



Update on Video Cameras in Special Education Classrooms

Texas Education Code section 29.022 requires districts to conduct video and audio surveillance in certain special education classrooms or settings upon request. The statute is intended to protect students who, because of a disability, may not be able to report mistreatment by district employees or other students. This article provides legal guidance and answers to common questions regarding video and audio surveillance in special education, including recent changes to the law.

Q. Who can request video and audio surveillance in a special education classroom or setting?

A. A parent, staff member, principal, assistant principal, or the board of trustees may request in writing that the district install video and audio recording equipment in a self-contained classroom or other special education setting.¹ A *parent*, including a guardian or person in parental relation, means someone “whose child receives special education and related services for at least 50 percent of the instructional day in the self-contained classroom or other special education setting,” or an adult student who receives special education and related services for at least 50 percent of the instructional day in the classroom or setting.² A *staff member* means a teacher, related service provider, paraprofessional, counselor, or educational aide assigned to work in a self-contained classroom or other special education setting.³

Q. Where must a district place and operate camera equipment?

A. The extent of a district’s duty to install camera equipment depends on who makes the request. If a parent or staff member requests surveillance, the district is only obligated to place and operate a camera in the classroom or setting to which the relevant student or staff member is assigned. A principal or assistant principal is only authorized to request cameras for his or her own campus, but the board of trustees may request cameras for self-contained classrooms or special education settings at multiple campuses.⁴ The district is only required to place cameras in locations specified by the principal, assistant principal, or board of trustees. This is a change from prior law, which the Texas attorney general interpreted as requiring surveillance in all self-contained classrooms or special education settings upon one authorized request.⁵

¹ The law also applies to open-enrollment charter schools.

² Tex. Educ. Code § 29.022(u)(1); 19 Tex. Admin. Code § 103.1301(b)(1).

³ Tex. Educ. Code § 29.022(u)(4).

⁴ Tex. Educ. Code § 29.022(a).

⁵ Op. Tex. Att’y Gen. No. KP-113 (2016).

Q. What is the definition of a “self-contained classroom or other special education setting”?

- A. Section 29.022 applies to a self-contained classroom or other special education setting in which a majority of the students in regular attendance are: (1) provided special education and related services; and (2) assigned to one or more self-contained classrooms or other special education settings for at least 50 percent of the instructional day.⁶

Texas Education Agency (TEA) rules define a *self-contained classroom* as a classroom on a regular campus in which a majority of the students in regular attendance are provided special education and related services and have one of nine specific instructional arrangement codes in the Student Attendance Accounting Handbook indicating that the student receives special education services (43, 44, 45, 84, 85, 89, 94, 95, and 98).⁷ The rules define *other special education setting* as a classroom on a separate campus (i.e., a campus that serves only students receiving special education and related services) in which a majority of the students in regular attendance have one of two instructional arrangement codes indicating the student’s placement at the separate campus (86 and 96).⁸ A resource room instructional arrangement does not meet the definition of a self-contained classroom, although students who attend resource rooms for part of the school day may also be educated in a self-contained classroom eligible for surveillance.⁹ TEA provided the following illustration in a response to the public comments regarding the agency’s rulemaking:

For example, if a classroom on a regular school campus serves 12 students who receive special education services and 9 spend 50% or more of the instructional day in the classroom and have an instructional arrangement/setting of “self-contained (mild/moderate/severe) regular campus” while 3 spend between 21% and 50% of the instructional day in the classroom and have an instructional arrangement/setting of “resource room/services,” the classroom would be subject to the requirements in TEC § 29.022.¹⁰

Q. How should a district respond to a written request for surveillance?

- A. District policy must require a response within seven school business days of a designated central office administrator’s receipt of a written request for camera equipment. The response must either authorize the request or provide an explanation for denial of the request. The cameras must be operational by 45 school business days after authorization of the request (or the first school day after that day, if the 45th school business day is not a school day). However, TEA may grant an extension to the statutory timeline.¹¹

⁶ Tex. Educ. Code § 29.022(a).

⁷ 19 Tex. Admin. Code § 103.1301(b)(5); Tex. Educ. Agency, *Student Attendance Accounting Handbook at tea.texas.gov/Finance_and_Grants/Financial_Compliance/Student_Attendance_Accounting_Handbook/*.

⁸ 19 Tex. Admin. Code § 103.1301(b)(6).

⁹ Tex. Educ. Code § 29.022(u)(3).

¹⁰ Tex. Educ. Agency, 16_07 Public Comments on Proposed New 19 TAC Chapter 103.1301, [tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_\(TAC\)/Adopted/16_07_Public_Comments_on_Proposed_New_19_TAC_%C2%A7103_1301/](http://tea.texas.gov/About_TEA/Laws_and_Rules/Commissioner_Rules_(TAC)/Adopted/16_07_Public_Comments_on_Proposed_New_19_TAC_%C2%A7103_1301/).

¹¹ Tex. Educ. Code §29.022(a-2), (l).

For parents of incoming students, the law sets out an alternative timeline. District policy must allow a parent of a student who will be in an eligible classroom or setting the following school year to request surveillance by the later of the last day of the current school year or the 10th school business day after the student's special education admissions, review, and dismissal (ARD) committee decides to place the student in the eligible location. If a request is made under these circumstances, district policy must also require the camera to be operational by the later of the 10th school business day of the fall semester or the 45th school business day after the date the request is made.¹²

Q. What is the scope of the required surveillance?

- A. Video cameras must be capable of covering all areas of an applicable classroom or setting, including any attached room used for *time-out*, a behavior management technique in which, to provide a student with an opportunity to regain self-control, the student is separated from other students for a limited period in an unlocked area.¹³ Video surveillance is prohibited inside of a bathroom or any other area in which a student's clothes are changed. The district must, however, record audio from all areas of the classroom or setting. In 2017, Section 29.022 was amended to clarify that incidental visual recording of a minor portion of a restroom or changing area is not a violation if necessary due to the layout of the location.¹⁴

Note that the law does not require audio recording in every locker room or restroom that a student receiving special education might visit during the school day. Rather, the duty to record video or audio depends on whether the location meets the statutory criteria based on the students in regular attendance.

Q. Does a parent have the right to say no to video surveillance?

- A. No. Before Section 29.022 was added to the Education Code in 2015, district employees were prohibited from recording a student's image or voice without parental consent unless an exception applied, such as when the recording was part of the district's curriculum or an extracurricular activity, or for safety and security purposes in common areas such as cafeterias and hallways.¹⁵ Section 29.022 added a new exception to the list of circumstances in which recording without parental consent is permitted: when a recording is for the purpose of protecting the safety of a student who receives special education services.¹⁶

Parents do have a right to be notified. Before a camera is activated under Section 29.022, the campus must provide written notice to all staff and to the parents of each student attending class or engaging in school activities in the classroom or setting.¹⁷ TASB Policy Service has drafted a sample form letter for this purpose at EHBAF(EXHIBIT) in the Regulations Resource Manual, which is available in the Policy Service Resource Library on myTASB.

¹² Tex. Educ. Code § 29.022(l)(4), (5).

¹³ Tex. Educ. Code § 29.022(c), (u)(5); Tex. Educ. Code §37.0021(b)(3).

¹⁴ Tex. Educ. Code § 29.022(c), (c-1).

¹⁵ Tex. Educ. Code § 26.009(b).

¹⁶ Tex. Educ. Code § 26.009(b)(5).

¹⁷ Tex. Educ. Code § 29.022(d).

Q. Are the recordings confidential?

A. Yes. The recordings are considered confidential under state law and may not be routinely monitored or used for any purpose other than promoting the safety of students receiving special education services in a self-contained classroom or other special education setting.¹⁸ Nonetheless, there are times when a district may be required to release a recording to certain individuals. Section 29.022 spells out specific circumstances in which a district must release a recording to an employee or a parent of a student who is involved in an alleged incident documented by the recording for which a complaint has been reported to the district. In addition, district officials may be required to release a recording for viewing by law enforcement, Department of Family and Protective Services, or State Board for Educator Certification personnel for investigation purposes.¹⁹ TEA's rules define an *incident* as an event or circumstance that: (1) involves abuse or neglect, as defined by the Texas Family Code, of a student by an employee or a student; and (2) allegedly occurred in a self-contained classroom or other special education setting in which video surveillance is conducted.

Q. Can a recording of a student be considered an education record under federal law?

A. Yes, a recording of a student in a special education classroom could meet the definition of an *education record* under the Family Educational Rights and Privacy Act (FERPA), if the recording is directly related to the student and maintained by the district. Determining whether surveillance footage is directly related to students can be complicated. For example, if a video camera records all the students in a classroom, but no incident or occurrence is recorded involving any particular student, an argument could be made that the footage is not an education record. The U.S. Department of Education has often expressed this position in informal correspondence with school attorneys regarding video recordings of students taken by security cameras. Parents, however, may feel strongly that a recording of their child receiving special education is different in nature than a recording of students in a school bus or cafeteria. District officials should consider these positions and adopt consistent standards for determining when FERPA applies to recordings of students.

Section 29.022 does not limit a parent's right to access an educational record of the parent's child under FERPA or other law. In effect, however, the statute adds to the already complex area of determining when a recording is an education record. As such, districts should work with an attorney who is familiar with FERPA when developing policy, training, or regulations for a special education camera program. Note that under FERPA regulations, as well as the Individuals with Disabilities Education Act, if an education record directly relates to more than one student, the parent's right of access applies only to the information relating to the parent's child.²⁰ Therefore, if more than one student is recorded in footage related to an incident, a district may need to redact the other students' images and voices before releasing the footage.

¹⁸ Tex. Educ. Code § 29.022(h), (i).

¹⁹ Tex. Educ. Code § 29.022(i).

²⁰ 34 C.F.R. §§ 99.12(a), 300.615.

Q. Are districts required to adopt a local policy to implement Section 29.022?

- A. Yes. Both the statute and TEA’s rules require districts to adopt local policies and procedures regarding certain aspects of the required video surveillance, including procedures for responding to a request to install cameras and information about how a person may appeal an action by the district that the person believes violates the law. Districts will receive updated versions of TASB Policies EHBAF(LEGAL) and (LOCAL) from TASB Policy Service through Update 109 in the fall of 2017. Districts that have developed regulations, forms, or procedures to address implementation of Section 29.022 should also review these documents to ensure compliance with the amended statute.

Q. How long do cameras need to be operational?

- A. Under prior law, as interpreted by the Texas attorney general, districts were required to conduct surveillance as long as the location continued to be used as a self-contained classroom or special education setting.²¹ In 2017, the legislature amended Section 29.022 to clarify that surveillance must continue for the remainder of the school year in which the request was received, unless the requestor withdraws the request in writing. If for any reason recording will be discontinued, the campus must notify the parents of each student in regular attendance in the classroom or setting at least five school days in advance that surveillance will stop unless requested by an authorized person. No later than 10 school days before the end of a school year, the parents of each student must be notified that surveillance will not continue during the following year unless there is a new request.²²

Q. How long do we need to retain recordings?

- A. Amendments to Section 29.022 in 2017 reduced the retention period for recordings from six months to three months.²³ However, if the district receives a lawful request to access a recording, the district must retain the recording from the date of receipt until the person has viewed the recording and a decision has been made as to whether the recording documents an alleged incident. If the recording includes an alleged incident, the district must keep the recording until the alleged incident has been resolved, including exhaustion of all appeals.²⁴ The amended law also required TEA to adopt rules establishing an expedited review process regarding a district’s denial of a request for surveillance, request for an extension of time, or decision not to release a recording to an authorized person.²⁵

Board members, administrators, and school attorneys may contact the TASB Legal Line at 800.580.5345 to speak with a TASB attorney regarding cameras in special education classrooms and other legal issues.²⁶

²¹ Op. Tex. Att’y Gen. No. KP-113 (2016).

²² Tex. Educ. Code § 29.022(b).

²³ Tex. Educ. Code § 29.022(e).

²⁴ Tex. Educ. Code § 29.022(e-1).

²⁵ Tex. Educ. Code § 29.022(m).

²⁶ tasb.org/Services/Legal-Services/Telephone-Consultations.aspx.

For more information on this and other school law topics,
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