

Essex County Prosecutor's Office  
Cyber Crimes Unit

# Anti-Bullying Bill of Rights Act, 2011

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*“It is the intent of the Legislature in enacting this legislation to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises.”*

A Uniform State  
**Memorandum of Agreement**  
Between Education and Law  
Enforcement Officials

2011

*Approved by the New Jersey Department of Law & Public  
Safety and the New Jersey Department of Education*

# Memorandum of Agreement “MOA”

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- Following the enactment of the ABR, a revised MOA between Education and Law Enforcement Officials was distributed by the Attorney General. The MOA recognized that conduct that can be defined as “bullying” may also constitute a crime under the criminal code.
- Pursuant to this, and previous versions of the MOA, school officials agree to report crimes to law enforcement

# Selected provisions on Reporting Requirements

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## REPORTS TO LAW ENFORCEMENT

School officials must *immediately* notify law enforcement of incidents involving:

- Firearms, Article 4.6

# Firearms

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- School shall immediately contact LE; secure item until LE arrives; and provide info to LE re: chain of custody and how/where item discovered. *Article 4.6*
- **Upon receiving such reports, Law Enforcement shall:**
  - ↳ *immediately* respond to school to take custody of weapon. *Article 4.8*
  - ↳ make reasonable efforts to arrest student believed to possess weapon off school grounds, unless not feasible. *Article 4.9 (See 7.4)*

# Selected provisions on Reporting Requirements

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## REPORTS TO LAW ENFORCEMENT

School officials must *immediately* notify law enforcement of incidents involving:

- Firearms, Article 4.6
- *Planned or Threatened Violence, Article 4.10*

# Planned or Threatened Violence

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➤ *Immediate notification to LE when:*

“[A]ny school employee in the course of his or her employment develops reason to believe that anyone has threatened, is planning, or otherwise intends to cause death, serious bodily injury, or significant bodily injury to another person under circumstances in which a reasonable person would believe that the person genuinely intends at some time in the future to commit the violent act or to carry out the threat.”

*Article 4.10*



## Planned or Threatened Violence, cont'd

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- *Immediate notification to LE required even if*
  - Act of violence is not imminent
  - Intended victim doesn't know about threat
  - Intended victim isn't student or otherwise affiliated with school
  - Threatened act is not to be on/about school *Article 4.10*

Upon receipt of such information, LE agrees to “promptly dispatch an officer, or immediately dispatch an officer where the circumstances so warrant...to undertake an investigation and to take such actions as may be appropriate as necessary to prevent threatened, planned, or intended act of violence from occurring.” *Article 4.11*

# Selected provisions on Reporting Requirements

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## REPORTS TO LAW ENFORCEMENT

School officials must *immediately* notify law enforcement of incidents involving:

- Firearms, *Article 4.6*
- Planned or Threatened Violence, *Article 4.10*
- **Sexual Offenses**, *Article 4.12* – includes acts of penetration and criminal sexual contact

# Selected provisions on Reporting Requirements

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## REPORTS TO LAW ENFORCEMENT

School officials must *immediately* notify law enforcement of incidents involving:

- Firearms, *Article 4.6*
- Planned or Threatened Violence, *Article 4.10*
- Sexual Offenses, *Article 4.12*
- **Controlled Dangerous Substances** (with certain exceptions; see NJAC 6A:16-6.3(A)(3), *Article 4.1*)

# Controlled Dangerous Substances (CDS) offenses

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- School officials *shall* promptly notify LE of CDS when they have “reason to believe” such an offense has occurred, *Article 4.1* (with exceptions)
- Disclose identity of student in possession or involved/implicated in distribution
- Immediately notify LE upon seizing or coming upon (suspected) CDS, and preserve item(s) pending LE response
- LE “shall dispatch officer as promptly as possible to take custody and secure the CDS or drug paraphernalia.” *Article 4.5*
- School will detail chain custody to LE

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- Sexual Offenses, *Article 4.12*
- Controlled Dangerous Substances (with certain exceptions; see NJAC 6A:16-6.3(A)(3), *Article 4.1*
- Offenses involving Computer, the Internet and Technology, *Articles 4.20.2-4.20.3*

## Offenses involving Computers, the Internet & Technology

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“The purpose of this section of the memorandum is to recognize some of the areas where law enforcement and education professionals should cooperate to ensure a unified response to the illicit and harmful use of technology by students, teachers, administrators and other school staff.”

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“...when notification to law enforcement is appropriate, the entirety of the investigation should be conducted by law enforcement so as not to compromise the integrity of potential evidence.”

MOA, *Article 4.20*

# Offenses involving Computers, the Internet & Technology

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Examples of areas “where law enforcement and education professionals should cooperate to ensure a unified response...”:

- **Unauthorized access** to school networks Harassment and threats via electronic media
- Use of technology to facilitate other crimes
- Blogging (free speech)
- Limitation of electronic devices, such as cell phones, cameras, on school grounds

# Offenses involving Computers, the Internet & Technology

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Unauthorized access – think of hacking, key loggers, changing grades, etc.

- MOA recognizes that this is a crime, and is *not an internal matter*.
- Law enforcement have trained forensic analysts – different skills than IT
- Notification is to be made to law enforcement IMMEDIATELY.
- Cell phones and other devices “should be turned over to the police, not parents, when the school comes into possession of items which they suspect may contain evidence of criminal behavior.” *Article 2.20.2*
  - Examples: “sexting,” text messages containing terroristic threats, etc.



# Where is the evidence?

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- Device?
- Online service provider?
- Cellular telephone service provider?

## Preservation of Evidence; Chain of Custody

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Documents, electronic devices, etc where such items may contain evidence of a crime, or of harassment, intimidation or bullying, employees must take precautions to ensure the safety and security of the item(s) to prevent the possibility of theft, destruction or unlawful use by another.

# Selected provisions on Reporting Requirements

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- Signs of gang activity or recruiting observed on school grounds

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Reporting Other offenses, Article 4.13

# Selected provisions on Reporting Requirements

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## Reporting other offenses

School officials *should* notify law enforcement, “whenever any school employee develops reason to believe that a criminal offense has been committed on or against school grounds, including on school buses or at school-sponsored functions.” In deciding whether to contact law enforcement, school official(s) should evaluate:

- Nature and seriousness of the offense
- Risk that the offense posed to health or safety of other students, school employees or general public.
- Possibility that offence committed on school grounds involving students may result in escalation of violence at another location/time.
- School employees shall not prevent or discourage victim from reporting incident to law enforcement.

# Selected provisions on Reporting Requirements

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Reporting Other offenses, *Article 4.13*

Child Abuse or Neglect; Potential Missing or Abused Children, *Article 4.19*

# Child Abuse or Neglect

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## N.J.S.A. 9:6-8.10. REPORTS OF CHILD ABUSE:

Any person having **reasonable cause** to believe that a child has been subjected to child abuse or acts of child abuse **shall** report the same immediately to the Division of Youth and Family Services by telephone or otherwise.

### **MOA, Article 4.19.7**

- Give “heightened scrutiny” to “[s]udden requests for school records accompanied by suspicious absences”
- When school learns that student may be absent due to parental kidnapping or custodial interference, school should immediately contact LE

# Selected provisions on Reporting Requirements

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Child Abuse or Neglect; Potential Missing or Abused Children, Article 4.19

“Bias” Crimes and “Bias-Related” Acts, Article 8.4.1



# Selected provisions on Reporting Requirements

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Child Abuse or Neglect; Potential Missing or Abused Children, *Article 4.19*

“Bias” Crimes and “Bias-Related” Acts, *Article 8.4.1*

Hazing, *Articles 8.5 – 8.5.2*

# Immunity from Liability for Reporting

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## N.J.S.A. Title 9:6-8.13. PERSON MAKING REPORT; IMMUNITY FROM LIABILITY; ACTION FOR RELIEF FROM DISCHARGE OR DISCRIMINATION

Anyone acting pursuant to this act in the making of a report under this act shall have immunity from any liability, civil or criminal, that might otherwise be incurred or imposed. Any such person shall have the same immunity with respect to testimony given in any judicial proceeding resulting from such report.

A person who reports or causes to report in good faith an allegation of child abuse or neglect pursuant to section 3 of P.L.1971, c. 437 (C. 9:6-8.10) and as a result thereof is discharged from employment or in any manner discriminated against with respect to compensation, hire, tenure or terms, conditions or privileges of employment, may file a cause of action for appropriate relief in the family part of the Chancery Division of the Superior Court in the county in which the discharge or alleged discrimination occurred or in the county of the person's primary residence.

If the court finds that the person was discharged or discriminated against as a result of the person's reporting an allegation of child abuse or neglect, the court may grant reinstatement of employment with back pay or other legal or equitable relief.

# Notification of Parents or Guardians

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\*\* If a parent/guardian is alleged to be a suspect in the abuse, school officials SHALL NOT notify either parent or guardian.

i.e. if father is suspected of abusing daughter,  
school may not notify the victim's mother.

\*\* Law enforcement, and only law enforcement, decide when and whether a parent or guardian of a student shall be contacted under these circumstances.

**“Failure to follow this procedure may compromise the integrity of an investigation and place the child at risk.”**

# Basis for Reporting

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- MOA *does* require reporting upon school officials' having a **reason to believe** a specified crime has taken place.
- ABR and MOA do not call for investigation to obtain additional proof before referral to LE; only “reason to believe” standard.

# Disclosure of Information during Investigation

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LE Agency/Prosecutor agree to verbally notify the principal when a student is the subject of an investigation or in custody but not yet charged. Provided that:

- LE/Prosecutor deem it necessary (per *Article 5.3*) and where sharing the information will not impact the investigation/prosecution.
- Notification will be conveyed verbally, kept confidential by the school, and “shall not be maintained by the school as part of the juvenile’s student records.”
- School may use of information to suspend or otherwise discipline student

*Article 5.3*

# LE Testimony at School Hearings

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- LE Officers are to be made available to testify at Board of Education hearings, including those regarding expulsions or suspensions.
- Information provided by LE at hearings is to be kept confidential.
- County Prosecutor's Office must be notified in advance, and can prevent LE from testifying if it may interfere with any ongoing criminal investigation/prosecution

*Article 5.6*

# Anti-Bullying Bill of Rights Act, 2011

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*“It is the intent of the Legislature in enacting this legislation to strengthen the standards and procedures for preventing, reporting, investigating, and responding to incidents of harassment, intimidation, and bullying of students that occur in school and off school premises.”*

# Reporting HIB to Law Enforcement

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- Not all behavior that constitutes “bullying” must be reported to law enforcement.
- HOWEVER, if the conduct qualifies under the mandatory reporting requirements of the MOA, incidents must be reported to law enforcement.
- School officials agree to convey suspicions or evidence of bias or gang activity.
- Tell victims that they may contact law enforcement, but don’t classify incident as a criminal offense. This determination is best left to law enforcement.
- School employees shall not discourage victims from contacting law enforcement.



# The reality of reporting – it's easier than you think

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1. It is your duty to report and we are counting on you.
2. You will likely be asked to provide a statement.
3. Law enforcement understand your schedule; we will always attempt to accommodate you.
4. If you are a “fresh complaint witness” or other important witness, your cooperation is VITAL.
5. If you are a necessary witness and will not provide a statement your testimony may be compelled before a Grand Jury.

# Terminology...

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The Anti-Bullying Bill of Rights defines harassment, intimidation and bullying (“HIB”) as a gesture, written, verbal or physical act, or electronic communication, whether a single incident or a series of incidents where act is:

- motivated by an actual/perceived characteristics;
- on school property, function, school bus, or off school grounds;
- disruptive/interferes with operation of school or others’ rights; and that
- will effect actual or fear of physical/emotional harm to student or damage to student’s property; or
- insulting or demeans student/group; or
- creates a hostile educational environment for the student

## Differing Terminology and Approaches

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- No “HIB” or “bullying” in criminal code
- Incident can be “HIB” but not a crime.
- LE can only investigate HIB or bullying if conduct constitutes a crime.
- Schools only investigate conduct that falls within definition of HIB in ABR.
- HIB investigations are not bound by burdens of proof in criminal cases.

*Article 8.6.1*

# When is “bullying” a crime?

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There is no crime in the criminal code called “bullying” Crimes and offenses typically implicated by behaviors characterized in HIB incidents are:

- **Robbery, 2C:15-1**
- **Assault, 2C:12-1 et al.** (*Can be disorderly persons offense or felony (crime)*).
- **Sexual offenses, 2C:14-2, -3, -4**
- **Terroristic threats, 2C:12-3**
- **Harassment, 2C:33-2, et al.** (*Disorderly persons offense.*)
- **Hazing, 2C:40-3** (*Can be disorderly persons offense or felony (crime)*).

[Not referenced in MOA but also consider: “sexting” cases where photo is used to bully/harass student depicted; may constitute Child Pornography, the discovery of which must result in seizure of the device and reported to LE immediately.]

## Information Sharing, *Article 8.6.4*

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### Disclosing Reports of Bullying to Schools, *Article 8.6.4.1*

↪ LE must notify principal of school where alleged victim of bullying attends.

### Reporting HIB to Law Enforcement, *Article 8.6.4.2*

↪ Schools do not have to report ALL incidents of HIB – only where conduct is/may be crime and subject to mandatory or voluntary reporting provisions

### Preservation of Evidence & Chain of Custody, *Article 8.6.4.3*

Items/devices seized that may have evidence of HIB shall be secured and handling of items/devices documented

# All of this in 10 days?

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- Parallel investigations – different goals
- Coordinated effort is vital

# Coordination of Investigations

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- Previously, school's investigation awaited conclusion of criminal investigation.
- ABR requires completed investigation within 10 days
- For ABR, need only determine whether HIB took place, not whether crime occurred as well.
- LE may ask school not to do certain things, i.e. interview witnesses.
- School can only work with available information in preparing ABR report but **can reopen case with newly-received facts upon receipt.**
- “School officials agree to share information from the investigation with LE as appropriate.”
- County Prosecutor must be given witness list at least **5 days before ABR** hearings where criminal charges are pending against any student, **provided that principal has been notified of charges.**

*Article 8.6.5*

[End of review of selected provisions of MOA]



# NOT reporting

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## 9:6-8.14. VIOLATIONS INCLUDING FAILURE TO MAKE REPORT; DISORDERLY PERSON

It is a disorderly persons offense to knowingly violate the provisions of this act including the failure to report an act of child abuse having reasonable cause to believe that an act of child abuse has been committed.

## Effect of Technology on Education & Law Enforcement

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- Ease of contact between teachers & students
  - Promulgation of social media policies and restrictions on contact
- Ability of situations to “go viral”
  - Sexting
  - Cyber Bullying
- Location, preservation, and examination of evidence changes
  - Some evidence can never be taken back (e.g. sending/uploading photo)
  - Other evidence *may* be lost forever if not preserved (e.g. if deleted from website)

## Police: Triton Regional teachers accused of sexual relationships with students, principals covered it up

Published: Thursday, October 04, 2012, 4:11 PM Updated: Thursday, October 04, 2012, 5:11 PM



Jessica Beym/South Jersey Times

By



Camden County Prosecutor's Office will be having a press conference today about the arrests of three Triton teachers and two administrators.

Three Triton Regional High School teachers have been charged with official misconduct for having sexual relations with female students last spring and two administrators who reside in Gloucester County are accused of covering it up, the **Camden County Prosecutor's Office announced today**.

The three teachers at the Runnemede school are all men, and allegedly had sexual relationships with three female students between November 2011 and June 2012, the prosecutor's office announced at a press conference in Camden.

- Daniel Michielli, 27, of Blackwood, a math teacher, charged with official misconduct, criminal sexual contact, endangering the welfare of a child
- Nick Martinelli, 28, of Cherry Hill, Boys soccer coach and health teacher, charged with official misconduct
- Jeff Logandro, 32, of Blackwood, girls' cross country coach and math teacher, charged with official misconduct, criminal sexual contact, endangering the welfare of a child

Authorities said three different female victims were involved. Logandro and Michielli's alleged victims were under the age of 18, which is why they face the additional charges.

The regional high school's principal, Catherine DePaul, 55, of Deptford Township, and vice principal Jernee Kollock, 39, Williamstown, were charged for failing to report the alleged relations.

Authorities said one of the girls told a substitute that teachers from Triton were having sexual relations with students. The student and substitute met with DePaul to inform her about it. However, DePaul "failed to contact local law enforcement or the state Division of Children and Families and inform either of the allegations," the prosecutor's office said.

During the meeting with the student, DePaul allegedly had the student — who allegedly heard first-hand about the relationships — write down what she knew. Authorities said the vice principal stayed in the room with her and advised the student on what to write, even correcting the student's account, authorities allege.

The prosecutor's office said they were never notified about the allegations and that DePaul told investigators she was trying to protect the teachers.

# The New York Times

May 1, 2012

## **Social Media Rules Limit New York Student-Teacher Contact**

By DAVID W. CHEN and PATRICK McGEEHAN

# MailOnline

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## The man who sent sex text in error to ALL his contacts... and ended up in prison

- Craig Evans, 24, had been jailed for 18 months for inciting a child to engage in sexual activity
- Freed after judges hear the messages went out to all his contacts including members of his own family

By PAUL BENTLEY

PUBLISHED: 12:05 EST, 27 September 2012 | UPDATED: 18:33 EST, 27 September 2012

The 24-year-old swimming coach ended up in prison for sex offences after the text also found its way to two young schoolgirls. Evans had typed an intimate invitation to his girlfriend... **Among the recipients of the text were two girls aged 13 and 14, which led to Evans, who teaches swimming in a leisure centre, being arrested and charged with causing or inciting a child to engage in sexual activity.**

# Cautionary Tale...

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## **Ting-Yi-Oei, 60 yr old Assistant Principal at Virginia HS**

- Investigated rumors about sexting – found 16 yr old boy with picture of a young girl in her underwear w/arms wrapped around her breasts
- Principal told Oei to save photo on his computer as evidence; told boy to delete it
- Incident not reported to the authorities at that time
- 2 weeks later, boy was suspended for pulling down another female student pants
- Boy's mother learns of earlier incident with girl's photo
- When Oei refused to revoke suspension, mother told police about photo
- Oei charged with misdemeanor failure to report suspicion of child abuse
- Prosecutor says Oei must resign or face felony charge of possession of child pornography
- Oei refused to resign → indicted by GJ on possession of child pornography (!)
- Judge eventually granted motion to dismiss charges on grounds that photo was not so sexually explicit/lewd to rise to level of child pornography under VA state law.

All ends well: School board votes to reimburse him for legal fees & PTA throws a welcome back breakfast!

# Social Media – New Rules

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# The New York Times

December 17, 2011

## **Rules to Stop Pupil and Teacher From Getting Too Social Online**

By JENNIFER PRESTON



# The New York Times

May 1, 2012

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# Communications with Students

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## Common Sense Suggestions

- Do not “friend” or otherwise connect with your students via social media or other sites.
- All contact with students outside of school should be through parent(s) or utilizing school-approved system &/or school email address

# Common justifications for contact

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- Need to be reachable so students can notify me they will be late for class/sports.
  - Go through parent or other approved means.
- Need to communicate about homework.
  - Go through parent or other approved means.
- My Facebook privacy restrictions are sufficient
  - Privacy restrictions may change *without notification that is obvious to you* – DO NOT rely on a website to restrict what you think is inappropriate from students. Consequences may be severe.
- I would never do anything inappropriate
  - Simply having a student's cell phone number in your phone is a risk.

# What's the worst that could happen?

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- Inadvertent text to student instead of friend – use your imagination to envision the content

# MailOnline

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# What's the worst that could happen?

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- Inadvertent text to student instead of friend – use your imagination to envision the content
- Facebook changes their privacy settings again...

# What's the worst that could happen?

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- Inadvertent text to student instead of friend – use your imagination to envision the content.
- Facebook changes their privacy settings again...
- Inappropriate and inadvertent or purposeful text/photo/email from student to you – you must explain.

# Real Cases

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- Teacher's aide sent inappropriate (not sexual) texts to student whose name was purportedly in his phone from a field trip while out drinking with another teacher...He will never become a teacher.
- Teacher sends sexually and otherwise inappropriate texts to student – but there is no physical contact whatsoever. Teacher forfeited teaching license and has a felony conviction.

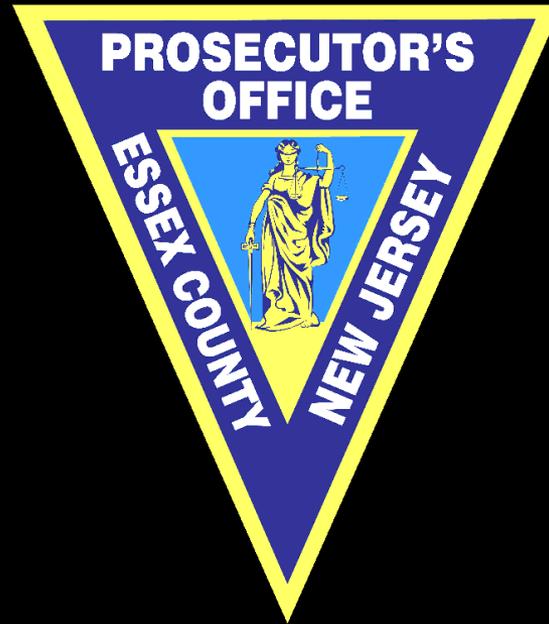


# Is it worth it?

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Consider the very serious ramifications of the worst case scenarios of inappropriate – **or what you may have thought was appropriate** – contact with a student.

**Proceed at your own risk.**



Essex County Prosecutor's Office  
Cyber Crimes Unit  
Tel. 973-266-7213