

Sexting in Kansas Schools

By

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Abstract

This paper is an exploratory study about sexting, the sending of sexually explicit or illicit photos or video between cell phones, in Kansas public schools. An on-line survey asked superintendents to report if they have had an occurrence of sexting in their district. They were also asked if they felt sexting is currently a problem in their district. Finally, the survey asked those superintendents who had experienced sexting to report if they involved law enforcement in their investigation. Follow up phone interviews were also conducted to try and identify common themes among districts and their perceptions of sexting at this time.

Out of 79 districts which completed the survey, 41 districts or 52% report they have dealt with sexting in their schools. Of these 41 districts, 27 or 66% estimated they have had two to five instances in the past two years.

69% of all districts completing the survey reported that they do not feel sexting is a problem at this time. Of the 41 districts who reported dealing with sexting, roughly half (52%) felt sexting currently is a problem. Common reasons why some districts don't feel sexting is a problem include the fact that there are so few instances, and that most of the sexting occurs outside of school. Superintendents who felt sexting is a problem commonly said that even one instance of sexting in their school is a problem. Many superintendents also feel that only a small percentage of sexting between their students is reported to school officials.

Of the 41 districts who reported having dealt with sexting, 68% reported that they involved law enforcement in their investigation. Many districts reported they were unaware of the outcome of any legal investigations due to the fact that legal records of minors are not public

record. However, two districts reported they knew charges were filed and reported they believed students received probation for their sexting activities.

70% of all participating districts reported that they do not have a policy that specifically addresses sexting. After interviewing ten superintendents, most felt that this issue would be covered by their current cyberbullying policy, acceptable use of technology policy, or use of cell phone policy. However, sexting may violate the Kansas state statute Sexual Exploitation of a Child (K.S.A § 21-3516, 2009). Districts should consider adopting a policy that specifically prohibits sexting. Administrators must continue to make prudent decisions when considering whether a sexting violation warrants the inclusion of law enforcement in their investigation.

Dedication

To my three girls.

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Chapter 1

Introduction

The term sexting, while new, has created a buzz in the media and has become a recognizable term for teens in our culture. A definition of sexting for the purpose of this study is the sending of sexually explicit, or otherwise illicit, photos or video electronically, primarily between cell phones. The transfer of pictures or video is relevant due to child pornography laws that this practice may violate such as the Kansas statute titled Sexual Exploitation of a Child (K.S.A. § 21-3516, 2009) and the federal law titled Sexual Exploitation of Children (18 U.S.C. §§ 2251). The transfer of lewd or explicit text messages between minors would not violate these same laws and so is not included in the definition.

In 2008, the term sexting became a media buzzword that fueled fear and uncertainty about how prevalent this practice was among teens. In December 2008, The National Campaign to Prevent Teen and Unplanned Pregnancy and Cosmogirl.com published the results of an online study. The study asked teens if “they had sent/posted nude or semi-nude pictures of themselves”. Of the 653 survey participants, ages 13-19, 20% reported that they had. (“Sex and Tech: Results from a survey of teens and young adults”, 2009). This study suggests that one in five teenagers have participated in sexting.

This survey has come under scrutiny for many reasons. The largest concern is that the survey does not differentiate between nude or semi-nude pictures in the poll question. However, the one-in-five statistic is routinely cited among articles about sexting (Bialik, 2009). In fact, the survey has been cited within the few educational journal articles to address the subject (Taylor, 2009).

There is little data for educators to determine how prevalent sexting is among teens in schools. This fact, coupled with limited case law, gives administrators little guidance for any new policy development. As stated earlier, the act of sexting may constitute a crime. In fact, under the Kansas statute Sexual Exploitation of a Child (K.S.A. § 21-3516, 2009) sexting may constitute a level five felony. This law prohibits the possession, solicitation and dissemination of nude photos of minors. Some states, such as Pennsylvania, are considering changing state laws to keep teens caught sexting from being charged as sex offenders ('Sext' crime, 2010). The cases prompting these changes have fueled media exposure surrounding sexting (Carver, 2009).

There is little research or data for educators to reveal the extent that sexting is occurring among students. Due to media articles, it is known that school administrators are being forced to deal with sexting. What is not known is the extent that sexting is considered a problem by school administrators. Many legal issues also may be unclear to administrators as they develop policy or are forced to deal with sexting if it occurs at their school. This study provides new information to researchers and educational administrators about the extent of sexting occurrences in Kansas public schools, and the legal issues that surround this topic.

Research Questions and Methodology

Question #1:

What are the legal issues surrounding sexting, especially as it relates to public schools?

A review of relevant legal principals, statutes, and case law was conducted to determine the legal issues surrounding sexting. This information can be found in Chapter 3 of this study. In Chapter 5, a sample policy is offered for districts who do not currently have a policy in place that specifically addresses sexting. This, in conjunction with the review of literature found in Chapter

2 , should help administrators have a better understanding of how to approach sexting if it should become an issue in their school.

Question #2:

How do superintendents report on sexting as a problem in their districts?

- Have schools dealt with student sexting? And if so, how many instances have they dealt with?
- Do superintendents feel that sexting is currently a problem in their district?
- Have schools who have dealt with sexting involved law enforcement in their investigation? And if so, what was the outcome of the legal investigation?
- Have schools developed policy specifically aimed at sexting?

How the information was gathered

An online survey was e-mailed to all 293 districts in the state of Kansas (See Appendix A). 79 superintendents participated in the survey for a 27% response rate. A follow-up phone interview of ten superintendents was also conducted.

How the information was analyzed to answer each question

The results of the survey questions are reported using descriptive statistics. Many of the survey questions produce nominal data that can be reported in percentages. For example, “49% of the superintendents participating in the survey report that they have dealt with sexting in the last two years.”

Qualitative data from open ended survey questions are listed in an unedited form. The results are broken into two groups; districts reporting sexting as a problem and districts not reporting sexting as a problem. An analysis of similarities and trends in the responses of participants provides more information about their perceptions of sexting.

Ten districts agreed to participate in a follow-up phone interview. The interviews are broken into two groups. The first three interviews, District #1 – District #3, are from districts who have dealt with sexting. The interview protocol used for these districts is listed in Appendix B. The next seven interviews, District #4 – District #10, are from districts who had not dealt with sexting. The interview protocol used for these districts is listed in Appendix C. Transcriptions from the 10 phone interviews are provided in an unedited format (Appendix D). A summary and analysis of common themes found in the interviews is presented in Chapter 4.

Summary of the Study

This paper contains five Chapters. The introduction provided a brief background of sexting. It also outlined the research questions and the methods used to collect and analyze the data used to answer each question. Chapter 2, or literature review, discusses how recent cell phone technology has presented new problems for schools. The chapter discusses sexting as a developing social phenomenon and reviews the previous studies surrounding the subject. The third Chapter discusses the legal implications of sexting, which is directly related to the first research question of the study. Chapter 4 presents the results of the survey and interviews that address research question #2. The fifth Chapter, and conclusion, discusses the legal and practical considerations school administrators must make when dealing with sexting. It is the goal of this study that the information and analysis presented here will help school administrators consider how to deal with this delicate matter in a way that serves the best interests of students and society.

Chapter 2

Review of Literature

Schools, Cell Phones & Sexting

The *American School Board Journal* published an article in 2003 that expressed the then current issues schools faced surrounding cell phones. At the time, schools were concerned about phones being used to aid in the distribution of drugs on campus. Additionally, bomb threats were also a concern, considering the heightened awareness of terrorist threats due to Columbine and the recent 9/11 attacks. (Danforth, 2003). This policy was offered by the author:

Students may possess or use electronic signaling devices, including but not limited to pagers, beepers, and cellular/digital telephones, provided that such devices do not disrupt the educational program or school activity. Electronic signaling devices shall be turned off during class time and at any other time directed by a district employee. If disruption occurs, the employee may direct the student to turn off the device and / or confiscate the device until the end of the class period, school day or activity. (p. 32)

In 2007, Obringer and Coffey conducted a survey of 500 high schools representing all 50 states. At the time of the study they found that:

A majority of high schools (districts) had [cell phone] policies in place, (2) parents generally supported the school's cell phone use policy, (3) classroom teachers used cell phones at school for non-school related business, (4) disciplinary action for inappropriate cell phone use by students ranged from a mild reprimand to confiscations of the cell phone, and (5) the potential misuses of camera phones in high schools has not been fully addressed by many schools. (p. 41)

The authors, looking to the future, suggested that schools would need to adjust policy to keep up with rapidly changing technology and media available to students. The study also reported that 76% of these high schools did not allow students to use their cell phones at school at all (p. 42). This data suggests that most policies allowed students to possess phones at school, but that they were not to be used during school hours. This kind of policy shows a greater restriction of cell phone use than the policy offered by the *American School Board Journal*, only four years prior, in which students could use cell phones in school but not during class time (Danforth, 2003).

In recent years, advances in technology and an increasing number of students using smart phones have prompted some schools to look at cell phones not as a problem, but as a tool to improve student learning. In 2008, the North Carolina public schools decided to use cell phones as instructional tools. The state is focusing on the low performance of students in the area of math by encouraging students to use their cell phones to figure out math problems (Ramaswami, 2008). This view of cell phone use is in direct opposition to most administrators who spend much time trying to keep cell phones out of sight. Here, educators are asking students to bring “handhelds [cell phones] out of lockers and backpacks and use them to enhance traditional classroom instruction” (p. 34).

Donlevy, (2005) describes a forecast of a changing work place where students will need critical thinking skills and mastery of technological skill to compete for high paying jobs. The author urges schools to:

... accelerate their embrace and use of technology to prepare students for the new realities. While emphasizing the acquisition of sound basic skills, schools must allow students the freedom to explore the new technologies rather than to restrict their access to them. (p. 203)

Donlevy also proposes that schools focus on preparing students to communicate using multimedia formats in conjunction with a focus on critical thinking skills.

While these newer pedagogical concepts have merit in theory, school administrators are still forced to deal with practical problems this advancing technology can bring to the school environment. The internet brings a great amount of information to students and teachers, but also brings the threat of access to pornographic web sites and social networking sites that are a fertile ground for cyberbullying. Authors have warned of the potential danger of camera phones in schools from the time they have been available to purchase. In 2004, *Education Week* published an article warning of the potential problems schools might face with the emerging technology of

camera phones. The author suggested that schools develop policies that would help them be better prepared to handle what we now call sexting (Carroll, 2004, p. 8). However, sexting is not the only problem school officials are facing with the increase of student cell phone use.

Cyberbullying has become a serious discipline problem for schools.

Cyberbullying

“Cyberbullying describes bullying using mobile phones and the internet” (Smith, et al., 2008, p. 376). Smith, and his colleagues, report that in some studies bullying by text message is as prevalent as traditional school bullying. Cyberbullying is also reported to be one of the most prevalent types of bullying among middle school age students (Chibbaro, 2007; Kowalski, 2008).

Nancy Willard (2007) describes the many different types of cyberbullying that have become prevalent among teens.

- Flaming – Online fights using electronic messages with angry and vulgar language.
- Harassment – Repeatedly sending nasty, mean and insulting messages.
- Denigration – “Dissing” someone online. Sending or posting gossip or rumors about a person to damage his or her reputation or friendships.
- Impersonation – Pretending to be someone else or sending or posting material to get that person in trouble or danger or to damage that person’s reputations or friendships.
- Outing – Sharing someone’s secrets or embarrassing information or online messages.
- Trickery – Talking someone into revealing secrets or embarrassing information, then sharing it on-line.
- Exclusion – Intentionally and cruelly excluding someone from an online group.
- Cyberstalking – Repeated, intense harassment and denigration that includes threats or creates significant fear. (p 1-2)

It is clear that if you take the term “embarrassing information” and replace that with “a nude photo of another student”, sexting could be a form of cyberbullying. Although sexting and cyberbullying are not always related, the two can sometimes combine to create horrific

outcomes. This was the case with Jessica Logan, a high school student who eventually took her own life after months of harassment over a nude photo she shared with her boyfriend, which was then spread throughout the school via text message (Zetter, 2009).

Sexting: A Social Phenomenon

The term sexting is new. The word, however, demonstrated its growing presence in American culture by becoming a finalist for the New Oxford American Dictionary's word of the year for 2009 (Gross, 2009). Sexting was also listed as the number one buzzword of the year for 2009 in Time Magazine (Stephey, 2009). For the purpose of this study, sexting is defined as the sending of sexually explicit, or otherwise illicit, photos or video electronically, primarily between cell phones. The sending of photographs or video is important in our definition due to the legal ramifications of possessing or disseminating nude photos of minors.

Many teens today use cell phones to text their friends. Most cell phones today have built in cameras and/or video recorders. Lenhart (2009) recently reported that as many as 3 out of 4 teenagers own a cell phone. Consequently, Hinduja & Patchin (2010) observe that the majority of sexting occurrences are, "part of adolescent courtship rituals during an era where cell phones, texting, [and] sending digital pictures are mainstays in youth culture" (p. 2).

Laura Stepp investigated what she perceived as a shift in American dating behavior in her book *Unhooked* (2007). In her work, she followed several young women over the course of their first year in college and talked frankly with them about their dating and sex life. She was shocked to find that casual sexual encounters seemed to be the norm, rather than monogamous dating partners. There seemed to be little or no hesitation to share intimate sexual experiences with strangers. Rather, the girls hesitated to get emotionally involved with anyone. The subjects in the book looked at serious relationships as a roadblock to their success in school. They wanted

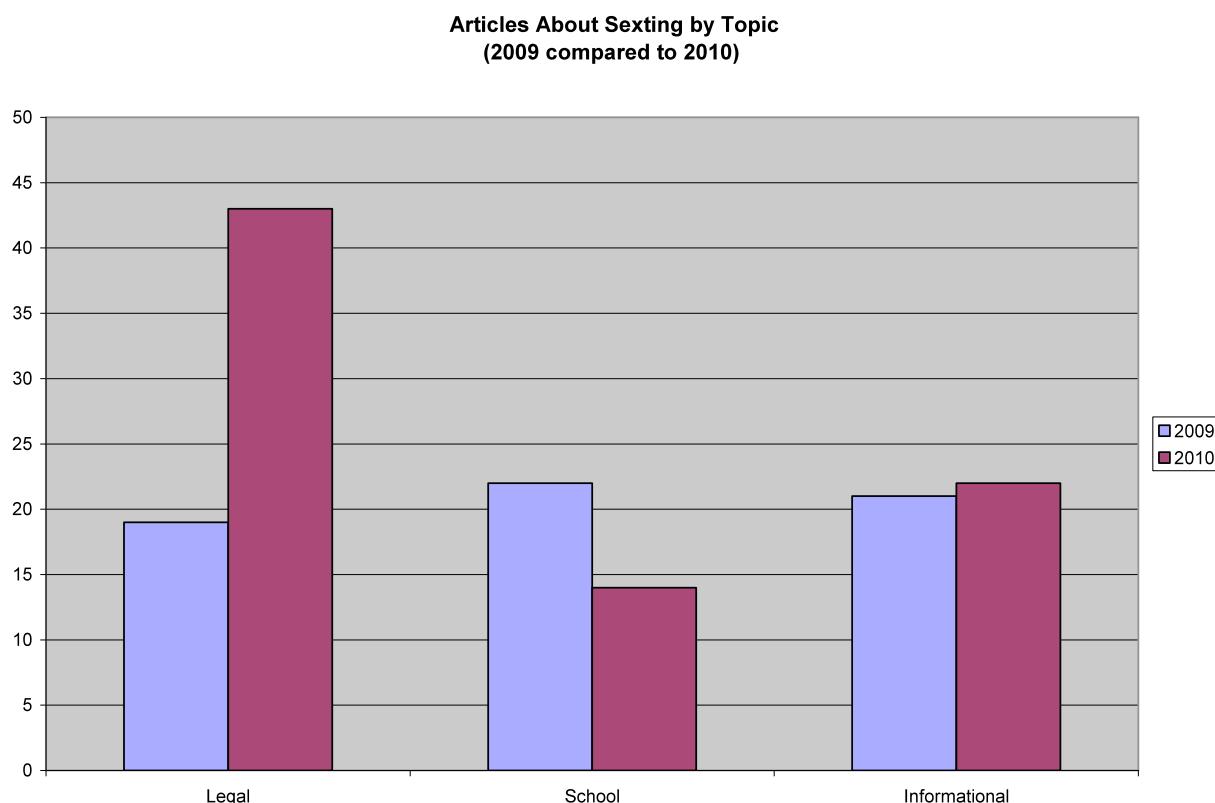
to party and have a good time. However, on Monday morning, they did not want the emotional stress and ties that come with ‘serious’ relationships. Most of the girls described a meaningful relationship as a goal to be achieved after their own personal, educational, and occupational goals were met.

It is hard to know whether the prevalent “hookup” culture of east coast college students described by Stepp is transferable to midwestern teenagers. However, teens are able to access and share information instantly. And it is clear that some students are choosing to share nude photos with others in their attempt to negotiate the difficult terrain of teenage social and sexual development.

Sexting has presented new issues for school administrators. However, there is little data to inform practitioners about the severity of this problem in order to create appropriate policy. Recently, Shapiro and Stefkovich (2011) included a case study addressing sexting in the new edition of their text *Ethical Leadership and Decision Making in Education*. The addition of this case study is an indication that sexting is becoming an issue for school administrators. There have been many cases across the country reported in the media that have given educators reason to think twice about how they should deal with sexting in the future.

The term sexting was used by the media as early as 2005 (Roberts, 2005). However, the term gained notoriety in the United States in January of 2009, when criminal charges were filed against several students in Greensburg, PA for their sexting activity (Stiles, 2009). A search of the data base “Newspaper source plus”, which includes 410 U.S. newspapers, from 2008 to 2010 resulted in 502 articles related to sexting. I reviewed a sample of 155 of these articles (See Appendix E). Out of this sample, 34 articles were informational in nature, discussing the definition of sexting and reflecting on the current trend. 45 articles dealt with how sexting was

directly interacting with schools. These included examples of cases in which school officials were forced to handle an occurrence of sexting. The remaining 65 articles focused on recent legal issues surrounding this topic. Many of these articles discussed cases of teens facing child pornography charges due to sexting. The following chart shows the drastic increase of news articles related to the legal issues surrounding sexting from 2009-2010.



Examples of sexting intersecting with public schools found in the articles above include four students from Cattaraugus County, New York, who used their cell phones to share nude photos of female classmates. Some of the girls involved in this case were as young as 13 (Herbeck, 2009). A student from Plainfield East High School in Illinois, took a nude photo of herself and sent it to a friend. The photo quickly spread around the school, causing a major

disruption to the school environment (Warren, 2009). In many of these articles the schools decided to involve local law enforcement to investigate cases of sexting in their school.

Police in Palmview, Texas arrested a high school student for soliciting nude photos from classmates. Jorge Suchil, 17, was charged with possession of child pornography after the police searched his cell phone and found pictures of at least six minors (Taylor, 2010). In Spotsylvania, Virginia, two high school students, one 18 years old and the other 15, were charged with possession of child pornography with intent to distribute (Blitz, 2009). These boys also solicited pictures from girls as young as 13 years old, still attending middle school.

Police in Montgomery, Maryland were called to investigate a case of sexting at Bethesda middle school. The photos were discovered on an i-pod touch. While not a phone, the device is portable and has the ability to connect to the internet to share files electronically. Sexually explicit photos were discovered of girls from local middle and high schools (Birnbaum, 2010). In Victoria, Texas ten middle school students had their phones confiscated by school officials and turned over to local law enforcement (Cavazos, 2010). In Eagle Point, Oregon three high school students face possible felony charges following a recent sexting incident at Eagle Point High School. In this case, the high school employed a school resource officer (SRO) who became aware of illicit photos circulating in the school (Achen, 2009). In Tucson, Arizona two 13 year old students, accused of electronically sharing a nude picture of a 13 year old girl, face charges of use of a telephone to offend, harass or intimidate (Huicochea, 2009). A similar case in Greenfield, Wisconsin occurred in 2009 when police investigated accusations that a 14 year-old coerced young girls to send him nude photos (Kertscher, 2009).

Other districts are choosing to combine school discipline and educational programs, rather than criminal discipline action. In Payton, Colorado, seven middle school students were

suspended for sharing nude photos of a pre-teen girl. The district suspended the students and is considering future educational programs for both students and parents (McGraw, 2010).

Similarly, in West Allis, Wisconsin nine high school students will face suspension, not criminal charges, for their sexting activity (Walker, 2009). Other schools have begun developing district policies aimed specifically at sexting. The Henery County Board of Education in Abbeville, Alabama has adopted a new cell phone policy prohibiting sexting (Cook, 2009). The Decatur Illinois School District has included sexting into a portion of current policy covering cyberbullying (Wells, 2009).

It is clear that teenage students across the county are sexting. What is not clear is the extent to which this practice is happening. There have been a handful of studies that have aimed to explore the extent that teens are participating in this new trend.

Previous Studies

A review of literature reveals five studies that report the extent of the occurrence of teen sexting. The results of these studies vary widely:

The actual extent of sexting among youth, however, is somewhat unclear when looking across existing studies, and varies depending on how the behavior is defined, whether it includes only cell phone use or other forms of online communication, the specific age group studied, and the study's methodology and sampling. (Hinduja & Patchin, 2010, p. 2)

It is, for this reason, that this study is exploratory in nature. The number of schools that have been affected by sexting is not known. One of the main purposes of this study is to discover what percentage of participating school districts have dealt with sexting.

In the fall of 2008, the National Campaign to Prevent Teen and Unplanned Pregnancy and Cosmo girl.com conducted an on-line study. They contracted a research group named TRO to conduct the study which targeted people ages 13 – 26. The survey reported a total of 1,280

responses, of which 653 were between the ages of 13 – 19. The data from this study has been widely publicized in news articles (Bialik, 2009; “Sexting” shockingly common among teens, 2009). It has also appeared in academic journal articles for educators and legal practitioners (Taylor, 2009; Heck, 2009).

The Associated Press and MTV published a study in 2009 that focused on digital abuse. This study reported on digital harassment, digital dating abuse and sexting practices of teenagers and young adults (AP-MTV, 2009). The study reported that 10% of all respondents ages 14 to 24 had sent naked pictures of themselves to others, while 15% reported receiving like images. However, the report fails to break down the data between those respondents under 18 and those above 18 years of age. This differentiation is important considering the legal ramifications of this practice.

The Pew Internet & American Life Projected also conducted a study in the fall of 2009. This group, partnering with the University of Michigan, used a series of focus groups to collect information about teen sexting. They report that, “4% of all cell-owning teens ages 12-17 report sending a sexually suggestive nude or nearly-nude photo or video of themselves to someone else” (Lenhart, 2009). These findings are much more conservative than the National Campaign to Prevent Teen and Unplanned Pregnancy and Cosmo girl.com study, and show a large gap in the understanding of the prevalence of this practice.

The last study of note surveyed students from a large public school district. Hinduja & Patchin (2010) collected data from 4,400 students ranging from age 11 to 18 years old. This study found 7.7% of all students reported sending naked or semi-naked pictures via cell phone. 12.9% of the teens reported that they had received similar images via text. Like the Pew study,

this study reported no differences in gender when considering sending these images. However, boys were much more likely to receive them than girls at 15.9% and 9.9% respectively.

One key point to consider when examining the data from these studies is what constitutes an illicit or illegal photo. Both the Pew and Hinduha & Patchin studies asked about sending “naked or semi-naked” pictures. The term semi-naked could certainly be interpreted as a picture that would not be illegal under most state statutes. In fact, some teens may feel that sending a photo of themselves in a bathing suit would be considered semi-naked. The next chapter will help administrators to understand more clearly what they should consider an illegal photo if dealing with sexting in their schools.

Chapter 3

Sexting: A Legal Framework

The first research question in this study asks about legal issues surrounding sexting, especially as it relates to public schools. This section will explore the statutes and case law that establishes the act of sexting as a crime, as well as legal issues surrounding search and seizure of photos or video from cell phones at school. A review of the legal issues surrounding sexting is important to establish a foundation for educators as they develop future policy

One question schools have when dealing with sexting is whether to treat it as a crime. In many states, the law is in the process of changing. Some lawmakers believe that convicting teens who sext under current child pornography laws is much too heavy handed. Others favor severe penalties. “Twenty-one states have either introduced or enacted legislation to address sexting as of September 2010, with penalties ranging from educational programming for first-time offenders, to fines, felony charges, or short-term incarceration” (Hinjuga & Patchin, 2010, p 2).

State Representative Seth Grove from Pennsylvania has introduced a bill in which, “teens convicted of sending nude photos would face misdemeanor charges” (‘Sext’ Crime, 2010, p. 12). Under the proposed legislation the teens would be required to attended educational programs and perform community service. This is in sharp contrast to being charged with a felony under child pornography laws in which teens may face jail time and may be required to register as sex offenders (*State v. Canal*, 2009).

The ACLU has argued that the bill proposed by Seth Grove is still a bad idea. They believe that nude photos ‘sexted’ by students should be protected under the constitution as a form of free speech. Andy Hover, an ACLU legislative director from Pennsylvania argues that, “only truly sexually explicit images aren’t covered by the first amendment” (“Sext” Crime, 2010,

p. 12). However, the definition of “truly sexually explicit” is subjective and will be the cause of debate as states shape new laws in reaction to teen sexting.

The Supreme Court developed the legal definition of obscenity in *Miller v. California* (1973). The *Miller* standard states that material will be considered obscene if:

(a) ... the average person, applying contemporary community standards, would find that the work, taken as a whole, appealed to the prurient interest, (b) whether the work depicted or described, in a patently offensive way, sexual conduct specifically defined by the applicable state law, as written or authoritatively construed, and (c) whether the work, taken as a whole, lacked serious literary, artistic, political, or scientific value. (p.15)

Weins and Hiestand (2009) address the question of whether or not sexting is protected by the First Amendment:

All material that fails the Miller obscenity test lack First Amendment protection and, if those materials have been criminalized under the applicable statute, may serve as the basis for prosecution. However, prosecutions for sexting activity generally fall into the category of child pornography, not obscenity. Child pornography prosecutions are not bound by the Miller obscenity standard. (p. 7)

New York v. Ferber (1982) provides that child pornography is separate from the obscenity standard enunciated in *Miller* (1973). *Ferber* provides that state law must clearly define what material will constitute child pornography. However, *Ferber* did not address whether states could charge someone for merely possessing child pornography. Eight years later, in *Osborne v. Ohio* (1990), the Court expressed that a state may constitutionally prohibit the possession and viewing of child pornography.

It seems that there is sufficient case law to support a school policy that would identify the possession of illicit photos or video of a minor as a criminal offense, in states that have specific legislation prohibiting such images. School administrators in Tunkhannock High School in Pennsylvania took this view, which led to the most notable sexting case to date. *Miller v. Mitchell* (2009) began when school administrators investigated a case of sexting at their high

school. Administrators found semi-nude and nude pictures of teens on the cell phones of several students. After investigating, the school district found that several boys had been sharing these photos via text messages and turned the phones over to the Wyoming County District Attorney's Office.

George Skumanick, the current district attorney, held an assembly at Tunkhannock High School and warned all students that sexting could lead to prosecution under the Pennsylvania law titled Sexual Abuse of Children (18 Pa. Cons. Stat. § 6312). This law prohibits the possession or distribution of child pornography. Later, Mr. Skumanick sent letters to the parents of the students involved in the sexting investigation. He threatened to bring charges against any student who would not sign an agreement to participate and complete an educational program. Part of this educational program would require the students to write an essay on why what they did was wrong.

The letter requested that all students and parents attend an informational meeting. At this meeting, Skumanick repeated his threat “to bring felony charges unless the children submitted to probation, paid a \$100 program fee, and completed the education program successfully” (*Miller v. Michell*, 2009, p. 144). The parents of several children pictured wearing only bras or a bathing suit were told that, because the teens were posing provocatively, they also would face charges if they did not agree to attend the educational program. Several parents did not sign the agreement and filed suit on March 25, 2009, seeking a temporary restraining order (TRO) from the district attorney to prevent “initiating criminal charges against plaintiffs for the photographs” (*Miller v. Michell*, 2009, p.145).

After the TRO suit was filed, Skumanick decided not to bring charges against those students pictured in bras or bathing suits. However, he stated that he would continue to file

charges against another student who was pictured with a towel around her waist, her bare breast exposed.

The court granted the TRO based upon the fact that Skumanick threatened to file charges if the plaintiff did not agree to participate in the educational program, which included having to write an essay explaining how her actions were wrong. The court found that Skumanick's demands to have the student write such an essay were in violation of the plaintiff's First Amendment right to be free from compelled speech. The court also found that Skumanick's actions violated the plaintiff's right to parental autonomy: "Parents have a Fourteenth Amendment substantive due process right to raise their children without undue state interference" (*Miller v. Michell*, 2009, p. 150).

It should be noted that the court based the decision for granting the TRO on the actions of the county attorney. The decision does not address whether the photos were protected speech, as proposed by the representatives of the ACLU. The court did say that the photo in question could fall under Pennsylvania's Sexual Abuse of Children law (18 Pa. Cons. Stat. Ann § 6312). However, the court also noted that Skumanick never provided probable cause that the girl in the picture ever possessed or distributed the picture in question. This would suggest that simply appearing in a photo would not constitute a violation of child pornography laws. Rather, it is the possession or dissemination of such material that should be considered when addressing policy surrounding this practice.

Another case involving sexting, *State v. Canal* (2009), reached the Iowa Supreme Court. In this case, a 14 year old girl repeatedly requested that an 18 year old classmate send her a picture of his genitals. The boy, who was a friend and classmate of the young girl, sent two pictures. The first was of his erect penis, and the second was of his face with a message that said

“I love you”. These pictures were later found by the girl’s mother. The girl’s father then turned the pictures over to local law enforcement. Jorge Canal was charged with “knowingly disseminating obscene material to a minor” under Iowa law, Dissemination and Exhibition of Obscene Material to Minors (Iowa Code § 728.2).

Canal claimed that the evidence was insufficient to establish the pictures he sent were obscene. The appeal also argued that his counsel was ineffective for, “failing to request a jury instruction informing the jury that mere nudity is not sufficient to establish obscenity” (*State v. Canal*, 2009, p.530).

The instructions given to the jury defining obscenity incorporated the Supreme Court’s definition set out in *Miller v. California*. The instructions also added the phrase “with respect to what is suitable material for minors”(*State v. Canal*, 2009, p. 531). This shows that the court recognizes a difference between what would be considered obscene for minors and adults. This stems from the 1968 ruling in *Ginsberg v. New York* (1968). Here, the court found that “the concept of obscenity or of unprotected matter may vary according to the group to whom the questionable material is directed”(*Ginsberg v. New York*, 1968, p. 636).

More importantly, the court ultimately relied on the “community standard” set forward in *Miller* to support the conviction. “Jurors are allowed to draw on their own knowledge of the views of the average person in the community or vicinage from which they come when determining community standards”(*State v. Canal*, 2009, p. 531). The court found that, although “another jury in a different community may have found this material not to be obscene, the evidence in this record was sufficient for this jury to determine, under its own community standards, that the material… was obscene” (p. 532).

Search and Seizure

Legal issues surrounding the search and seizure of cell phones in school fall under the Fourth Amendment of the United States Constitution. The Amendment states that:

“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the Place to be searched, and the persons things to be seized.”

Several major cases have set precedent for how this right applies to students in public schools.

Tinker v. Des Moines Independent Community School District (1969) established that students retain their constitutional rights while at school. This case directly addressed students' free speech rights under the first amendment. In this case Justice Fortas delivered a historically significant quote: “It can hardly be argued that either students or teachers shed their constitutional rights to freedom of speech or expression at the schoolhouse gate” (p. 505). In fact, Justice White later used this concept to uphold students' Fourth Amendment rights in his decision delivered in *New Jersey v. T.L.O.* (1985). Here he found that the court had:

“held school officials subject to the commands of the Fourth Amendment...In carrying out searches and other disciplinary functions pursuant to such policies, school officials act as representatives of the State, not merely as surrogates for the parents, and they cannot claim the parents' immunity from the strictures of the Fourth Amendment.” (p. 336)

New Jersey v. T.L.O., while affirming that students have rights under the Fourth Amendment while at school, also provides that school administrators need not meet the same probable cause requirements that law enforcement officials are held to in a criminal investigation. Rather, *New Jersey v. T.L.O.* provides that, “a school official must have reasonable grounds to believe that a search of a specific individual will produce relevant evidence that the individual has violated a specific school rule or law” (Imber & Van Geel, 2010, p.194).

From this case came the idea that searches must be reasonable at their inception and must be reasonable in scope. Administrators must have reasonable suspicion that a student has

violated a specific school rule to begin a search. The scope of the search must be limited by the original reason for the search. The following case is an example of a search that was reasonable at its inception but was not reasonable in scope.

In *T.J. v. State* (1989) the administrator had reason to believe that a young girl may have been in possession of a knife. The administrator emptied the purse of the student and found no knife. The administrator's next action was an unlawful search under the Fourth Amendment because it went beyond what was reasonable in scope.

The assistant principal did not see a knife or any other weapon... There was a small zippered side pocket inside the purse. The assistant principal did not see any bulges in this side pocket. When she placed her hand inside the pocket, she felt only a plastic bag. She did not think that the plastic bag contained a weapon. Nevertheless, she removed the plastic bag and, ultimately concluded that it contained a few pieces of "rock cocaine".
(p.1321)

The scope of the search became too broad when the administrator searched a part of the purse they had no reason to believe contained a weapon. In fact, a part of the purse in which a knife could not have been found. The student was being searched because there was reasonable suspicion she possessed a knife, and possession of a weapon is a violation of a school rule. This was the basis for the inception of the search. Because the administrator continued to search the student's purse with no reason to believe a weapon would be found. the scope of the search became too broad.

This same legal principle of restriction of scope can be applied to the search of cell phones by school officials. For example, if a school administrator reasonably suspects a student of breaking the school rule against cell phone use during the school day, they can search the phone to see if any calls or messages have been sent from the phone during school hours. They cannot legally search other parts of the phone such as photo or video files out of curiosity, or to see if other infractions might be found.

Klump v. Nazareth Area School District (2006) is a case in which a high school student, Christopher Klump, violated a school rule by having his cell phone out in class during the school day. The phone was taken by the teacher and handed over to administration. The confiscation of the cell phone would be warranted based on the fact that the student had broken a school rule. The student had not done anything else to provide reasonable cause to believe that searching the contents of the cell phone would provide evidence that the student had violated any school rule. However, the administration accessed the phone book directory of the student's cell phone and called several other students in the school to see if they were violating the school rule of using a cell phone during the school day. Administrators also accessed the phones instant message application and conducted an on-line chat with the student's brother, never identifying themselves as school personal. The result of this search produced messages relating to drug-related activity. Justice James Knoll Gardner cited *New Jersey v. T.L.O* in his decision in determining the reasonableness of the search of cell phones by school officials. Justice Gardener emphasizes the standards set out in *T.L.O.* in that the search must be justified at inception and be reasonable in scope and explains his application of the *T.L.O* standard to this case:

Further, we must accept [the] plaintiffs' allegation that the school officials did not see the allegedly drug-related text message until after they initiated the search of Christopher's cell phone. Accordingly, based upon the averments of the Complaint, which we must accept as true at this state, there was no justification for the school officials to search Christopher's phone for evidence of drug activity. (p.640-641)

This case is different than *T.J. v. State* (1989) in that the search was illegal from its inception. It was not reasonable in this case to search the cell phone at all. The student had broken a school rule by having his phone out in school. Confiscating the phone was the only legitimate action that should have been taken at that point by the administration. The search of the cell phone was based upon curiosity on the part of the administrator and was therefore not valid at its inception.

This leaves some question as to when the search of a cell phone may be reasonable. Due to the nature of sexting, school administrators may not know that students at school are in possession of nude or illicit photos of minors until they hear this information from students in the form of a “tip”. Tips have been used to establish reasonable searches in school, providing that the student giving the tip is reputable (*Commonwealth v. Snyder* (1992), *Commonwealth v. Carey* (1990), *New Mexico v. Michail G.* (1987)). Administrators must consider the context of each situation carefully before using a tip from another student to justify a search. In *Phaneuf v. Cipriano* (2004), an administrator’s search was upheld as legal because the student giving the tip was reliable and was very specific about the substance and its location. Other searches have been ruled unreasonable at inception due to the fact that the tip came from a student deemed unreliable (Imber & Van Geel, 2010, p. 196).

Also, what to do with illegal pictures of minors, if found during a search, must be considered. School administrators must receive training in how to deal with the occurrence of sexting in their schools. Due to the sensitive nature of sexually explicit photos of students, protocol should be developed for handling any evidence in sexting cases. *Commonwealth of Virginia v. Ting-Yi Oei* (2009) provides an example of a school administrator who was not given appropriate guidance on how to deal with sexting in his school. Ting-Yi Oei is an assistant high school principal in Loudoun County, Va. He was arrested after he investigated a case of sexting in his school. At the request of the building principal, Mr. Oei secured copies of the contraband photo on his personal cell phone and computer, for the purpose of documentation (Manzo, 2009). Ting-Yi Oei was charged with possession of child pornography. Charges against Mr. Oei were eventually dismissed, but the experience was very traumatic for the assistant principal, who simply felt he was doing his job. Ting-Yi Oei has since published an article in which he urges

school districts to develop policies to prevent others from falling into a similar legal issue. He warns that educators and administrators should never show evidence of this nature to anyone other than law enforcement. He also discussed the dangers of copying, downloading or any kind of dissemination of these types of materials (Oei, T-Y, 2009).

Kansas Statutes and Policy Development

Both *Miller v. California* and *New York v. Ferber* rely on the state to specify what material is prohibited by law. In Kansas, the possession, solicitation and distribution of nude or sexually explicit photos or video of minors violate the state's Sexual Exploitation of Children law (K.S.A § 21-3516, 2009). School districts must consider this statute when developing policy and approaching future sexting cases within their schools.

KAN. STAT. ANN. § 21-3516 (2009) defines the sexual exploitation of a child. The statute defines sexual exploitation of a child as:

- (1) Except as provided in subsection (a)(5), employing, using, persuading, inducing, enticing or coercing a child under 18 years of age to engage in sexually explicit conduct for the purpose of promoting any performance;
- (2) possessing any visual depiction, including any photograph, film, video picture, digital or computer generated image or picture, whether made or produced by electronic, mechanical or other means, where such visual depiction of a child under 18 years of age is shown or heard engaging in sexually explicit conduct with intent to arouse or satisfy the sexual desires or appeal to the prurient interest of the offender, the child or another;
- (3) being a parent, guardian or other person having custody or control of a child under 18 years of age and knowingly permitting such child to engage in, or assist another to engage in, sexually explicit conduct for any purpose described in subsection (a)(1) or (2);
- (4) except as provided in subsection (a)(6), promoting any performance that includes sexually explicit conduct by a child under 18 years of age, knowing the character and content of the performance;
- (5) employing, using, persuading, inducing, enticing or coercing a child under 14 years of age to engage in sexually explicit conduct for the purpose of promoting any performance; or

(6) promoting any performance that includes sexually explicit conduct by a child under 14 years of age, knowing the character and content of the performance.

(b) As used in this section:

(1) "*Sexually explicit conduct*" means actual or simulated: *Exhibition in the nude*; sexual intercourse or sodomy, including genital-genital, oral-genital, anal-genital or oral-anal contact, whether between persons of the same or opposite sex; masturbation; sado-masochistic abuse for the purpose of sexual stimulation; or *lewd exhibition of the genitals, female breasts or pubic area of any person*.

(2) "Promoting" means procuring, selling, providing, lending, mailing, delivering, *transferring, transmitting, distributing, circulating, disseminating*, presenting, producing, directing, manufacturing, issuing, publishing, displaying, exhibiting or advertising:

(A) For pecuniary profit; or

(B) with intent to arouse or gratify the sexual desire or appeal to the prurient interest of the offender, the child or another.

(3) "Performance" means any film, photograph, negative, slide, book, magazine or other printed or visual medium, any audio tape recording or any photocopy, video tape, video laser disk, computer hardware, software, floppy disk or any other computer related equipment or computer generated image that contains or incorporates in any manner any film, photograph, negative, photocopy, video tape or video laser disk or any play or other live presentation.

(4) "*Nude*" means any state of undress in which the human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered.

(c) Except as provided further, sexual exploitation of a child is a severity level 5, person felony. Sexual exploitation of a child as described in subsection (a)(5) or (a)(6) when the offender is 18 years of age or older is an off-grid person felony.

(emphasis added)

This statute gives guidance to school officials as to what material the state considers illegal when dealing with sexting at school. The statute defines nudity and sexually explicit conduct. These two definitions can help administrators determine if photos found at school violate state law or are simply pictures taken in poor taste. The statute also prohibits the possession or distribution of nude photos of minors. Administrators should consider how they are going to deal with students who take, possess or distribute illegal photos via sexting at school.

They must also differentiate how they will handle situations where these photos were taken or distributed outside of school.

The statute also prohibits anyone from persuading or enticing minors to take nude photos of themselves. It is important that administrators be able to make a determination between pictures shared between two students consensually and privately, and those pictures collected through gross solicitation from one student to another. The statute also prohibits the sale of, or profit from any nude pictures of minor. If students are soliciting nude photos of minors and selling them at school, authorities should be notified to continue the investigation.

The statute also provides guidance by what it does not say. The statute does not say simply appearing in a photo is a violation of the law. Administrators must take care not to become over zealous during a sexting investigation by punishing students for simply appearing in photos.

While there have been no federal charges brought against teens to date for sexting, the federal law titled Sexual Exploitation of Children (18 U.S.C. §§ 2251) also prohibits the possession, distribution or receipt of child pornography and focuses primarily on the intrastate or international dissemination of such material. However, considering the ease with which one can text an image across the country or the world, federal charges could be sought in sexting cases in the future.

Summary

Question #1 asked about the legal issues associated with sexting. There are several key legal concepts that school administrators should consider when dealing with sexting. It is illegal to solicit, possess, or disseminate nude photos of minors. Administrators should be ready to deal with sexting and understand the importance of discreetly collecting any illicit photos and turning

them over to law enforcement, remembering never to download, copy or duplicate any photo in this process. Finally, administrators must respect the constitutional rights of students when investigating a possible occurrence of sexting at school. Any search of cell phones or other electronic devices must be reasonable at inception and in scope.

Chapter 4

Sexting in Kansas Schools: Survey Results

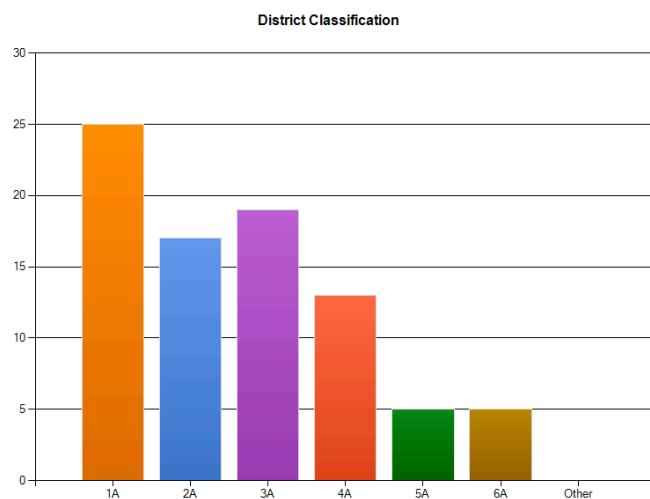
Research question #2 asked how superintendents report on sexting as a problem in their districts?

An on-line survey was used to collect data to answer this question. The survey asked superintendents to respond to the following questions.

- Has your school dealt with student sexting? And if so, how many instances have you dealt with?
- Do you feel that sexting is currently a problem in your district?
- If you have dealt with sexting, did you involve law enforcement in your investigation? And if so, what was the outcome of any legal investigation?
- Has your district developed policy specifically aimed at sexting?

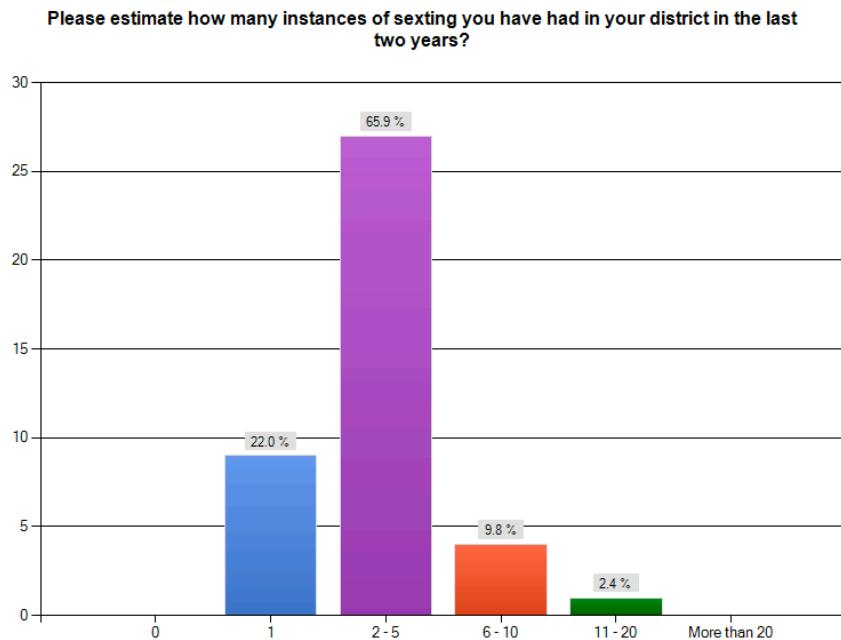
This chapter describes the results from the survey.

A total of 79 school districts completed the on-line survey. Of these 79, ten superintendents were willing to participate in a follow up phone interview. Below is a graph displaying the size classification of each of the districts participating in the survey.



How many districts participating in the study have dealt with sexting?

52% of respondents (41 of 79) reported having dealt with sexting. As displayed in the graph below of the 41 districts who reported dealing with sexting, 27 or 66% reported dealing with an estimated two to five incidents over the past two years.



How did superintendents who participated in the study report their perception of sexting as a problem in their district?

69% of all respondents reported that they do not feel that sexting is a problem in their district at this time. However, the 41 districts who reported dealing with sexting are roughly split. 52% of these districts feel sexting is not currently a problem while 48% report they do feel it is currently a problem.

Each superintendent had the opportunity to share why they felt this way. The responses are separated into two categories; districts that have dealt with sexting and districts that have not. Of the 41 superintendents participating in the survey who claimed to have encountered sexting,

19 superintendents chose to provide a reason for why they felt sexting is a problem. These are listed below.

District had an occurrence of sexting and feel that sexting is a problem
(responses are unedited)

1. It's a problem in society thus a problem for us.
2. Even one sexting issue is a problem. There are not only school related issues but legal issues that can follow a young person for the rest of their life.
3. If it happens, and it does, it is a problem.
4. Previous experience implies that although we have had only a few instances reported there are probably more incidents unreported.
5. Although I am not aware of all the incidences, and I don't think we have had an abnormal number, one is too many.
6. One incident is too many. We know there is more going on, but haven't had many cases reported.
7. It does occur and therefore needs to be addressed as part of the learning process.
8. Although we do not have much of this (reported), if it adversely affects one student it is a problem.
9. If it only happens once it is a problem.
10. Although we address the issue and make every attempt to prevent the behavior it still occurs. I believe it is a problem everywhere and largely goes under reported.
11. Increasing amounts of inappropriate use of social media.
12. Students do not believe it is wrong to send nude pictures of themselves to one another. They believe it is nothing more than harmless exchange of pictures and it is part of the cell phone culture they have created.
13. Any illicit photos of our students is not good for the person sending, receiving, or the subject of the photos. It can cause long-term effects for the subject of the photos and can lead to a permanent sex offender status for the sender.

14. Even though we have had only one incident I can foresee it becoming more and more of a problem as technology advances.
15. Easy access to instantaneous information that students wouldn't share if they were face to face.
16. Because the very nature of sexting is criminal, it disrupts the learning environment. It puts the school in a go between situation because it happens off of school grounds but is brought to school via disruption to those involved in sending, receiving, forwarding the messages.
17. Creates issues, invades privacy and spreads quickly.
18. While we haven't seen it prevalent on school grounds, we know it is happening in non-school activities.
19. Lack of family values, parent involvement and oversight in their child's lives.

Some superintendents seem to feel that there is a larger problem with sexting within their communities than what is reported to them. "While we haven't seen it prevalent on school grounds, we know it is happening in non-school activities" (response #18). "Although we address the issue and make every attempt to prevent the behavior it still occurs, I believe it is a problem everywhere and largely goes underreported" (response #10). Others take a more global view about sexting as a problem. "It's a problem in society thus a problem for us" (response #1).

The nature of social networking is another common reason reported by these superintendents as a factor in sexting occurrences. Survey participants report that students do not understand how quickly these photos can be spread once they have been sent, nor do they understand the lasting damage these images and their dissemination can cause. "Students do not believe it is wrong to send nude pictures of themselves to one another. They believe it is nothing more than [a] harmless exchange of pictures and it is part of the cell phone culture they have created"(response #12).

Other superintendents reported that although they have had only one instance of sexting reported in their district, they consider it a problem. “Even one sexting issue is a problem” (response #2), “if it happens, and it does, it is a problem” (response #3), “if it only happens once it is a problem” (response #9). Small numbers of sexting occurrences, while a common theme among superintendents who felt sexting was a problem, was also a theme for those who do not feel it is a problem. (responses 21, 22, 23, 24, 25, 27, 35, 36, 37, & 38).

Roughly half of the 41 survey participants who claimed to have encountered sexting did not view it as a current problem. 19 superintendents choose to provide a reason for why they felt this way. These are listed below.

District had an occurrence of sexting but do not feel that sexting is a problem
(responses are unedited)

20. This is something that can be addressed through civility and anti-bullying training/seminars/classes for our students. It will not eliminate an occurrence or two....but certainly involves parents, patrons, community and teachers to KNOW the signs, indicators and responses needed.
21. So few instances.
22. Has not been an ongoing situation. Maybe one occurrence a year. Most outside of school.
23. We have had two separate, isolated incidents. The pictures have not been spread beyond the two people involved.
24. It has not been widespread and the photos were not extremely explicit.
25. We feel that because we have so few incidents, we can not consider it to be a district problem. We also know that sexting happens and is not reported to school officials so the iceberg is there.
26. We dealt with the issue when we became aware of it and we haven't heard of or discovered further incidents of sexting.
27. We had one incident two years ago that was sternly addressed. No further incidents have occurred. Our district's student and staff culture promotes mutual respect and responsibility.

28. It is occurring without a doubt but has not been a "school" issue on more than a few occasions.
29. I believe our students feel confident and safe to report suspected texting incidents to our administrators. We have had one such report in two years; therefore, I believe it was an isolated situation and not a widespread affair.
30. It is probably happening more than I think, but it is not brought to my attention very often.
31. Of the instances that we have experienced, they occur outside school but are brought into the school setting through student talk. While this is a problem, to date we have not had any inappropriate photographing taking place in the school setting.
32. Our school police officers intervene in these types of situations very quickly. Word spreads rapidly through the school population that this behavior will be investigated and is not tolerated.
33. I define problem as something that is noticeable, disruptive, has a negative impact on learning.
34. The investigation showed that a parent was involved in sending the picture to the boyfriend. We have not had any other incidents since.
35. Not a lot of cases and we address the issue at least a couple of times a year.
36. Based on number of occurrences, but I can see it being a growing concern that we need to continue to address in the future. We have also had speakers come out and speak with students on issues such as sexting. Feedback from students on these assemblies was very positive.
37. Presently we have had one case which happened over the summer.
38. It is not everyday and it has only been done a couple of times in two years.

As mentioned above, these superintendents do not feel that sexting is a problem due to the small number of instances they deal with in the school setting. "It is not everyday and it has only been done a couple of times in two years." (Response #19). Some participants seem to believe it is not affecting the school because it is happening outside of school for the most part. "It is occurring without a doubt but has not been a "school" issue on more than a few occasions"

(Response #9). "Of the instances that we have experienced, they occur outside school but are brought into the school setting through student talk. While this is a problem, to date we have not had any inappropriate photographing taking place in the school setting" (response #31). This idea of differentiating between behavior outside of school and during school will be key in considering future policy and possible school punishment for students caught sexting.

Some responses seem to reflect the idea that sexting, while occasionally occurring, has not been a substantial disruption to the school environment in their districts. "I define problem as something that is noticeable, disruptive, has a negative impact on learning" (response #31). This line of thinking is in line with concepts of student rights set forth by *Tinker* (1969). Due to the infrequent nature of sexting among the districts surveyed, sexting does not seem to be a substantial disruption to Kansas schools at this time.

How many of the districts who reported having dealt with sexting involved law enforcement in their investigation?

Of the 41 districts who report having dealt with sexting, 28 districts or 68%, reported the incident to law enforcement.

The survey provided an open ended question asking about the outcome of any criminal investigation that began at their school. 22 of the 28 superintendents choose to respond to this question. Of these 22, eight claimed that no charges were filed. 12 districts reported they did not know the results of any legal investigation, primarily due to the fact that the students were minors and their legal records were not public record. However, two districts reported that charges were filed and they believe the students received probation for their sexting offenses.

How many districts have already developed a policy that specifically addressed sexting?

70% of all respondents report they do not have a policy that specifically addresses sexting. However, during my phone interviews, some of the superintendents felt that sexting would be covered under their current bullying or cell phone policies.

Common Themes and Summary from Follow up Phone Interviews.

The three superintendents that I spoke with who had encountered sexting had varying experiences. In District #1, “students [were] sending nude pictures of themselves to other students via cell phone”. In District #2, a student was photographed unknowingly in the dressing room at school in a state of undress and photos were texted to other students. In District #3, a middle school student stole an adult’s cell phone, photographed his genitals and then texted that picture to someone in the phone’s address book. While the circumstances of these cases are very different, they were all handled very similarly.

In each of these cases, the pictures were brought to the school administration’s attention. No search of a cell phone was ever conducted. Students in all three districts received school discipline. The parents were supportive of the school disciplinary procedures in each of the reported cases. An additional interesting similarity is that no counseling was offered to those involved in the sexting incidents, except for the discussion with administration about the incident during the investigation.

I asked seven superintendents who had not yet dealt with sexting how they would react if they encountered it. Some said they would simply start by calling local law enforcement (District #5). Several of the schools reported they would handle the situation differently if the pictures were taken at school (District #4 & #7). Another common response was that parents would be notified and, if needed, local law enforcement would be called.

All of the superintendents felt they were doing a good job of providing educational programs to students in both middle school and high school in regards to the dangers of cyberbullying. Half of the interview participants reported that they also provided education to students regarding sexting. These superintendents believed that the assemblies about cyberbullying included enough of a warning about the dangers of sexting that their students understood the potential consequences. Another similar response during my interviews was that most superintendents seemed to believe they would know if they were looking at an illegal picture. This seems to bear true in that 68% of all districts that reported having dealt with sexting in the online survey involved law enforcement.

Although districts seem to be willing to involve law enforcement in these cases, none of the ten superintendents I interviewed reported that they had a policy in place that specifically addressed sexting. Each superintendent made an effort to explain how they felt that their current policies covering cyberbullying, appropriate technology use, or cell phones would be sufficient to deal with sexting occurrences. None of the superintendents made any reference to other policies dealing with student's illegal behavior, such as drug abuse policies, in our conversations.

Chapter 5

Conclusion

Sexting: Policy Development

70% of all participating districts reported that they do not have a policy that specifically addresses sexting. Perhaps this is because most school districts have dealt with so few instances of sexting. However, due to the potential criminal nature of this practice, and the potential harm & embarrassment to students, districts should consider adopting a policy prohibiting the possession, solicitation, or distribution of illegal photos or video at school or school activities. Developing policy, and following the guidance of *Tinker* and *T.L.O.* for the protection of student rights, will help administrators to address issues if they do arise.

The Kansas State School Board Association believes that, “developing and adopting policy are two of the school board’s most important roles. Well-written policy improves the chances school districts will comply with federal and state regulations” (www.kasb.org/policy1, 2010, para 1). This concept supports the idea that schools should develop new policy to address sexting. The Washington State School Directors Association has recommended a policy that is designed to deter sexting as well as cyberbullying via cell phones at school. The policy “allows school officials to confiscate or search students’ electronic devices at school or school sponsored events if they have reasonable suspicion that such a search will result in [the discovery of] a violation of school rules” (McVicker, 2010, para 3). This policy has been adopted by several districts throughout the state of Washington.

Kansas administrators should look to current state statutes for guidance in the development of new policy prohibiting sexting at school. The policy should be clear about what practices or behavior are prohibited at school. This is important due to the fact that many

instances of sexting originate outside of school. The following sample policy focuses on identifying specific sexting practices that are prohibited at school and would be grounds for school discipline.

Sample Policy

The following is a sample policy that addresses the legal issues outlined in this study.

To comply with K.S.A. Chapter 21, Article 35, Laws of Kansas 2009, the following policy is in effect:

- A. Students may not take nude photos of themselves or others while at school or school activities.
- B. Students may not entice or coerce other students to send nude photos of themselves, or others, to them at school or school activities.
- C. Students may not possess any picture or video containing images of nude minors while at school or school activity
 - a. Any student who receives such a picture or video, while at school, via text message or email should delete the image immediately and report the incident to school officials.
- D. Students may not distribute pictures or video of nude minors while at school or school activities.

The definition of “nude” for the purposes of this policy is as follows: *"Nude" means any state of undress in which the human genitals, pubic region, buttock or female breast, at a point below the top of the areola, is less than completely and opaquely covered.*

Practical Application and Considerations

Sexting ‘may’ be considered a crime. This statement alludes to the many different scenarios that a school administrator may encounter that would be considered sexting. Each case of sexting that a school official might deal with will be unique. This forces the administrator to use knowledge and professional judgment in deciding what action to take. This is no different than most discipline decisions a principal must make throughout their day. A scuffle or shoving match between students, for example, may fall under the legal definition of Assault (K.S.A. § 21-

3148, 1994), a class C misdemeanor in Kansas. However, many principals would not turn this over to police for investigation. They would impose school discipline and contact parents to inform them of the situation. Administrators struggle each day to make disciplinary decisions that are the most appropriate and meaningful for each situation. In most cases of two students fighting in the hallway, the involvement of law enforcement, and the emotional ramifications it would have on the students, is not appropriate.

Administrators should use this same rational and professional judgment when dealing with sexting. Key disciplinary procedures should remain in place, and parents should be immediately informed of the situation. However, the involvement of law enforcement should not be an automatic reaction every time a case arises. Looking at different scenarios can help illustrate this concept. The following examples are hypothetical, assuming the district has adopted the sample sexting policy described above.

Example #1

A female student comes to you crying because her boyfriend has just broken up with her. You try to calm her down, but she continues by telling you that she has sent nude photos of herself to this boy and she is afraid he will share them with others. You call the boy in and ask him if he is still in possession of these photos on his phone and if he has shared them with anyone else. He admits that he does have the photos but has not shared them with anyone. You continue your investigation and conclude that the pictures were taken and sent outside of the school day.

You now have reasonable cause to search the boy's phone to establish that he is in possession of these photos. However, he has already admitted that he is in possession of nude photos of a minor at school, a violation of your sexting policy.

You ask the boy to open his phone and delete the photos. You then inform the student that you are going to search his phone to confirm that he has not forwarded these photos by examining his “sent” text messages. A search of the phone finds no evidence that these photos were distributed at school.

You contact the parents of both of the students involved and explain how you handled the situation. You determine that only the boy is in violation of your school sexting policy, because all of the girl’s actions occurred outside of school, and assign the young man a day of in-school suspension. This reaction is a long way from calling law enforcement and having the students escorted from the building in hand-cuffs, and thus, possibly entering the juvenile justice system. This is the most appropriate and meaningful action for the situation.

Example #2

A reliable student tells you that another boy was showing several students a nude photo of a girl in school. He had heard the boy bragging that the girl took the picture in the locker room after gym and texted it to him during school. You ask both the girl and the boy accused of sexting to your office and ask them to set their cell phones on your desk. You then begin to talk about why you have reason to believe that they are both in violation of your school policy prohibiting sexting at school. The students deny the allegations. You tell them that you will simply keep the phones and that their parents can pick them up later. At this point the girl begins to cry and admits sending the picture. You ask the boy to confirm that he received the photo and that he showed other students. You ask both students to delete the photo from their phones. You then explain to the young man that you will search his “sent” text messages to make sure that he did not distribute this photo to others while at school. After the search, you conclude that he had not forwarded the message to anyone while at school.

In this case, the students committed the sexting violation at school and stronger discipline action should be taken. A short term suspension is reasonable disciplinary action, and the parents should be notified immediately. However, did the actions of the students deserve a criminal investigation? If so, who was the victim? It seems that this situation could be handled appropriately without the involvement of law enforcement.

Example #3

A teacher informed you she was approached by a young girl who was upset about some pictures taken at a party the night before. She felt that another student had taken nude pictures of her while she was inebriated. She said there were people making fun of her at school because the young man was talking about it to others. After finding this young man and escorting him into your office, you explain the situation and inform him that you would like to search the photos on his cell phone. After searching the photo folder of his cell phone, you find dozens of nude photos of several young girls in various stages of undress. The pictures all seemed to be taken away from school. However, the student is in violation of the sexting policy for possessing nude photos of minors while at school. You assign the student a short-term suspension. At this point, you decide that you should call the police to continue the investigation. Before calling the police, you call the student's parents so that they can be present when the police arrive. Once the police arrive, you hand over the cell phone to the officers.

All three of these examples are sexting. However, only in the last example was it appropriate to involve law enforcement. The decision to involve law enforcement should be made by considering the actual criminal nature of each occurrence. Several reflective questions can help determine whether it is appropriate to involve law enforcement. Is there a clear victim in the situation? Was there clear intent to widely disseminate pictures or were they shared

privately and consensually between students? Is the nature of the material extremely obscene or is it on the fringe of the State's definition of sexually explicit? These questions are similar to the reflective questions administrators make everyday when they choose what actions by students constitutes the evolvement of law enforcement for crimes such as assault or battery.

In each case you would contact the parents of any student involved. Some parents may choose to involve law enforcement in a situation that you felt was handled appropriately at school. It seems, however, that local prosecutors in Kansas are also trying to make prudent decisions about what kind of sexting violations constitute prosecution under the Sexual Exploitation of a Child law. This seems to be the case due to the fact that over 50% of the districts in the survey dealt with sexting. Of those, 69% involved law enforcement. However, of all these cases only two administrators were able to report that local county attorneys pushed for charges to be filed.

Administrators should also consider the need for providing counseling services to students involved in sexting. Students may need to talk to someone in a safe environment other than the principal's office. Counselors can help students discuss their decision-making and any stress or fear that they have related to the event. This may not always be necessary, but the offer of support should be made to all students involved.

Educational Programs and Training

Students must also be provided education about the potential illegal nature of sexting and the possible consequences. Programs should be developed for both middle school and high school students. These programs should address the potential negative consequences of sexting, including the possibility that any pictures shared electronically can spread quickly over the internet where it can remain indefinitely. Helping students understand the risks involved with

sexting behavior can help them become more responsible ‘digital citizens’. The emphasis of this training should fall not only on the possible legal consequences of sexting, but on the emotional consequences that can come from private photos being shared with those they did not intend to share them with. For teenagers, this type of embarrassment, and the negative social aftermath, can be devastating. Schools must educate their students to use the technology available to them in a safe and responsible way.

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Appendix A

Sexting in Kansas Schools: Internet Survey Instrument

- 1. Please click below to verify you are the superintendent of your district.**
- 2. Please select your district classification.**
 - a. 1A
 - b. 2A
 - c. 3A
 - d. 4A
 - e. 5A
 - f. 6A
 - g. Other
- 3. Do you employ an SRO in your district**
 - a. Yes
 - b. No
- 4. Have you had occurrences of sexting in your district?**
 - a. Yes
 - b. No
- 5. Please estimate how many instances of sexting you have had in your district in the last two years.**
 - a. 0
 - b. 1
 - c. 2-5
 - d. 6-10
 - e. 11-30
 - f. More than 20
- 6. Please select all that apply. We have had a problem with sexting at our...**
 - a. High School
 - b. Middle School
 - c. Elementary School
 - d. None of our Schools
- 7. Do you perceive sexting to be a problem in your district?**
 - a. Yes
 - b. No
- 8. Why do you feel this way?**
- 9. If you have had an occurrence of sexting in your district, what actions did you take (investigation and or punishment?)**

- 10. If you have had an occurrence of sexting in your district, did you contact law enforcement during your investigation?**
- 11. If you did involve law enforcement, can you provide any detail about the outcome of the legal investigation that followed?**
- 12. Does your district currently have a district policy that specifically addresses sexting?**
- 13. Would you be willing to participate in a brief follow up phone interview?**

Appendix B

Superintendent Reporting Occurrences of Sexting in their District Follow-up Phone Interview Protocol

1. Can you describe the occurrence or occurrences?
2. Were the pictures brought to administration or was a search of a student's cell phone performed?
3. Had you provided training to your administrators as to how to handle sexting in schools prior to the occurrence you encountered? If no, did the occurrence prompt further training for how to handle this issue in the future?
4. Have you initiated any educational programming for students in your district about the dangers of sexting? If yes, is this at the high school, middle school, or both?
5. Did the students involved receive any school discipline, i.e.... detention or suspension? If so, what was the reaction of the parents?
6. Did you provide any counseling to the students involved, especially to those whose picture may have been distributed across the school?
7. Did the occurrence of sexting in your district prompt other districts in your area to develop policy or training for their district addressing sexting?
8. Does your district have a policy that specifically addresses sexting?

Appendix C

Superintendent Reporting No Occurrences of Sexting in their District Follow-up Phone Interview Protocol

1. How would you handle a situation in which an administrator in one of your schools discovered nude photos of minors on a student's cell phone?
2. Have you initiated any educational programming for students in your district about the dangers of sexting? If yes, is this at the high school, middle school, or both?
3. Does your district have a policy that specifically addresses sexting? If so, was this prompted by the occurrence of sexting in a neighboring district?
4. Do you feel you understand what kinds of images would be illegal if brought to your attention?
5. Has your district provided training to administrators as to how to deal with sexting should they encounter it?

Appendix D

Superintendents Reporting Occurrences of Sexting in their District Follow-up Phone Interview Responses (Comments are unedited)

District # 1: 3A District

Can you describe the occurrence or occurrences?

“The occurrence we have had is students sending nude pictures of themselves to other students via cell phones.”

Were the pictures brought to administration or was a search of a student’s cell phone performed?

“The administrators were made aware of the events by the students themselves.”

Had you provided training to your administrators as to how to handle sexting in schools prior to the occurrence you encountered? If no, did the occurrence prompt further training for how to handle this issue in the future?

“Yes, through the attorneys at KASB”

Have you initiated any educational programming for students in your district about the dangers of sexting? If yes, is this at the high school, middle school, or both?

“At this point in time no, but we are going to do that yes. But at this point in time no”

Did the students involved receive any school discipline, i.e.... detention or suspension? If so, what was the reaction of the parents?

“Yes, and the parents were supportive of the schools reaction”

Did you provide any counseling to the students involved, especially to those whose picture may have been distributed across the school?

“Not any formally, the counseling was given to the students by the school administration. No formal counseling by a counselor trained to do that.”

Did the occurrence of sexting in your district prompt other districts in your area to develop policy or training for their district addressing sexting?

“Not that I am aware of”

Does your district have a policy that specifically addresses sexting?

“Not specifically. There is no policy specifically mentioning sexting, quote unquote, although it is, in our consideration, an aspect of the anti-bullying policy.”

District# 2: 4A District

Can you describe the occurrence or occurrences?

“It took place in a locker room, and there was a picture taken of another student in various stage of undress. That was sent out to some students.”

Were the pictures brought to administration or was a search of a student’s cell phone performed?

“It was brought to us, immediately after it happened”

Had you provided training to your administrators as to how to handle sexting in schools prior to the occurrence you encountered? If no, did the occurrence prompt further training for how to handle this issue in the future?

“Well, not specifically on that, we just, you know, any type of technology violation, whether its inappropriate web sites or pictures on computers. We haven’t specifically isolated sexting as far as using cell phones.” “It comes in a general type training.”

Have you initiated any educational programming for students in your district about the dangers of sexting? If yes, is this at the high school, middle school, or both?

“We do have that under our, when our technology person speaks at the beginning of the year, he does mention that. He goes over our policy in pretty good detail and that is mentioned.” “This is at the high school and middle school.” “It is in part of our cyber-bullying education in grades k-5, but not, to be honest, its not from a part that they may be doing it, its if they come upon it or something like that.”

Did the students involved receive any school discipline, i.e.... detention or suspension? If so, what was the reaction of the parents?

“Yes.” The parents were supportive of the schools action.”

Did you provide any counseling to the students involved, especially to those whose picture may have been distributed across the school?

“No.”

Did the occurrence of sexting in your district prompt other districts in your area to develop policy or training for their district addressing sexting?

“I don’t know, I know I did share the information with a couple of neighboring districts, but I don’t know if by direct result they may have brought it up.” “I can’t tell you that it resulted in any specific training.”

Does your district have a policy that specifically addresses sexting?

“It is within appropriate use of technology. Is it a stand alone policy? No.”

District# 3: 3A District

Can you describe the occurrence or occurrences?

“The occurrence was that there was a middle school male who some how came to be in possession of another individuals phone. Probably theft would be the best way to say it. He

snapped a photo of his genitals and then sent that photo to someone else in the address book on the phone.”

Were the pictures brought to administration or was a search of a student's cell phone performed?

I believe, if I recall, it was brought to the attention of the administrator by the person who lost the phone. Because, of coarse when the picture showed up on the other individuals phone it came from a female adult. She then went to the middle school principal and said, “hey this was sent from my phone, my phone is missing. It is our understanding that this individual student has it because kids talk.” That is kind of how we found out who had it. They did not bring a picture in, they just reported it. And when the administrator talked to the kid admitted it.

Had you provided training to your administrators as to how to handle sexting in schools prior to the occurrence you encountered? If no, did the occurrence prompt further training for how to handle this issue in the future?

“I would say we had some training on cyber-bullying, and inappropriate use of technology. We understood that there was the possibility that this could work it’s way into the hallways. Like every other school out there for years we’ve been telling kids, you know, cell phones stay put away in the locker room and things like that. So, from that perspective, yes. It has been addressed with both faculty and kids for years.

Have you initiated any educational programming for students in your district about the dangers of sexting? If yes, is this at the high school, middle school, or both?

“Yes. I would say K-12.”

Did the students involved receive any school discipline, i.e.... detention or suspension? If so, what was the reaction of the parents?

“I believe the student was placed in in-school suspension at the middle school.” The parents were supportive of the schools action.”

Did you provide any counseling to the students involved, especially to those whose picture may have been distributed across the school?

“In this case he distributed his own picture, so, if you want to call the administrator and the SRO setting down with the kid and talking about the potential ramifications had this been not someone who had reported it directly to the school. I guess you could say we provided education.”

Did the occurrence of sexting in your district prompt other districts in your area to develop policy or training for their district addressing sexting?

“No.”

Does your district have a policy that specifically addresses sexting?

“Specifically to sexting? You know what, I would have to go look at the book. I do believe that KASB has sent out information that’s been included as part of the cell phone use, cyber-bullying policy ect.., but I can’t quote it to you.”

**Superintendents Reporting No Occurrences of Sexting in their District
Follow-up Phone Interview Responses
(Comments are unedited)**

District # 4: 6A School District

How would you handle a situation in where an administrator in one of your schools discovered nude photos of minors on a student’s cell phone?

“We have had that situation occur last summer, and sense it happened out side of school and it happened away from campus there was not much control that we had. Now if it would have happened during the day and we had evidence that it happened on our campus. Our disciplinary

protocol would be put into place. The child or the parties involved would have been suspended from school. There would have been a hearing within 72 hours of the suspensions to determine whether or not that we wanted to go ahead and take any further action on long term suspension or expulsion.”

“Once those types of photos are out on the internet, as far as retracting them, that is a whole other problem. We have advised our staff, as far as electronic correspondence, electronic pictures. We have brought outside speakers in the last couple of Fall’s to address these things. We did bring a speaker in this fall to talk to our student body about putting pictures or comments out on facebook or the internet. And some of the negative reaction that can happen. I can’t say honestly that all our kids listen to that and faithfully are going to apply what they heard, it’s just a real tough area for us in administration to monitor.

Have you initiated any educational programming for students in your district about the dangers of sexting? If yes, is this at the high school, middle school, or both?

“We ran that middle school through high school.”

Does your district have a policy that specifically addresses sexting? If so, was this prompted by the occurrence of sexting in a neighboring district?

“Not the sexting so much, but we address use of cell phones during the school day. If a child is caught with a cell phone or using a cell phone during the school day the phone is confiscated. The first offense the student can pick it up after school is out. We then send a letter home to the parents stating that this policy was violated. Second time we take the phone, the parent has to come pick up the phone.”

Do you feel you understand what kinds of images would be illegal if brought to your attention?

“Yes and no. I know what definitely is pornographic and not appropriate. As far as what would be a grey area, unless someone is going to try and convince me that this is a piece of art work, most of what I see I am going to go ahead and make the judgment call that this is inappropriate. Because number one we don’t want you to be doing this during the school day. And we don’t want these types of pictures being sent to other students.”

Has your district provided training to administrators as to how to deal with sexting should they encounter it?

“Not yet. We’ve got some training hopefully next year, I am going to send some of the administrators to. We try to stay on top of it as much as possible. We do have a technology committee. We have brought this up before, in front of the technology committee, who in turn, some of those are building level administrators. We do handbook updates in May, and this is one of the areas we are going to take a look at. If we can gain some information from this study or from other avenues, we have no problem incorporating that into our student/parent handbooks.”

District # 5: 4A District

How would you handle a situation in where an administrator in one of your schools discovered nude photos of minors on a student’s cell phone?

“Well we would call local police. We would start from there, we would call the local police and work with them.”

Have you initiated any educational programming for students in your district about the dangers of sexting? If yes, is this at the high school, middle school, or both?

“Not that I’m aware of, no.”

Does your district have a policy that specifically addresses sexting? If so, was this prompted by the occurrence of sexting in a neighboring district?

“No, it does not.”

Do you feel you understand what kinds of images would be illegal if brought to your attention?

“Um, yes, probably so.”

Has your district provided training to administrators as to how to deal with sexting should they encounter it?

“No.”

District #6: 3A District

How would you handle a situation in where an administrator in one of your schools discovered nude photos of minors on a student’s cell phone?

“Well first we would do an investigation and look into the situation, I’m assuming the picture is one of our students. We would probably contact the parents as well fairly quickly on that issue. If there was a law being broken we would have to bring in the Galena police first probably. We would probably talk to our resource officer and our attorney to make sure there were no laws being broken.

Have you initiated any educational programming for students in your district about the dangers of sexting? If yes, is this at the high school, middle school, or both?

“No we haven’t. We probably should be for the fact that it would be more proactive than waiting for it to happen, because eventually it probably will happen here. So.. that’s a good question and probably something we ought to look into doing. Of course we have character education and all those things. During seminars, I am sure our teachers talk about the harmful effects of not using the internet or technology appropriately. And of coarse also students are required to use

technology appropriate here and they sign a code of conduct, but I don't think specifically addressing that issue.”

Does your district have a policy that specifically addresses sexting? If so, was this prompted by the occurrence of sexting in a neighboring district?

“Not specifically addressing sexting, no. Inappropriate use of technology and our cell phone policy would overlap.”

Do you feel you understand what kinds of images would be illegal if brought to your attention?

“Well, I think I do for the most part, but I would still contact our attorney and the Kansas Association of School Boards and our resource officer to make sure. I think any minor related with nudity might be an issue.”

Has your district provided training to administrators as to how to deal with sexting should they encounter it?

“No, not specifically. We do provide training, sending our principals up to KASB for different topics. It could have been addressed there but we have not specifically set anything up for that.”

District #7: 1A District

How would you handle a situation in where an administrator in one of your schools discovered nude photos of minors on a student's cell phone?

“Protocol says we call the parents, make them aware of what is happening, and the student goes to the counselor. If it was something that happened during school, like in the locker room, that would require a entirely different set of reactions and action.”

Have you initiated any educational programming for students in your district about the dangers of sexting? If yes, is this at the high school, middle school, or both?

“We have at least one program a year, where we bring someone in to talk about all the ramifications of any online, or any kind of, (technology) uses that could lead to a problem. Including being lured in by a stranger, all kinds of things, and sexting is a part of those programs. We do one a year.”

“We start in middle school and go all the way through to high school. By the time they graduate they are probably sick of listening to it, but I don’t care, they can’t hear it enough.”

Does your district have a policy that specifically addresses sexting? If so, was this prompted by the occurrence of sexting in a neighboring district?

“No.”

Do you feel you understand what kinds of images would be illegal if brought to your attention?
“I think so. We cover those in the program, I don’t attend every program, but I try to go so I can keep up.”

Has your district provided training to administrators as to how to deal with sexting should they encounter it?

“I am the administration, so yes.”

District #8: 1A District

How would you handle a situation in where an administrator in one of your schools discovered nude photos of minors on a student’s cell phone?

“You know eventually we are going to have a policy for it. Right now we would be without a whole lot of guidance. A lot of it depends on the distraction that it made to the school environment. If students brought it in and they were showing people, then we would have to address that. If they were bringing pictures in of a child who was nude, that would involve suspension and probably even consideration for expulsion for that type of thing.”

Have you initiated any educational programming for students in your district about the dangers of sexting? If yes, is this at the high school, middle school, or both?

“Not sexting, but we are just beginning a program dealing with kind of a pause before you click type of a program. Jostens has come out with that, and that is really neat. There is a lot of danger so we are going to look into doing that this year.

Does your district have a policy that specifically addresses sexting? If so, was this prompted by the occurrence of sexting in a neighboring district?

“Sexting, no”

Do you feel you understand what kinds of images would be illegal if brought to your attention?

“Yeah, I do.”

Has your district provided training to administrators as to how to deal with sexting should they encounter it?

“No.”

District # 9: 2A District

How would you handle a situation in where an administrator in one of your schools discovered nude photos of minors on a student’s cell phone?

“Well Since we haven’t had one, this would all be starting from scratch so, if that happened, we are a small district, so we would probably. ..most likely call our attorney just to make sure we are doing everything ok. Initially we would probably put somebody, in suspension of some kind.

Have an informal hearing to get through with the little preliminary stuff and make sure we have all our ducks in a row. Basically after we got through with that informal hearing we would determine if we needed to go to a more formal setting and determine if we were going to go for a long term suspension or not. Depending on what the kid’s done, and everything else. But our big

thing would be our phone call to parents and we would also have a phone call to local law enforcement. We would no by then if that was a bigger offense than we were used to handling.”

Have you initiated any educational programming for students in your district about the dangers of sexting? If yes, is this at the high school, middle school, or both?

“Yes, as part of our bullying procedures we’ve gone through, ah about the last three years, we bring in at least one speaker who is an expert in bullying and usually that topic is addressed.”

“Our school is a 7-12 facility so that would cover both. We have even brought the 5th and 6th grade over too. It is part of our anti-bullying, so if we are going to get it done we might as well kind of get them accustomed to it.”

Does your district have a policy that specifically addresses sexting? If so, was this prompted by the occurrence of sexting in a neighboring district?

“Sexting, no. Bullying and Cyber-bullying, yes.”

Do you feel you understand what kinds of images would be illegal if brought to your attention?

“Honestly no. If somebody came up to me and showed me a picture of a kid in their underwear, you know that some kid took a picture of a kid in their underwear and were distributing that around... we would be calling somebody to find out.”

Has your district provided training to administrators as to how to deal with sexting should they encounter it?

“Not specifically just sexting. We’ve gone through the bullying training and part of that comes up. We’ve discussed it administratively of what to do if somebody brings you a cell phone that has some bad pictures, or pictures you would assume are bad. Basically our protocol would be to call our attorney. Usually we use KASB to start off with and we have a local guy as well. KASB is usually our first line of defense on that.

District #10: 1A District

How would you handle a situation in where an administrator in one of your schools discovered nude photos of minors on a student's cell phone?

“Oh my, well we would probably, we have a principal and myself are the only two administrators, and we would probably get together and talk about it a little bit. Most likely call the lawyers at KASB. See where we are at and go from there.”

Have you initiated any educational programming for students in your district about the dangers of sexting? If yes, is this at the high school, middle school, or both?

“Not that in particular no.”

Does your district have a policy that specifically addresses sexting? If so, was this prompted by the occurrence of sexting in a neighboring district?

“Well, certainly cyberbullying, but the term sexting is not in it yet.”

Do you feel you understand what kinds of images would be illegal if brought to your attention?
“In terms of actually being illegal, not positive on that. I certainly know right from wrong, but in terms of the legality of it, I don’t know.”

Has your district provided training to administrators as to how to deal with sexting should they encounter it?

“Not that subject in particular.”

Appendix E

Title	Newspaper	Date	Topic
Teens and 'Sexting' -- risky pictures: To prevent sexting, adults first need to accept the role that technology plays in adolescents' lives.	Star Tribune, (Minneapolis, MN)	4/24/2009	Informational
New software gives parents some control against sexting	The Hour, (Norwalk, CT)	10/16/2010	Informational
County hosts sexting panel	Times - News, (Burlington, NC)	9/26/2010	Informational
If only there were an 'un-send' button for sexting	Star Tribune, (Minneapolis, MN)	10/17/2010	Informational
Teens warned that 'sexting' can now bring harsh consequences	The Day, (New London, CT)	9/30/2010	Informational
Review starts of 'sexting,' social media	The Day, (New London, CT)	11/5/2010	Informational
'Safety Summit' to focus on sexting	Daily Press, (Victorville, CA)	11/8/2010	Informational
Prosecutor warns of 'sexting': Aiming to educate parents, teachers, teenagers	Times - News, (Burlington, NC)	4/7/2010	Informational
Our Time: Senior sexting gaining steam	The Orange County Register, (Santa Ana, CA)	2/8/2010	Informational
Oregon parents warned about 'sexting': Meeting tells of being aware of what kids are doing	The Blade, (OH)	3/10/2010	Informational
Area officials fear growth of 'sexting' among youth	Morning Sentinel, (Waterville, ME)	3/8/2010	Informational
Sexting cases on the rise	The Sedalia Democrat, (MO)	12/27/2009	Informational
Sexting is part of life for many U.S. teens	St. Louis Post-Dispatch, (MO)	1/18/2010	Informational
Illinois ponders 'sexting' trend	St. Louis Post-Dispatch (MO)	2/25/2010	Informational
Sexting: at least 15 percent of teens take part.	Christian Science Monitor	12/16/2009	Informational
To deal with 'sexting,' XXXtra discretion is advised	USA Today	5/5/2009	Informational
Tips, warning signs kids may be sexting	Daily Press, (Victorville, CA)	9/7/2009	Informational

Parents have responsibility to stop "sexting," attorney says	Tulsa World, (OK)	10/29/2009	Informational
Officials warn teens, parents about sexting	The Capital, (Annapolis, MD)	1/31/2010	Informational
Suozzi, Mulvey announce seminars on 'sexting'	Newsday, (Melville, NY)	10/30/2009	Informational
Truth about sexting: the consequences	The Times Leader, (Wilkes-Barre, PA)	4/24/2009	Informational
Is your teen 'sexting'? Experts say it's unlikely.	San Francisco Chronicle	3/21/2009	Informational
More teens are 'sexting,' exchanging sexual messages	Ventura County Star, (CA)	3/16/2009	Informational
Teen 'sexting' not seen as trend in Yuma	The Sun, (Yuma, AZ)	1/17/2009	Informational
Seduction of sexting: Innocent flirting? Hardly. Phenomenon has legal, psychological impacts	The Montana Standard, (Butte, MT)	4/26/2009	Informational
Boundless consequences: With 'sexting,' a seemingly innocent decision can lead to a lifetime of regret	The Anniston Star, (AL)	7/5/2009	Informational
'Sexting' skews public-private line	USA Today	3/12/2009	Informational
'Sexting' is latest tech risk for parents, kids to guard against, expert says	The Dallas Morning News, (TX)	4/27/2009	Informational
More teens caught up in 'sexting'	USA Today	3/12/2009	Informational
Which Is Epidemic--Sexting or Worrying About It?	Wall Street Journal - Eastern Edition	4/8/2009	Informational
Teen Sext: Phone fad leads to trouble	Omaha World-Herald, (NE)	2/22/2009	Informational
15% of teenagers get sexy photos via cell, study says.	San Francisco Chronicle	12/16/2009	Informational
It is time for a little □sext' education	The Kansas City Star, (MO)	5/20/2009	Informational
Police shocked by what they find on kid's phones	Aiken Standard, (SC)	1/28/2009	Informational
'Sexting' charges faced by 2 teens TIPS FOR PARENTS: Two Spotsylvania students charged in sexting case	The Free Lance-Star, (Fredericksburg, VA)	3/11/2009	Legal
Teen 'sexting' dials up authorities' attention: Local teens investigated for sexting	The Free Lance-Star, (Fredericksburg, VA)	3/8/2009	Legal

Stafford looks into possible 'sexting': Stafford investigating teen "sexting" case	The Free Lance-Star, (Fredericksburg, VA)	6/3/2009	Legal
Teen has date in court for 'sexting'	Connecticut Post (Bridgeport, CT)	9/25/2010	Legal
BRIEF: Ranger, Texas, sexting case plea	Odessa American, (TX)	9/17/2010	Legal
'Sexting' case on GFPD's radar	Grand Forks Herald (ND)	10/6/2010	Legal
Court Says Parents Can Block 'Sexting' Cases	New York Times	3/18/2010	Legal
Teen 'sexting' proliferates: Practice is risky and illegal, say child advocates.	Columbia Daily Tribune, (MO)	4/28/2010	Legal
The Philadelphia Inquirer Daniel Rubin column: Daniel Rubin: Proposed sexting law could do more harm than good	The Philadelphia Inquirer, (PA)	8/5/2010	Legal
Legal experts say 'sexting' DA should have resigned	The Wisconsin State Journal, (Madison, WI)	9/18/2010	Legal
Lautenschlager criticizes state officials for silence in DA sexting case	The Wisconsin State Journal, (Madison, WI)	9/15/2010	Legal
BRIEF: 'Sexting' case lands Jacksonville man 20-year federal prison sentence	The Florida Times-Union, (Jacksonville, FL)	9/15/2010	Legal
Ex-city man faces 'sexting' charges	Jacksonville Journal-Courier, (IL)	7/8/2010	Legal
Pa. working to outlaw teen 'sexting'	The Philadelphia Inquirer, (PA)	8/2/2010	Legal
BRIEF: Tucson teacher arrested in 'sexting' case: Dad tips off police	Arizona Daily Star (Tucson, AZ)	6/25/2010	Legal
BRIEF: TUSD moves to fire teacher indicted in 'sexting' case	Arizona Daily Star (Tucson, AZ)	8/11/2010	Legal
State House committee reduces penalty for teen sexting	Pittsburgh Post-Gazette (PA)	3/16/2010	Legal
Coach charged in 'sexting' case: The assistant football coach faces multiple charges after he allegedly sent sexually explicit texts to a 14-year-old.	Star Tribune, (Minneapolis, MN)	6/29/2010	Legal
Kennewick police probe sexting extortion case	Tri-City Herald, (Kennewick, WA)	6/9/2010	Legal
BRIEF: Sexting case	Odessa American, (TX)	8/13/2010	Legal

Milford man, 18, charged in 'sexting' juvenile	New Haven Register, (CT)	5/11/2010	Legal
Federal appeals court bars prosecutor from pursuing charges in teen sexting case	The Times-Tribune, (Scranton, PA)	3/18/2010	Legal
Court averts free-speech issue on 'sexting'	The Philadelphia Inquirer, (PA)	3/18/2010	Legal
Court declines to decide if sexting is pornography	The Philadelphia Inquirer, (PA)	3/17/2010	Legal
A win for plaintiff in 'sexting' case	The Times Leader, (Wilkes-Barre, PA)	3/18/2010	Legal
Area girls won't face 'sexting' charges: Federal permanent injunction prevents Wyoming County from charging several teen girls	The Roanoke Times, (VA)	5/1/2010	Legal
5 teens arrested in sexting incidents: The new cases spotlight some of the difficulties localities in the region face when dealing with the issue.	The Roanoke Times, (VA)	5/20/2010	Legal
Charges will not be filed against Wyoming County girls in sexting case	The Times-Tribune, (Scranton, PA)	5/1/2010	Legal
Appeals court won't rule on free speech, □sexting' link	The Philadelphia Inquirer, (PA)	3/17/2010	Legal
Authorities differ on making 'sexting' a criminal offense: Bill would make it a misdemeanor	Pittsburgh Post-Gazette (PA)	2/5/2010	Legal
Proposed 'sexting' law foes seek to scrap it	Pittsburgh Post-Gazette (PA)	2/4/2010	Legal
Bill to reduce 'sexting' penalties approved in committee	Connecticut Post, (Bridgeport, CT)	3/30/2010	Legal
BRIEF: New 'sexting' legislation proposed	Connecticut Post, (Bridgeport, CT)	3/29/2010	Legal
'Sexting' turns to extortion	Greeley Tribune (CO)	12/5/2009	Legal
Man arraigned in region's first "sexting" case	The Day, (New London, CT)	12/8/2009	Legal
Federal court in Phila. weighs 'teen sexting' case	The Philadelphia Inquirer, (PA)	1/15/2010	Legal
Appeals court considers: Is "sexting" pornography?	The Philadelphia Inquirer, (PA)	1/16/2010	Legal
Appeals court may decide if teen □sexting' can lead to child-porn charges	The Philadelphia Inquirer, (PA)	1/15/2010	Legal

Federal court in Phila. weighs 'teen sexting' case	The Philadelphia Inquirer, (PA)	1/15/2010	Legal
Sexting gone wild: MN mom buries teen co-worker in sexual texts, photo	Star Tribune, (Minneapolis, MN)	4/2/2010	Legal
Westmoreland man waves right to preliminary hearing in sexting case	Leader Times, (Kittanning, PA)	4/8/2010	Legal
Cass Lake woman to serve probation in sexting case	Star Tribune, (Minneapolis, MN)	4/6/2010	Legal
Former Tucson school monitor gets probation in sexting case	Arizona Daily Star, (Tucson, AZ)	5/19/2010	Legal
Juvenile rights advocate: Sexting bill is overreaction: Bill expected to go to House committee for vote next week.	The Times Leader, (Wilkes-Barre, PA)	2/5/2010	Legal
'Sexting' is no felony, bill says: 'Dumb thing' shouldn't scar teens for years, lawmaker argues	Pittsburgh Post-Gazette (PA)	1/25/2010	Legal
Sexting' case to get day in court: Tunkhannock Area teens' cell-phone image swapping is the focus of federal appeals court hearing on Friday.	The Times Leader, (Wilkes-Barre, PA)	1/13/2010	Legal
BRIEF: California man sentenced to prison in "sexting" case	Greeley Tribune (CO)	12/4/2009	Legal
BRIEF: DeKalb sexting arrest	Chattanooga Times/Free Press (TN)	1/21/2010	Legal
Man admits 'sexting'; cell phone banned	Wenatchee World (Wa)	1/15/2010	Legal
Effort begins to standardize sexting penalty	Tribune-Review, (Greensburg, PA)	4/1/2009	Legal
Tucson boys accused of 'sexting' photo of nude girl, 13	Arizona Daily Star, (Tucson, AZ)	8/26/2009	Legal
2 local boys face misdemeanor 'sexting' charges	Arizona Daily Star, (Tucson, AZ)	8/27/2009	Legal
BRIEF: Police investigating underage ?sexting?	Manassas Journal Messenger, (VA)	2/11/2010	Legal
Create consistent laws on 'sexting'	USA Today	5/11/2009	Legal
Legislators look into how Va. laws cover 'sexting'	Richmond Times-Dispatch, (VA)	5/20/2009	Legal

BBRIEF: Police investigate reported 'sexting' case	Moscow-Pullman Daily News, (ID)	6/6/2009	Legal
'Sexting' overreach.	Christian Science Monitor	4/28/2009	Legal
'Sexting' suspect found guilty by jury	The Gazette, (Colorado Springs, CO)	6/27/2009	Legal
Teen 'sexting' flirts with felony charge	The Blade, (OH)	3/19/2009	Legal
Waukesha police recommend charges in sexting incident	The Milwaukee Journal Sentinel, (WI)	4/2/2009	Legal
Teens face porn charges in 'sexting'	Tribune-Review, (Greensburg, PA)	1/13/2009	Legal
Are 'Sext' Messages a Teenage Felony or Folly?	Wall Street Journal - Eastern Edition	4/8/2009	Legal
Teen texting presents challenges for law enforcement	Herald & Review, (Decatur, IL)	2/27/2010	Legal
Sending of Explicit Photos Can Land Teens in Legal Fix	The Washington Post	5/7/2009	Legal
Prosecutors Gone Wild.	New York Times	3/25/2010	Legal
Supreme Court takes up 'sexting' privacy case.	Christian Science Monitor	4/19/2010	Legal
Bradley school board adopts 'sexting' policy	Chattanooga Times/Free Press (TN)	11/13/2010	School Issue
School out of lawsuit on 'sexting'	The Times Leader, (Wilkes-Barre, PA)	9/16/2010	School Issue
'Sexting' common among Kanawha middle schoolers	The Charleston Gazette, (WV)	7/7/2010	School Issue
Educator accused of sexting teen	The Philadelphia Daily News, (PA)	9/15/2010	School Issue
'Sexting' on rise at schools: Tucson students collecting racy photos of their classmates 'like baseball cards'	Arizona Daily Star (Tucson, AZ)	3/7/2010	School Issue
Students face 'sexting' charges	Houston Chronicle (TX)	6/4/2010	School Issue
Sexting exposes Lubbock teens, preteens to trouble	Lubbock Avalanche Journal (TX)	3/28/2010	School Issue
Sedalia school assemblies aim to educate students about consequences of sexting	The Sedalia Democrat, (MO)	8/31/2010	School Issue
Courts, schools hit with 'sexting'	The Roanoke Times, (VA)	3/21/2010	School Issue
Warning sent to cyberbullies, sexting students	Las Vegas Review-Journal, (NV)	4/30/2010	School Issue

CHS students get 'sexting' warning: Capt. Dan Hally of the Asotin County Sheriff's Office outlines consequences of sexually explicit text messages	Lewiston Morning Tribune, (ID)	11/26/2010	School Issue
'Sexting' creates privacy, safety issues at schools	Arizona Daily Star, (Tucson, AZ)	3/7/2010	School Issue
Program to focus on 'sexting,' other dangers to children: Lou Brock to take part in presentation at Alton High	The Telegraph, (Alton, IL)	4/17/2010	School Issue
Students, parents warned about cell phone 'sexting': Sending nude photos via text messaging can have long-lasting consequences, officials note	The Day, (New London, CT)	11/19/2009	School Issue
Palmview High School student faces felony charge after alleged 'sexting'	The Monitor, (McAllen, TX)	5/4/2010	School Issue
Questions arise in La Joya schools 'sexting' case	The Monitor, (McAllen, TX)	5/5/2010	School Issue
Eagle Point teens cited in 'sexting' episode	Mail Tribune (Medford, OR)	12/18/2009	School Issue
Seven middle schoolers suspended in sexting incident	The Gazette, (Colorado Springs, CO)	2/4/2010	School Issue
Sexting, cyber bullying challenges LI schools	Newsday, (Melville, NY)	1/13/2010	School Issue
School parents hear about Internet, sexting dangers: Presentation at Heights Elementary is a learning experience	Lewiston Morning Tribune, (ID)	2/10/2010	School Issue
Howell students cell phones confiscated due to sexting images	Victoria Advocate, (TX)	2/26/2010	School Issue
'Sexting' probed at Bethesda school	The Washington Post	4/16/2010	School Issue
Local educators discuss how to prevent sexting	The Beaumont Enterprise, (TX)	1/28/2010	School Issue
New Henry County Schools cell policy addresses ?sexting?	The Dothan Eagle, (AL)	5/22/2009	School Issue
Richmond-area localities response to sexting varies	Richmond Times-Dispatch, (VA)	5/2/2009	School Issue

Community High School students debate sexting with teachers, others	The Milwaukee Journal Sentinel, (WI)	5/16/2009	School Issue
Area parents take notice of sexting	Richmond Times-Dispatch, (VA)	5/17/2009	School Issue
Programs alert young people to dangers of 'sexting,' Internet postings	Pittsburgh Tribune Review, (PA)	9/20/2009	School Issue
Students face 'sexting' charges: Spotsylvania has received several reports of the new texting trend, but today's charges mark the first case to be prosecuted, police say.	The Free Lance-Star, (Fredericksburg, VA)	3/10/2009	School Issue
HISD to students: No sexting, or else	Houston Chronicle (TX)	7/14/2009	School Issue
High schoolers reminded of 'sexting' dangers, now and down the road: Pontiac students attend Wednesday assembly	The Pantagraph, Bloomington, (IL)	4/30/2009	School Issue
Expulsion hearing to continue for Whitnall student suspected in sexting case	The Milwaukee Journal Sentinel, (WI)	10/15/2009	School Issue
Argenta-Oreana students learn about far-reaching effects of 'sexting'	Herald & Review, (Decatur, IL)	5/16/2009	School Issue
The Dangers Of 'Sexting': School Officials Invite Prosecutor to Discuss Legalities of Cell Phone Pictures With Students	The Chronicle, (Centralia, WA)	3/26/2009	School Issue
'Sexting' scrutiny	Wytheville Enterprise, (VA)	5/1/2009	School Issue
Another 'sexting' incident reported in Westmoreland	Tribune-Review, (Greensburg, PA)	1/27/2009	School Issue
West Allis students face suspension in sexting case	The Milwaukee Journal Sentinel, (WI)	3/28/2009	School Issue
A Lawyer, Some Teens and a Fight Over 'Sexting.'	Wall Street Journal - Eastern Edition	4/21/2009	School Issue
'Sext' education: officials warn of dangers: Officials explain the dangers	Connecticut Post, (Bridgeport, CT)	10/8/2009	School Issue
Pontiac police look to deter risque pics sent by teen phones	The Pantagraph, Bloomington, (IL)	4/30/2009	School Issue
Technology Leapfrogs Schools and Jurisdictions.	New York Times	12/17/2009	School Issue

Schools work to stop the wrong messages with technology	Northeast Mississippi Daily Journal, (Tupelo, MS)	11/4/2009	School Issue
Explicit texts, social networks challenge schools	Newsday, (Melville, NY)	1/14/2010	School Issue
Texting + Sex = Teens flirting with porn	The Buffalo News, (NY)	1/25/2009	School Issue