelines for Investigating Sexting Allegations

This section identifies best practices to create guidelines for investigating sexting allegations at the District-wide level. The Superintendent 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 District's specific needs.

Actor	Action
Superintendent 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 District. Use the **Investigation and Management of Sexting Allegations** section (see below) as a template for discussion at the meeting and customize it to meet local considerations as necessary. Ask the Board Attorney to provide direction about searching student-owned electronic devices in Step 2: Isolate Evidence / Confiscate Device in the **Investigation and Management of Sexting Allegations** section (see below). Searching electronic devices involves Fourth Amendment to the U.S. Constitution search and seizure issues. The federal Stored Communication Act (SCA) (18 U.S.C. §2701) can also be implicated if the District wants to access information stored on a personal cellular phone from a third-party provider. Generally asking for permission, calling the parents to come and look through the phone,

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[4] *Sexually explicit digitized depiction* means any image, photograph, film, video, digital recording, or other depiction or portrayal that has been created, altered, or otherwise modified to realistically depict either: (1) the intimate parts of another human being as the intimate parts of the depicted individual or computer-generated intimate parts of the depicted individual, or (2) the depicted individual engaging in sexual activity in which the depicted individual did not engage. 720 ILCS 5/11-23.7(a), added by P.A. 103-825. See Id. for definitions of other terms in this provision, including *intimate parts* and *sexual activity*. For *personal identifying information*, see f/n 3, above.

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Actor	Action
	or getting a warrant solves these issues. **Note**: See *Searching and Seizing Computers and Obtaining Electronic Evidence Manual* (Sept. 2009), Chapter 3, The Stored Communication Act, at: www.justice.gov/d9/criminal-ccips/legacy/2015/01/14/ssmanual2009_002.pdf Identify and list all State's attorneys and local law enforcement agencies with jurisdiction over the District's boundaries. Provide this list to all Building Principals in the District. 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. Invite local State's attorney offices and law enforcement agencies to meet with District school officials to provide input on how the District should manage sexting. Add an agenda item about sexting to a Parent Teacher Advisory Committee meeting (see Board policy 2:150, *Committees*). Include information from discussions with State's attorneys and local law enforcement about the issue. Discuss local considerations for: 1. Disciplinary actions and consequences in response to sexting; and 2. Sexting education and prevention efforts. Consider adding information about the negative consequences of sexting to the District's sex education curriculum. See, U.S. Dept. of Justice (DOJ) Guide titled *Citizen's Guide to United States Federal Child Exploitation and Obscenity Laws*, at: www.justice.gov/criminal-ceos/citizens-guide-us-federal-child-exploitation-and-obscenity-laws. Consider adding the above resources to exhibit 4:170-AP2, E4, *Letter to Parents/Guardians About Preventing and Reducing Incidences of Sexting*. Convene a meeting with Building Principals to inform them of the District's Investigation and Management of Sexting Allegations procedures (see below). 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.[5] Invite the local State's attorney and local law enforcement to participate in the District's education and prevention efforts.
Building Principals	Educate building staff members about the procedures for **Investigation and Management of Sexting Allegations** (see below).

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[5] If a district offers the National Sex Education Standards (NSES), any recommendations should align with NSES. See sample policy 6:60, *Curriculum Content*, and its f/n 3~~5~~, and sample administrative procedure 6:60-AP2, *Comprehensive Personal Health and Safety and Sexual Health Education Program (National Sex Education Standards (NSES))*.

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Actor	Action
	Follow the Investigation and Management of Sexting Allegations.

Investigation and Management of Sexting Allegations

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

Actor	Action
Building Principal or designee	**Step 1: If the alleged conduct is governed by Board policy 2:265, *Title IX Grievance Procedure* (Notification and Information subhead):** Skip Step 2 and consult with the Title IX Coordinator regarding Steps 3, 5, and 6. Continue to follow Step 4. **Note:** The District may not issue discipline for alleged conduct covered by Title IX unless there is a determination at the conclusion of the Title IX Grievance Process that the Respondent engaged in discrimination prohibited by Title IX. **Step 2: If the alleged conduct is not governed by Board policy 2:265, *Title IX Grievance Procedure*, then investigate.** Determine where actions took place. Contact parents/guardians of all students involved. Contact the Superintendent and request permission to contact the Board Attorney. **Step 3: Isolate Evidence / Confiscate Device** NEVER transfer or store depictions on personal or school electronic devices to minimize accusations of possession of child sexual abuse materialpornography. (See 720 ILCS 5/11-20.1 et seq., amended by P.A. 104-245, eff. 1-1-26, 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: www.justice.gov/criminal-ceos. Contact the Board Attorney for guidance to determine whether to involve local law enforcement or manage the situation within the District's disciplinary policy. See Joshua D. Herman, *Criminal Law. Sexting: It's No Joke, It's a Crime*. Illinois Bar Journal, Volume 98, No. 4, P. 192 at f/n 42 (published April 2010), at: www.isba.org/ibj/2010/04/criminallaw, (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.")

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	Follow Board policy 7:140, *Search and Seizure*, and administrative procedure 7:150-AP, *Managing Agency and Law Enforcement Requests~~Police Interviews~~*. Follow the Board Attorney's direction regarding searches of student owned technological devices. See Preparation of Guidelines for Investigating Sexting Allegations (above). **Step 4: Follow the reporting requirements of Board policy 5:90, *Abused and Neglected Child Reporting*, when applicable** A *sexted* 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 et seq. 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). **Step 5: Determine appropriate disciplinary actions for all students involved in the incident** 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. Provide equivalent discipline to all students involved in the creation, dissemination, and storage of the sexted image, whenever possible. For situations that may require unequal punishment, contact the Superintendent so that he or she may consult the Board Attorney. **Step 6: Prepare a plan to prevent harassment and bullying of involved students** Remind the students and their parents/guardians of the Board policies 2:265, *Title IX Grievance Procedure*; 7:20, *Harassment of Students Prohibited*; 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*; and 7:185, *Teen Dating Violence Prohibited*. Instruct involved students not to harass anyone involved in the sexting incident and keep the issues confidential. Consider involving the social worker or school counselor, if available, in the process to assist students. Follow Board policy 7:180, *Prevention of and Response to Bullying, Intimidation, and Harassment*, for students who violate the policy.

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