



Combating Cyberbullying and Sexting

Cyberbullying and sexting among K-12 students are significant problems of the electronic age. Cyberbullying means bullying or intentional harassment or intimidation of another person with less power or stature by electronic means. Sexting refers to electronically sending sexually explicit or suggestive material, including texts, images, and videos.

Most cyberbullying and sexting occurs away from school on students' personal electronic devices. However, when these activities spill over into school and negatively affect the educational environment, the duty to protect students from harm often requires administrators to step in. They need to take corrective measures, reinforce with parents and students the risks of cyberbullying and sexting, and encourage students to report problems.

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Widening Scope of the Problem

In 2010, the Pew Internet and American Life Project summarized research finding that as many as one-third of children ages 10–18 have experienced cyberbullying, which is especially prevalent among those ages 14–17. Research shows that students who are cyberbullied are more likely than other children to experience emotional distress, feel unsafe at school, receive detention or suspension, and be absent.

Sexting also is becoming disturbingly widespread among teenagers and even pre-teens. While the statistics can vary, a 2008 online survey by the National Campaign to Prevent Teen and Unplanned Pregnancy and Cosmogirl.com found that 20 percent of all teens, and 11 percent of girls 13–16, had sent or posted nude or seminude photos or videos of themselves, usually using their cell phones. Most teens who engaged in sexting considered it “fun” and “flirtatious.”

Yet sexting sometimes has unintended and tragic consequences. Recipients of suggestive photos frequently forward them to others, particularly when a romantic relationship ends. Several girls have committed suicide after nude photos they had sent to boyfriends “went viral” and were circulated widely, often beyond their own schools, resulting in severe harassment by both schoolmates and strangers. While suicides remain rare, they are high-profile matters that attract disproportionate media attention.

State Laws

Many states have enacted laws specifically prohibiting cyberbullying or electronic harassment.

School administrators should consult counsel about their state’s legal requirements.

The Legal Landscape

Public schools faced with cyberbullying or sexting among students must balance sometimes confusing legal mandates. Under the principle of *in loco parentis*, K-12 schools act “in the place of a parent” and have a duty to protect minors from being harmed at school. At the same time, public schools must respect students’ federal constitutional rights, particularly their First Amendment free speech rights. While schools have wide latitude to punish students for misconduct at school, their ability to respond to bad behavior occurring off school grounds is limited.

Schools can discipline students for speech or conduct outside school if it causes a substantial disruption to school activities or interferes with the rights of other students. A school might show substantial disruption, for example, with evidence that online disputes between students outside school generate fights at school. To help establish that cyberbullying or sexting interfered with the rights of students, administrators could demonstrate that individuals who were targeted began missing school frequently or displayed significant declines in academic performance. Before attempting to discipline students who participate in cyberbullying or sexting outside school, administrators should carefully analyze all the facts and document the activity’s negative impact on the overall school environment, particular students, or both. A failure to adequately document the facts jeopardizes the legal position of the school and its staff.

Students’ First Amendment free speech rights do *not* extend to “true threats,” or statements that a reasonable person would interpret as a serious expression of intent to do harm. If a student threatens violence electronically, schools should immediately call the police, followed by the student’s parents, and later determine the appropriate discipline.

Cyberbullying as Unlawful Harassment

The Office of Civil Rights (OCR) of the Department of Education enforces laws that prohibit schools that receive federal funds from discriminating on the basis of students' sex, race, color, national origin, or disability. In an October 2010 advisory "Dear Colleague" letter to educators, OCR stated that bullying constitutes unlawful discriminatory harassment if it is based on any of these categories, is severe enough to create a hostile environment, and schools do not act to stop it. A hostile environment results when harassment interferes with or limits students' ability to participate in or benefit from school services, activities, or opportunities. OCR made clear that labels used to characterize conduct, such as teasing or hazing, are irrelevant, and that schools must examine the nature of the conduct to determine whether it violates the law.

OCR's position is that, regardless of a specific complaint, schools must investigate all bullying or harassment of which they become aware. If a school concludes that the conduct involved illegal harassment on the basis of a protected category under federal law, it must promptly take action to end the behavior and prevent its recurrence. In addition to disciplining alleged perpetrators, this might mean separating perpetrators and targets, counseling involved students, and issuing new policies and procedures pertaining to harassment.



Sexting as Criminal Behavior

Sexting that includes images of nude minors may qualify as child pornography, even if the activity is consensual and the participants are under 18. For example, several teenage boys have been forced to register as sex offenders after electronically forwarding nude pictures of their girlfriends or themselves to other teens. Although some states are revising their laws to treat minors who sext nude images differently than adults who create or distribute child pornography, students who engage in sexting still run a risk of criminal prosecution in many states.

School administrators who obtain evidence of sexting should contact the parents of involved students, and if the evidence includes nude images of young people, they should immediately call the police to investigate and secure the device that contains the images. Most states require school personnel to report possible child abuse or neglect; in addition to considering whether child pornography is involved, law enforcement would need to determine whether any adults were involved in creating the images. Failing to contact authorities under these circumstances can have serious consequences for educators.

For example, a Virginia assistant principal was charged in 2008 with failure to report suspected child abuse and possession of child pornography. He had kept on his computer some images of an unidentified, seminude girl that he had requested of a student during an internal sexting investigation. Nobody in the administration contacted police, who were called instead by an irate parent. Although a judge eventually dismissed the criminal charges, the assistant principal had been arrested, put on administrative leave, exhausted his savings, and suffered a barrage of hostile publicity.

Practical Advice for Administrators: Prevention and Response

Although schools cannot be responsible for addressing all incidents of cyberbullying and sexting that occur outside school, their obligations under *in loco parentis* mean that administrators should prepare to act when these incidents disrupt the school environment and affect their ability to educate children. Effective action to prevent cyberbullying and sexting requires both written policies and education programs. Schools should also take care not to ignore or dismiss complaints they receive, even if the conduct occurred outside school.

Policies and Training

UE recommends that public K-12 schools have both a student conduct code and a policy on acceptable computer use written in language that is easily understood. They should require students and parents to provide annual, written acknowledgment that they received and will abide by these rules. It is not enough, however, to have policies on paper. Effective prevention requires that schools disseminate the policies widely and train the entire school community—students, staff, and parents—on their content and application.

The OCR's October 2010 "Dear Colleague" letter similarly stresses the importance of training school personnel to help combat bullying that rises to the level of illegal harassment. The letter contains several hypothetical case studies illustrating a school's failure to recognize and respond properly to harassment based on a student's race, color, national origin, sex, or disability. In its analysis of the cases, OCR repeatedly emphasizes how effective training would have better enabled teachers and other school personnel to recognize the harassment and intervene.

- ***Student conduct code.*** The content of a student conduct code can vary according to a school's needs and culture, but ideally it should include:
 - » A statement forbidding discrimination or harassment on all bases protected by federal, state, or local law, or district policy
 - » Designation of a Title IX coordinator to oversee compliance with Title IX of the Education Amendment Acts of 1972
 - » A prohibition on all forms of bullying, including cyberbullying
 - » Illustrations of prohibited behavior, with a statement that they are examples only and that other conduct may also violate the code
 - » Descriptions of the investigation and disciplinary processes
 - » An outline of potential penalties for violations
 - » A statement that the school may discipline students for off-campus conduct or speech that has a substantially disruptive effect on the school or interferes with the educational opportunities of other students
- ***Acceptable computer use policy.*** A policy governing the acceptable use of a school's computer equipment and servers should, at a minimum:
 - » State that users, including students and staff, have no legitimate expectation of privacy in any material they create, receive, or view using the school's equipment or servers
 - » Provide that the school reserves the right to monitor user activity at any time and for any reason, but does not commit the school to conduct such monitoring
 - » Make clear that all school conduct rules, including policies against discrimination, harassment and bullying, apply equally to online behavior
 - » Establish zero tolerance for unlawful conduct online using the school's equipment or servers
 - » Spell out any restrictions on students' use of personal electronic devices on school premises or during school hours

Prevention Tips and Tools

Schools should consider incorporating a variety of methods into programs to prevent cyberbullying and sexting.



- **Educate parents.** Although they may believe otherwise, many parents are ill-informed about the extent and nature of their children’s use of electronic media and the potentially serious legal consequences of misuse. They sometimes wrongly believe that schools are always responsible for addressing student misconduct.

K-12 schools therefore should include parents in their training efforts, which might encompass:

- » A review of school policies
- » An explanation of legal limitations on the ability of public schools to take action
- » A discussion of recent cyberbullying and sexting incidents
- » Resources to help parents talk with their children about ramifications of risky online behavior

An alternative for parents who cannot attend training in person may be a letter outlining the school’s efforts to address the issue and providing information and resources to help parents support their child’s responsible use of technology.

- **Use the teachable moment approach.** Even when formal discipline is not feasible, schools can turn an incident of cyberbullying or sexting into a constructive “teachable moment.” The school could contact the parents, who may be unaware of and embarrassed by their student’s online activities. Officials can explain to the student and parents that offensive material posted online might be accessed years later by a college or a future employer, neither of which is likely to be favorably impressed by the student’s behavior.
- **Begin in elementary school.** While much of the research into electronic media use by minors involves students 13 and older, evidence of rapidly increasing use among even younger children suggests that education on the risks should begin well before middle school. A recent national survey found that 30 percent of “tween” girls, defined as those ages 9-15, had already sent or received “sexy” messages or pictures online. Girls reported first sending this material around age 12 but first receiving it around age 10. More than 80 percent said they participated “to get attention.” Because even the most tech-savvy elementary school children are probably not fully “set” in their online habits, they—and their parents—may be more receptive to school guidance.
- **Seek participation of local authorities.** Invite a local law enforcement official to an assembly to outline laws that students may be violating when they engage in cyberbullying or sexting and the potential penalties. Teenagers often realize vaguely that they might “get in trouble” for sexting, for example, but most are shocked to learn that it can implicate child pornography laws.
- **Involve students.** Consider involving students in peer education by asking them to research and present to other students. For example, several eighth-grade students at a school in Washington state participated in forums on the dangers of sexting, including potential criminal liability under child pornography laws, conducted by the middle school principal, police, and prosecutors. The students then discussed what they learned with their homeroom classmates.

Handling Complaints

In addition to implementing programs to educate the school community and help prevent cyberbullying and sexting, officials must plan to respond to those incidents that do occur and negatively affect the school environment. Consider these recommendations, subject to any superseding state mandates:

- **Encourage early reporting.** Although many students are reluctant to report bullying or harassment, the negative effects only escalate if the problems are not addressed. The sooner schools can begin investigating cyberbullying and sexting incidents the better, so administrators should look for ways to encourage early reporting, such as:
 - » Flyers highlighting school policies against harassment or bullying and urging students to report violations
 - » A mechanism for anonymous reporting (e.g., by friends who know other students are being cyberbullied)
 - » Stories in the school paper or website describing extreme incidents of cyberbullying and sexting in other schools and explaining how the severity might have been reduced by earlier reporting
 - » Offering “amnesty” to targets of or witnesses to cyberbullying or sexting who admit they violated rules against personal electronic devices in school
- **Establish procedures for responding to complaints.** Schools should implement and publicize to staff procedures for handling incidents of cyberbullying or sexting. These procedures should include guidance on where to report complaints and how they will be investigated. Quick response and outreach should be highlighted.
- **Do not ignore complaints.** Schools should not disregard complaints from students or parents about cyberbullying or sexting, nor should they indicate that because the conduct occurred off campus, the school can do nothing about it. Not only will this response anger parents, but because students are often reluctant to report the behavior, dismissal of their concerns may exacerbate the problem or drive it further underground. Schools should do their best to investigate all complaints and, even if they cannot identify the perpetrators or impose discipline, look for opportunities to reinforce messages about appropriate online behavior.
- **Consult counsel before taking disciplinary action.** Schools should check with an attorney before imposing discipline on students who participated in cyberbullying or sexting outside school. The law governing the ability of a school to take such action is evolving and administrators should always exercise caution.



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Conclusion

The need for public K-12 schools to deal with cyberbullying and sexting among students can seem daunting, but administrators can, and sometimes must, take certain steps to do so. Schools should implement strong policies against cyberbullying and sexting, educate the entire school community about them, and avoid dismissing complaints simply because the online misconduct occurred outside the school.

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