

Tips for School Administrators on How to Handle "Sexting"

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A high school boy receives, via text message, naked photos of his girlfriend from her. Later in the week, the boy shares the photos with several of his classmates, and forwards the text messages to several of his basketball teammates and others. Before long, the building Principal becomes aware of the issue from various rumors, and in fact, the girlfriend comes to the Principal's office in tears, along with a friend of hers who had received the messages herself from the boyfriend who showed the same to the Principal.^[1]

Now, how does the Principal handle this "Sexting"^[2] issue?

The purpose of this month's Education Law newsletter is to provide some tips on what steps the Principal should take after becoming aware of the incident.^[3]

Searching Cell Phones

All school building administrators should be or are familiar with the United States Supreme Court decision of *New Jersey v. T.L.O.*, which held that school officials may search students (without a warrant), and not be in violation of the Fourth Amendment, as long as the search is reasonable, in that the search must be justified at its inception and reasonable in scope.^[4]

In the instant factual scenario, the Principal can take a few steps to make sure the searches of student cell phones complies with the Fourth Amendment.^[5] Those include:

- The Principal should look at the friend's phone to determine whether in fact the messages were sent from the boyfriend's phone. If the Principal makes that determination, s/he then likely has sufficient proof to search the boyfriend's cell phone.^[6]
- School systems should have a policy that explicitly prohibits sexting, and make it clear in such a policy that school administrators may search cell phones if they have reasonable suspicion that a search will reveal a violation of school rules.
- Some schools are fortunate enough to have resource officers on site. Advise the resource officer of the situation, and s/he will have a different legal standard than that of *T.L.O.* to follow in searching students.

Principal Confirms "Sexting", Next Step?

After the Principal confirms sexting has taken place, the Principal should do the following:

- Contact the parents of all students involved, *especially the girlfriend*.

- Immediately contact the police.[\[7\]](#)
- Report the sexting to the West Virginia Department of Health and Human Resources under the requirements of reporting child abuse or neglect.[\[8\]](#)
- The Principal should take steps to avoid continued distribution of the messages (i.e., confiscate the phones and provide to police).
- The Principal should then discipline all students involved pursuant to the Student Code of Conduct, or other such similar policies, and be sure to protect the girlfriend (and others) from Bullying and Harassment (State Board Policy 2421).

As previously mentioned, it is recommended that county school board provide education to its employees, in particular building administrators, on the topic of "Sexting", as well as educating students. The scenario outlined above can and has happened in the past, and when it begins, it is difficult to stop the distribution of the messages. School building administrators need to be prepared for such an event given the need to act quickly, yet still not violate a student's Fourth Amendment rights.

Should you have any questions on this issue or any issues please feel free to contact a member of Dinsmore & Shohl's [Education Law Practice Group](#).

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- (1) It has been reported that at least two female students have committed suicide after similar photos of themselves have been distributed.
 - (2) "Sexting" is known as the practice of students/teens forwarding sexually explicit images like that described above to themselves or their peers via text messaging.
 - (3) It is encouraged the school systems provide training on this issue to employees, adopt anti-sexting policies, and provide education to students on the issue.
 - (4) The Court stated, in relevant part, "a teacher or other school official will be 'justified at its inception' when there are reasonable grounds for suspecting that the search will turn up evidence that the student has violated or is violating either the law or the rules of the school."
 - (5) An example of a search that is a violation of the Fourth Amendment is as follows: Student "A's" was caught using his cell phone in violation of school policy. The Principal confiscated the phone and begin calling students in Student "A's" phone directory to see if they would answer and be in violation of school policy. The Court ruled that the initial confiscation was legal, but the search of Student "A's" cell phone was a violation of the Fourth Amendment. *Klump v. Nazareth Area School District*, 425 F. Supp. 2d 622 (E.D. Pa. 2006).
 - (6) For additional discussions on search and seizure, see Dinsmore & Shohl's Education Law monthly newsletter, [July 2009](#) ("Recent US Supreme Court Decision on Student Search and Seizure, Something Every School Administrator Should be Aware of").
 - (7) Students have been known to be prosecuted.
 - (8) The failure of a school administrator to report the same in Virginia led to charges being filed against him for failure to report suspected child abuse.