

IS YOUR STUDENT FLIRTING WITH A FELONY?

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Abstract

Sexting is the slang term for texting sexually explicit words, pictures or video via cell phones or other similar electronic devices. Sexting is a result of advances in technology, which have, by their nature, enabled new forms of social interaction and self-expression. One significant social danger with sexting is that material can be very easily and widely shared, without permission from the original sender. What may seem to be private and intimate exchanges may end up in the hands of any person in our increasingly complicated cyber-world.

While open legal debate rages due to the varying degrees of consequence for sexting, there are no current national standards by which to judge this activity (National Center for Missing and Exploited Children, 2009). Many states remain undecided regarding the criminal status of "sexters" (mass.gov, 2010). As a consequence, underage boys and girls are being convicted of the same crimes as child molesters and child pornographers. Increasingly, there is legal action being put in place to protect the rights of minors, even as they willingly exhibit pictures of their bodies and body parts for public cyber-viewing (mass.gov, 2010).

Parents and school personnel lack knowledge, formal training and comprehensive mandates on how to approach and process this social issue. Is the marrying of a hyper-sexualized culture with the fast-moving world of technology turning our students into criminals or are they just having fun and receiving disproportionate punishment?

This paper examines the phenomenon of sexting, its implications for children, adolescents and educators.

Introduction

America's youth are in dire sexual crisis. Today, children are face to face with sexually explicit content through many types of media with a greater frequency and intensity than ever before. America's youth are also screen-addicted. This is a recipe for the pervasive phenomenon called sexting (mass.gov, 2010). It could be argued that one of the causes for this evidently irresponsible behavior may include a decrease in this culture's healthy role models and familial estrangement, resulting in issues of delayed personal development and maturation in children and adolescents. This, in turn has left many youth turning to school officials rather than family members for help when they have been the perpetrator or victim of sexting. In addition, it has been determined that kids are spending upwards of 55 hours a week watching TV, texting and playing video games (www.thedailygreen.com, 2010).

Background

The first known published mention of the term sexting was in an article in the Sunday Telegraph Magazine (Roberts, 2005). Three years later, Hamilton (2008) suggested that sexting is taking place worldwide. Sexting raises personal questions of responsibility, developmental maturity, biological roles, neediness and above all, values. It also encourages society to grapple with legal and educational questions including what is public and private, what it means to be in a relationship, and the effects of technological distractions in school and in our communities. It calls into question some of the fundamental components of our society such as freedom of speech, right to privacy, relationship values, values about children as well as the role our most sacred institutions, including but not limited to school and family, play in the development and prevention of this phenomenon. We are living in a highly sexualized culture; from clothing to music, language, school behavior, television commercials, sexual assaults, teen pregnancies and casual sex. It is likely, that none of these spokes on the wheel are mutually exclusive; they are all interrelated.

Legal Implications of Sexting

The images involved in sexting are usually different in both nature and motivation from the type of content that anti-child pornography laws were created to address (Clark-Flory, 2009). These laws are currently being applied to sexting. For example, child pornography charges were brought against six teenagers in Greensburg, Pennsylvania in January 2009 after three girls sent sexually explicit photographs to three male classmates (Pilkington, 2009). In July 2010, Londonderry New Hampshire High School teacher Melinda Dennehy pleaded guilty and received a one-year suspended sentence for sending racy photos of herself to a 15-year-old student (National Ledger, 2010). Vermont lawmakers introduced a bill in April 2009 to legalize the consensual exchange of graphic images between two people 13 to 18 years old. Passing along such images to others would remain a crime (Associated Press, 2009). In such cases, even if a juvenile does not spend time in jail, he or she will be forced to register as a sex offender for 10 years or more. The Federal Adam Walsh Child Protection Act of 2006 requires that sex offenders as young as 14 years old are held accountable to register.

"Sexting" may violate the laws of the Massachusetts Commonwealth that were established to keep the children safe. For example, the child pornography laws in Massachusetts are all felonies; they are quite serious, and with no "lesser" charges (i.e., misdemeanors) (Youth and General Internet Use Statistics, 2010). Incidents of "sexting" in Berkshire County are taken very seriously, with law enforcement intervention if necessary. It is illegal for anyone, with lascivious intent, to knowingly send out or disseminate pictures of a person under 18 in a state of nudity (or semi-nudity) or engaged in a sexual act (Youth and General Internet Use Statistics, 2010 and mass.gov, 2010).

U.S. pornography laws follow the First Amendment (mass.gov, 2010). Although non-obscene pornography is protected by the First Amendment, child pornography falls outside of the scope of the First Amendment because of the harm it can cause minors (mass.gov, 2010). There may also be an assumption that minors do not know what they are doing. However, we are seeing, as described earlier, that minors are being held accountable despite having an "understanding" of their behaviors. If adults engage in sexting with other adults, their actions are protected from state intervention under the First Amendment, because sexting is considered free speech. However, when a minor engages in the same behavior it becomes criminal and harsh punishments follow (mass.gov, 2010).

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Children have constitutional rights, but not to the same extent as adults. Children have First Amendment rights even when they are on public school campuses (Calvert, 2009). Children also have a right to privacy; however there is still a question as to what degree children are afforded this right, especially on school grounds. If students can't protect what is in their best interests, does the government have the right to step in? In states that reduce penalties for teens, such as Utah, minors can still be convicted of sexting and face misdemeanor charges, which can include jail time. In Arizona, the maximum penalty for youth sexting is four months in jail (National Council of State Legislatures, 2010). As the statistics and research show, there is barely a common thread from state to state, despite our constitutional rights.

As we know, Massachusetts and New Hampshire are neighbors and could look towards each other to become more unified, to be leaders in developing a National Standard. The gray areas of fun, felony, child pornography, sexual exploration, freedom, secrets and privacy, and technology are coming to a head across the Country. What will we do about it and how far can we go with an issue that is decentralized and yet the nucleus of many social activities in and out of school?

Where does New Hampshire Fall on the Legal Continuum?

Lawmakers in Concord were trying to address concerns over teens sending illicit photos of themselves over cell phones or the Internet. New Hampshire lawmakers may be looking at similar legislation in New Jersey, where a child involved in sexting would be required to go through a diversion program rather than being charged with a sex crime. (www.wmur.com, 2010)

Conversely, the U.S. Court of Appeals was and has been considering a court ruling that said the pictures that teenagers sent sexually suggestive pictures of themselves to their friends by cell phones off the Internet fall under the U.S Constitutional free speech protections (abcnews.com, 1/17/2010). However, it seems the good old-fashioned way of learning about sex education and courting still is a flickering light in this modern age.

A Closer Look at Sexting

Anthropologists might describe humans as gregarious animals. One could assert that sexting is an adaptation in human development to the primal drive to socialize and a digression because we are moving away from face-to-face contact and evolved human relationships. In 2006, four percent of all youth Internet users reportedly received aggressive sexual solicitations, which threatened to spill over into "real life"(outside the context of the media exchange); the solicitors asked to meet the youth in person, called them on the telephone, or sent offline mail, money, or gifts (Missing Kids.com, 2006). Also 4 percent of youth Internet users had distressing sexual solicitations that left them feeling upset or extremely afraid (Missing Kids.com, 2006). Despite increased warning and vigilance, there are many cases where young people are finding adult sex "partners" to converse with online on numerous social networking sites (enough.org, 2010).

Sexting: A Crisis for Today's Youth, Parents and Educators

Crisis is defined as a "crucial or decisive point or situation; a turning point, an unstable condition, an emotionally stressful event or traumatic change in a person's life, a point in a story or drama when a conflict reaches its highest tension and must be resolved" (Webster, 2000). The Chinese character for "crisis" translates into danger and opportunity. Given these definitions, it is clear that sexting is a crisis occurring in our schools.

Although media attention is focused on violence in our schools, the changing and intense sexual culture among America's youth may be a crisis of equal proportion. It may represent larger social disharmonies that impinge on many developmental issues, especially with regard to concepts of sexuality and social relationships in the school environment. It appears that many students are lacking the critical life skills necessary to understand the consequences of sexting as well as the dignity to respect themselves and others.

Although there is not one National Standard regarding sexting, there are many ways to respond to this pervasive crisis. School Administrators and boards of education seem to be struggling with knowing how to discipline students for sexting when policies and procedures don't reflect a plan. They are often unable to keep pace with this rapid crisis. With this in mind, school counselors can play a vital role in assisting school administrators to develop a preventative program that will educate parents and students about the consequences of sexting.

The School Counselor's Role in Sexting Prevention

One of the primary goals of School Counselors is to act to remedy unavoidable harm to children and adolescents. The American Counseling Association (2005) stated, in A.8.b: "In a group setting, counselors take reasonable precautions to protect clients from physical, emotional, or psychological trauma". School counselors, therefore, must be aware of the ramifications of sexting, especially with regard to its impact on the social and emotional functioning of children and adolescents. As we consider the following ethical standards from the American School Counselor Association (year) we can see that sexting is a call to the profession for effective implementation of anti-sexting programs and policy.

Standard C: "Students will understand the relationship of academics to the world of work and to life at home and in the community".

Standard A: "Students will acquire the skills to investigate the world of work in relation to knowledge of self and to make informed career decisions."

Standard A: "Students will acquire the knowledge, attitudes and interpersonal skills to help them understand and respect self and others."

PS: A1.6 Distinguish between appropriate and inappropriate behavior

PS: A1.7 Recognize personal boundaries, rights and privacy needs

PS: A1.8 Understand the need for self-control and how to practice it

PS: A1.9 Demonstrate cooperative behavior in groups

PS: A1.10 Identify personal strengths and assets

PS: A1.11 Identify and discuss changing personal and social roles

PS: A2 Acquire interpersonal skills.

Sharing information and knowledge about safer texting and safer internet use is an excellent start to encouraging more of a dialogue about the ASCA Standards among co-workers and with students and parents.

Sexting Prevention: Things to Consider

What can we do in schools to help young girls and boys act more responsibly in today's technologically oriented society? Educating students and parents is a first step in the prevention process. As such, school counselors and educators can teach the following:

- Before pressing "send", encourage students to think.
- Don't assume anything you send or post is going to remain private. Your messages and images may get passed around, even if you think they won't.
- There is little to no changing your mind in cyberspace; anything you send or post will never truly go away. Something that seems fun and flirty that is done on a whim will never really disappear.
- Potential employers, college recruiters, teachers, coaches, parents, friends, enemies, strangers and others may all be able to find your posts, even after you delete them.
- It is nearly impossible to control what other people are posting about you, so consider how you want to be portrayed.
- Don't give in to the pressure to do something that makes you uncomfortable.
- Consider the recipient's reaction.
- Just because a message is meant to be fun doesn't mean the person who gets it will see it that way.
- It's easier to be more provocative or outgoing online, but whatever you write, post or send does contribute to the real life impression you're making.
- It is important to remember that even if someone only knows you by screen name, online profile, phone number or email address, that they can probably find you if they try hard enough.

Sexting Prevention: Increasing Parent Involvement

- NetSmartz411, maintained and operated by the National Center for Missing & Exploited Children helps parents learn about online vocabulary and trends, and provides advice for monitoring a child's cell phone use.
- Talk to your kids about what they are doing in cyberspace.
- Just as you need to talk openly and honestly with your kids about real life sex and relationships, you also want to discuss online and cell phone activity.
- Make sure your kids fully understand that messages or pictures they send over the Internet or their cell phones are not truly private or anonymous. It is essential that your kids grasp the potential short-term and long-term consequences of their actions.
- Know those with whom your kids are communicating.
- Do your best to learn who your kids are spending time with online and on the phone.

- Consider limitations on electronic communication.
- Be aware of what your teens are posting publicly.
- Observe your teen's MySpace, Facebook and other public online profiles from time to time.
- Make sure you are clear with your teen about what you consider appropriate "electronic" behavior.
- Restrict access to devices if they are unable to follow through with agreements.
- Give up control to gain authority-punishment (different from discipline) will promote and encourage rebellion.
- Be aware of what is popular, pop culture, norms and stay connected to school personnel.
- Decrease your child's screen addiction by encouraging face-to-face social interactions and activities.

Conclusion

It could be asserted that for many students, the use of technology is a large portion of their day. The current statistics capture some of the intensity by which students are engaging with electronic social communications. Harris Interactive-McAfee (2008) asserted that 32 percent of teens clear the browser history to hide what they do online from their parents. In addition, 52 percent of teens have given out personal information online to someone they don't know online including personal photos and/or physical descriptions of themselves (Harris Interactive-McAfee, 2008). Among the 96 percent of young people who have ever gone online, 65 percent say they go online most often from home, 14 percent from school, 7 percent from a friend's house, and 2 percent from a library or other locations. (www.kff.org, 2006).

Based on these statistics, home and school are the two most consistent places students go online. It is critical that educators and parents join together. In the larger scope, we as a culture need to join together and form National standards by which to assess and judge these pervasive and distracting activities. We are living in a high paced world, where human contact is often being replaced by electronic contact. It is particularly important to healthy personal development to maintain and nurture our innate need and skill to have contact with one another. It is especially important in this culture to be aware of how our students are developing, how they are spending their time expressing themselves as they individuate and become their own persons.

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