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National and local guidance in relation to the Covid 19 pandemic may over rule aspects of this policy.

Oldbury Academy

Sexting & Offensive

Material Policy

To be reviewed: September 2022

Sexting and Offensive Material Policy

Rationale

Oldbury Academy deems sexting as inappropriate and unsafe behaviour which threatens the social, emotional and/or physical safety of students. Although sexting is typically voluntary at first, it raises many serious legal and social concerns, especially when the images are spread beyond the control of the sender.

Sexting can result in humiliation, bullying and harassment of students. Sexting is also illegal – classified as the sharing of pornographic images.

Oldbury Academy has a responsibility to prevent sexting and the dissemination of inappropriate or offensive material and to educate both students and staff about both the legal and social dangers of sexting.

Purpose

This policy aims to provide a guide to staff about the steps that need be taken if there is a suspicion or a report of sexting occurring amongst our student body.

Procedure when dealing with an incident

Often, the first port of call for a student is a class teacher. Whomever the initial disclosure is made to must act in accordance with the academy's child protection policy, ensuring that a member of the child protection team is involved in dealing with the incident.

The child protection officer alerted should always record the incident. There may be instances where the image needs to be viewed and this should be done in accordance with protocols. In most cases it will not be necessary to watch the video or see the picture – if it is necessary it must be done by a DSL or member of SLT of the same sex and with a witness present. The best interests of the child should always come first; if viewing the image is likely to cause additional stress, professionals should make a judgement about whether or not it is appropriate to do so.

Definition

The term 'sexting' is derived from texting and refers to the sending of sexually provocative material (including photos, videos and sexually explicit text) from modern communication devices or applications, such as mobile phones, tablets, email, social networking sites and instant messaging services. This document is concerned specifically with 'sexting' – the images or videos generated

- by children under the age of 18, or
- of children under the age of 18 that are of a sexual nature or are indecent

These images are shared between young people and/or adults via a mobile phone, handheld device or website with people they may not even know.

Sexting can generally be categorised into two categories: *Aggravated and Experimental*

Aggravated incidents of sexting involve criminal or abusive elements beyond the creation of an image. These include further elements, adult involvement or criminal or abusive behaviour by minors such as sexual abuse, extortion, threats, malicious conduct arising from personal conflicts, or creation or sending or showing of images without the knowledge or against the will of a minor who was pictured.

Experimental incidents of sexting involve young people taking pictures of themselves to share with established boy or girlfriends, to create romantic interest in other youth, or for reasons such as attention seeking. There was no criminal element (and certainly no criminal intent) beyond the creation and sending of the images and no apparent malice or lack of willing participation.

Legal Implications for Students

It is important to be aware that young people involved in sharing sexual videos and pictures may be committing a criminal offence. Specifically, crimes involving indecent photographs (including pseudo images) of a person under 18 years of age fall under Section 1 of the Protection of Children Act 1978 and Section 160 Criminal Justice Act 1988. Under this legislation it is a crime to:

- take an indecent photograph or allow an indecent photograph to be taken;
- make an indecent photograph (this includes downloading or opening an image that has been sent via email);
- distribute or show such an image;
- possess with the intention of distributing images;
- advertise; and
- possess such images.

While any decision to charge individuals for such offences is a matter for the Crown Prosecution Service, it is unlikely to be considered in the public interest to prosecute children. However, children need to be aware that they may be breaking the law. Although unlikely to be prosecuted, children and young people who send or possess images may be visited by police and on some occasions media equipment could be removed. This is more likely if they have distributed images. This includes the young person where they have taken a photograph or video of themselves and then shared it.

The decision to criminalise children and young people for sending these kinds of images is a little unclear. The current Association of Chief Police Officers (ACPO) position is that:

‘ACPO does not support the prosecution or criminalisation of children for taking indecent images of themselves and sharing them. Being prosecuted through the criminal justice system is likely to be upsetting and distressing for children especially if they are convicted and punished. The label of sex offender that would be applied to a child or young person convicted of such offences is regrettable, unjust and clearly detrimental to their future health and wellbeing.’

However, there are cases in which children and young people have been convicted. The important thing to remember is that whilst staff will want to consider the implications of passing an incident over to the police, it is not the responsibility of staff to make decisions about the seriousness of the matter. Clearly, if it is a case that involves an adult, the process and potential outcome will be very different. Safeguarding procedures will need to be followed and great care taken to carefully manage the staff, pupils and the wider school community.

Essentially, though, sexting is classed as illegal as it constitutes sharing and/or possessing an indecent image of a child.

The risks to young people

Sexting is a behaviour that young people often engage in without understanding the full consequences. It is essential, therefore, that they understand the legal implications and the impact on others.

The initial risk posed by sexting primarily comes from peers, friends and others in their social network rather than from strangers or adults. Once images are in the public domain, young people may then be subjected to additional risks. It is also important to recognise that sexting does not refer to one single activity: it can have multiple facets and activities including being connected to sexual pleasure. However, something that transpires online can quickly spiral out of control as it becomes freely available in the public domain. It can then be transferred, forwarded, downloaded, uploaded and shared.

Young people are also essentially taking risks with their futures. Increasingly employers, universities and colleges are doing 'digital digging' – they are looking at profiles, searching for names and asking questions about the online profile of potential recruits.

Children can also be criminalised for incidents of sexting. Though unusual, there is a risk that sharing, possession and uploading of an indecent image can result in a young person being prosecuted under the Sexual Offences Act (2003) and the Protection of Children Act (1978).

It can also significantly affect the mental health and social interactions of young people. Once the image is in the public domain, it is difficult to control, to know who has seen it and what they have done with it. This can lead to feelings of paranoia and isolation during a crucial stage of a teenager's development, when they need to build up their self-esteem.

The risks to victims, bystanders and perpetrators are different but all three contain a degree of risk that can leave a young person in a vulnerable state and can significantly affect their future.

Implementation

Sexting disclosures should follow the normal safeguarding practices and protocols at Oldbury Academy. A student is likely to be very distressed especially if the image has been circulated widely and if they don't know who has shared it, seen it or where it has ended up. They will need pastoral support during the disclosure and after the event. They may even need immediate protection or a referral to social services.

This situation will need to be handled very sensitively. Whatever the nature of the incident, the school will need to ensure its safeguarding and child protection policies and practices are adhered to.

The following questions will help decide upon the best course of action:

- Is the student disclosing about themselves receiving an image, sending an image or sharing an image?
- What sort of image is it? Is it potentially illegal or is it inappropriate?
- How widely has the image been shared and is the device in their possession?
- Who does the device belong to?
- Does the student need immediate support and or protection?
- Are there other students and/or young people involved?
- Do they know where the image has ended up?

Any disciplining of students involved in sexting is at the discretion of the Pastoral Team and will depend on the specific details of the situation. If the sexting is deemed to be aggravated, then the student will be disciplined in accordance with the academy's Behaviour and Discipline policy. If the sexting is deemed experimental, a lesser course of action will follow, in either case parents will be informed and if applicable counselling may be provided for Students involved in sexting.

Guidance for Staff

Searching a device – what are the rules?

In the context of Oldbury Academy, it is highly likely that the image will have been created and potentially shared through mobile devices. It may be that the image is not on one single device: it may be on a website or on a multitude of devices; it may be on either an academy-owned or personal device. It is important to establish the location of the image but be aware that this may be distressing for the young person involved, so be conscious of the support they may need.

The revised Education Act 2011 brought to bear significant new powers and freedoms for teachers and schools. Essentially, the Act gives schools and/or teachers the power to seize and search an electronic device if they think there is good reason for doing so.

The Searching, Screening and Confiscation advice highlights that schools have the power to search pupils for devices, search data on devices and delete youth produced sexual imagery. This applies to all schools and there is no need to get parental consent. It would be expected that a DSL was present.

A device can be examined, confiscated and securely stored if there is reason to believe it contains indecent images or extreme pornography. When searching a mobile device the following conditions should apply:

- The action is in accordance with the academy's child protection and safeguarding policies
- The search is conducted by the head teacher or a person authorised by them
- A designated child protection officer is present or has given authorisation
- The search is conducted by a member of the same sex and witnessed by another member of staff

If any illegal images of a child are found the school should consider whether to inform the police.

Taking into account the ACPO position [see Legal Implications for students], as a general rule it will almost always be proportionate to refer any incident involving "aggravated" (see definition) sharing of images to the police whereas purely "experimental" (see definition) conduct may proportionately be dealt with without such referral, most particularly if it involves the child sharing images of themselves.

There should be due consideration to the wider context – if there are previous concerns regarding the child, possibly of a Child Protection nature then a MARF form would be a reasonable response. Parents should be notified early in the process.

Any conduct involving, or possibly involving, the knowledge or participation of adults should always be referred to the police.

If an "experimental" incident is not referred to the police the reasons for this should be recorded in writing.

Always put the child first. Do not search the device if this will cause additional stress to the student/person whose image has been distributed. Staff should be aware of the following

Never

- Search a mobile device even in response to an allegation or disclosure if this is likely to cause additional stress to the student/young person UNLESS there is clear evidence to suggest that there is an immediate problem
- Print out any material for evidence
- Move any material from one storage device to another

Always

- Inform one of the child protection officers
- Record the incident
- Act in accordance with the Academy's safeguarding and child protection policies and procedures
- Seek permission from the child protection officers or a member of the senior management team about the alleged incident before searching a device

In most circumstances where it is alleged that a pupil has an indecent image on their phone the most appropriate course of action is to allow the pupil to locate and delete the image.

If there is an indecent image of a child on a website or a social networking site then you should report the image to the site hosting it. Under normal circumstances you would follow the reporting procedures on the respective website; however, in the case of a sexting incident involving a child or young person where you feel that they may be at risk of abuse then you should report the incident directly to CEOP www.ceop.police.uk/ceop-report, so that law enforcement can make an assessment, expedite the case with the relevant provider and ensure that appropriate action is taken to safeguard the child.

What to do and not do with the image

If the image has been shared across a personal mobile device:

Always

- Confiscate and secure the device(s). In most instances it would be most appropriate for the pupil to locate and delete the images or video stored.

Never

- View the image unless there is a clear reason to do so
- Send, share or save the image anywhere
- Allow students to do any of the above

If the image has been shared across the academy network, a website or a social network:

Always

- Block the network to all users and isolate the image

Never

- Send or print the image
- Move the material from one place to another
- View the image outside of the protocols in your safeguarding and child protection policies and procedures.

Dealing with the Incident and deciding on a response

There may be a multitude of reasons why a student has engaged in sexting – it may be a romantic/sexual exploration scenario or it may be due to coercion.

It is important to remember that it won't always be appropriate to inform the police; this will depend on the nature of the incident (see definitions). However, as an academy it is important that incidents are consistently recorded. It may also be necessary to assist the young person in removing the image from a website or elsewhere.

If indecent images of a child are found:

- Act in accordance with your child protection policy, e.g. notify one of our child protection officers /pastoral team
- Store the device securely
- Carry out a risk assessment in relation to the young person and any necessary investigation.
- Make a referral if needed
- Contact the police (if appropriate)
- Put the necessary safeguards in place for the student, e.g. they may need counselling support, immediate protection and parents must also be informed.
- Inform parents and/or carers about the incident and how it is being managed.

Contacting other agencies (making a referral)

If the nature of the incident is high-risk, consider contacting your local children's social care team. Depending on the nature of the incident the school may choose to contact the police or refer the incident to CEOP.

Understanding the nature of the incident will help to determine the appropriate course of action. (Refer to definitions)

Having considered a range of cases you may find that your reaction to incidents of 'sexting' is being challenged by the contributory factors that surround each case and that a 'one size fits all approach' may not work. For example, consider:

- the age and the developmental appropriateness of their actions: is the activity appropriate for their age group or is it extreme behaviour? Teenagers will experiment – but what about a younger child? Are you concerned that the behaviour is outside the norms?
- their background or context: have they suffered abuse? Are they a looked after child or a vulnerable child? Have they been involved in the criminal justice system? Could their actions have been influenced by the behaviour of influential adults?
- whether the child was willing or coerced: were they subjected to sexual coercion or bullying, or was the incident willingly entered into? Were adults involved?
- the nature of the image that was shared: how provocative or explicit was it? Does it break the law, i.e. is it a child sex abuse image?
- the level of dissemination: how widely was the image shared and with whom? How was it passed around?
- participant intent/motive: was it simply a 'romantic' gesture? Or was there intent to harm another? What other motive might there be? Was there sexual attention seeking?
- the wellbeing of those involved: depending on the answers to some of the questions above, you should risk-assess the situation in order to work out whether you need to escalate the issue to protect those involved.
- whether protection, education or counselling is required related to the level of risk. Does what may be a silly juvenile incident warrant a criminal record?
- urgency and timing: again relevant to the level of risk - for example, an incident taking place last thing on a Friday may escalate over the weekend
- involvement of other schools/academies: does the school need to contact the senior management team at another school if the sexting involves, or has been disseminated to, pupils there?

The purpose of these additional considerations is to identify the kind of support that may be required, such as:

- whether the young person needs protecting and if so, in what way;
- whether they, their parents and/or other children in the academy need educating about the risks and issues;
- whether the young person needs counselling support services or child protection input

Essentially, every incident is unique and the designated member of staff will consider each one in context.

Conclusion

Sexting is a complicated and sensitive issue for all schools– there is no single solution and the consequences for young people, their families and the academy can be devastating.

How these incidents are handled presents specific challenges. New technologies offer great learning opportunities but the ease with which children and young people can share and upload images allow little time for consideration of the consequences of actions which may go hand in hand with adolescent development.