Risk Management Concerning Information Technology In Schools

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Concepts of Risk Management

- What do we mean by the term “risk management”?
- Risk management contemplates identifying certain risks of legal exposure and developing and implementing strategies to control and reduce that risk.
  - Typically identified in regard to premises liability, negligence, sexual harassment, etc.
  - Risk management is critical to insurance carriers and the existence of such programs may affect the school’s rating and premium.

Risk Management Concerning Information Technology Issues

- Increasing use of IT → increasing legal exposure
- Prevalence of computer and Internet technology bring an assortment of issues to the table:
  - Student safety when using computer networks
  - Cyberbullying and harassment, including sexual harassment
  - Unsupervised communications between faculty and students
  - Potential Internet use that risks school resources
  - Information and identity theft → FERPA issues
  - Student access to inappropriate/harmful material

Focus on Four Particular Risks

1. Student Cyberbulling and harassment
   a) Implications under Title IX, Section 504, and NYHRL
2. “Sexting” – Transmitting nude/semi-nude images of self to others
   a) Implications under child pornography laws
   b) Negligence overtones for failure to address
3. Online communications between faculty and students
4. Staff activities online and staff visiting inappropriate websites using school computers

Overarching Risk Management Tools

1. AUP
   - First step in risk management
   - Six elements to the AUP: (1) Preamble, (2) Policy Statement, (3) Definitions, (4) Acceptable Uses, (5) Unacceptable Uses, (6) Penalties
2. Education
   - Place the AUP in context and teach the rationale behind it.
   - Get student/faculty buy-in.
   - Ensure it is fully understood and diffuse defenses
3. Possible Technological Solutions
4. Maintain a Culture Inconsistent with Such Misuse

Cyberbullying – What Is It?

- Cyberbullying:
  - deliberate, repeated, and hostile behavior directed to one or more persons by a person or group
  - that is intended to harm
  - and which uses information and communication technologies (*e.g.*, e-mail, cell phones, instant messaging and chat applets)
  - to transmit, post, or publish defamatory, demeaning, and/or harassing material directed toward one or more individuals and which is published or unavailable to one or more persons via the Internet and/or use of a computer network.

The Prevalence of Cyberbullying

- 33% of males and 36% of female students have been the victim of cyberbullying/harassment.
  - Chat rooms were the most common online location.
- 18% of males and nearly 16 percent of females report having engaged in cyberbullying behavior.

The Prevalence of Cyberbulling

- Among Middle School Students:
  - 9.4% of responding middle school students said they had been victimized by cyber-bullying within the past 30 days;
  - 17.3% said they had been a victim of cyber-bullying at some time in their life;
  - 8.2% of the responding students said they had engaged in cyberbullying behavior within the past 30 days; and
  - 17.6% said they had cyberbullied someone within their lifetime.

Cyberbullying – The Risks

- Connotations of sex, race, etc., evoke potential liability under State and/or Federal statute
- Failure to address, although school had notice, could also lead to negligence liability
  - Duty to protect students from misuse of school equipment
  - Several foreseeable injuries could come from the failure to act
    - Loss of educational opportunities
    - Psychological/emotional injuries
    - Self injury

Toolbox for Cyberbulling

- **AUP**
  - Specifically prohibits use of equipment to harass or demean
  - Penalties from loss of privileges to suspension
- **Anonymous peer-reporting**
  - Downsides:
    - cost
    - Creates obligation to act
  - Upside:
    - Provides means of monitoring student behavior
- **Education**
  - Effects of cyberbullying
    - Psychological/emotional
    - Range of dissemination
  - Code of Conduct
- **Offender monitoring**
  - Once you know a student is a problem, keep and eye on him/her
  - Regularly check with victim to ensure harassment hasn't resumed

Dangerous Online Behavior

- 64% of the responding teenagers said they do things online they do not want their parents to know about
- 79% said they are not careful enough when giving out information about themselves online
- 20% of teens reported having sent or posted nude or images of themselves and about 39% had sent sexual text messages
  - 11% of girls sending images were 13-16 years old;
- 48 % had received such communications
- About 40% said it’s common to share such images/messages with people for whom they were not intended.

Sexting – Why Is This Your Issue?

- If you have notice, and fail to respond by apprising parents and ceasing further transmission of images/material
  - Breach of duty to notify parents or protect student
  - Deliberate indifference to a sexually hostile educational environment
  - Contribution to the delinquency of a minor
  - Sexual Exploitation of Children Act issues

Sexting – Why Is This Your Issue?

- Do you have notice?
  - You may have constructive notice:
    - Commonly teacher-held misperceptions of confidentiality and failure to report
    - Notoriety of images in school community
  - You may have actual notice:
    - Reports from other students
    - Discovery by IT personnel, etc.
- Obligation to act
  - A court could conclude that a school having notice of such misconduct, but having failed to credibly act was a breach of its obligation to act as a reasonably prudent parent

Toolbox For Avoiding Sexting in Your School

- AUP & Code of Conduct strictly prohibit
- Provide anonymous peer- reporting system
- Provide training
  - for teachers about gravity of conduct and obligation to report
  - Students concerning illegality and injury

- AUP & Code Of Conduct prohibits camera capable cell phones
- Protocol for teachers and staff when material discovered
  - Remember, this may be a crime – notify law enforcement or Hotline
  - Preserve evidence, but did not take possession
  - Immediate notification of parents

Power Tools

www.Netsmartz.org

- Operated by the National Center for Missing and Exploited Children
- A free and comprehensive educational site
  - Videos, classroom teaching materials and even complete presentations
- Resources for:
  - Parents
  - Educators
  - Children
  - Teens
  - Law Enforcement

RespectED

- Canadian Red Cross Violence and Abuse Prevention
  - Child Abuse Prevention
  - Open Your Eyes to Sexual Exploitation
  - 10 Steps to Keeping Young People Safe
  - Stand up to Bullies
    - Witnesses

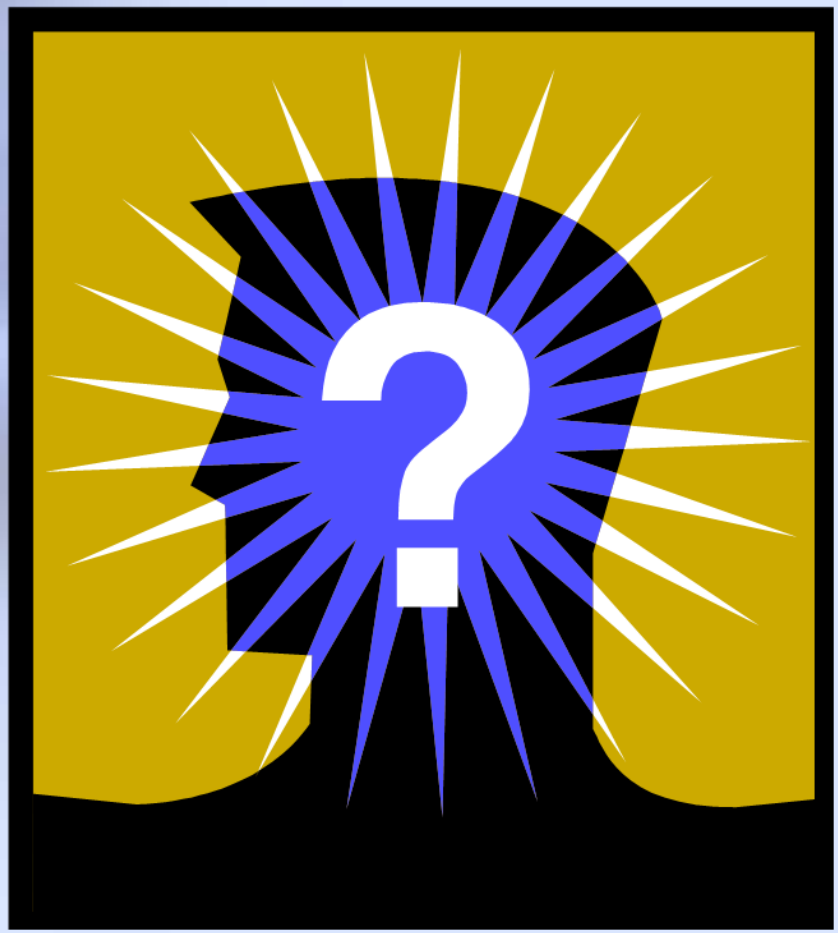
http://www.redcross.ca/article.asp?id=000294&tid=030

http://www.redcrossyouth.ca

Unmonitored Faculty-student Online Communication

- Inappropriate relationships remains a significant issue in education.
- When a school has warnings that such a relationship exists and it takes an effective or no action, it may breach duty to parents.
- Part 83 requires certified educators to report to SED any such instance
  - Creates potential for negligence per se
- Substantial potential for significant injury to school reputation.

Toolbox for Faculty-Student Online Communication

- Personnel policies & Staff AUP:
  - Only communications directly related to educational duties.
  - E-mail/files are school's property.
  - Social networking sites may be used only when with prior approval and provided access.
- Regular and unannounced monitoring of social networking sites, teacher websites, and e-mails.
- In-service for faculty regarding appropriate student relationships.
  - Unacceptable boundaries
  - Unacceptable out-of-school contact
- Educate students on appropriate faculty-student communications and behavior.
- Provide an anonymous reporting system
- Protocol for immediate reporting of inappropriate communications or relationships.

Questions and Answers