



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 by a trustee, staff member, or parent. 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 will provide legal guidance and answers to common questions regarding video and audio surveillance in the special education context.

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

Section 29.022 requires a district to provide video and audio recording equipment to each campus where a student who receives special education services in a self-contained classroom or other special education setting is enrolled, “on request by a parent, trustee, or staff member.”¹ Texas Education Agency (TEA) rules implementing Section 29.022 define a *parent* as a person described in Texas Education Code section 26.002 “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 a student who receives special education and related services for at least 50 percent of the instructional day in the classroom or setting who is no longer legally a minor.² The rules define *trustee* as “a member of a school district’s board of trustees or a member of an open-enrollment charter school’s governing body.”³

The rules define a *staff member* as a person assigned to work in a self-contained classroom or other special education setting or the principal or assistant principal at the same campus.⁴ TEA announced in a *To the Administrator Addressed* letter on September 28, 2016, that this definition will be revised.⁵ On September 13, 2016, the attorney general opined, in response to a request submitted by the commissioner of education prior to TEA’s rulemaking, that the definition of staff member adopted by TEA imposed a more restrictive meaning than the plain language of Section 29.022. According to the attorney general, the common meaning of “staff” is “all the people employed by a particular organization,” and nothing in the plain language of Section 29.022 limits this definition.⁶

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

² 19 Tex. Admin. Code § 103.1301(b)(1).

³ 19 Tex. Admin. Code § 103.1301(b)(3).

⁴ 19 Tex. Admin. Code § 103.1301(b)(2).

⁵ Tex. Educ. Agency, *To the Administrator Addressed Letter re: Guidance from Texas Attorney General Regarding Senate Bill 507, 84th Texas Legislature* (Sept. 28, 2016) at tea.texas.gov/interiorpage_wide.aspx?id=51539610682.

⁶ Op. Tex. Att’y Gen. No. KP-113 (2016).

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

Each campus that receives equipment shall place, operate, and maintain one or more video cameras in each 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 a self-contained classroom or other special education setting for at least 50 percent of the instructional day.⁷

TEA’s rules define *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).⁸ 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).⁹ TEA provided the following example 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

3. Does one request mean that a district must install cameras in every location that meets the legal definition of a special education classroom or setting?

Many districts have interpreted Section 29.022 to mean that when surveillance is requested, the district needs to install cameras only in the classroom related to the request (i.e., the classroom in which the child who is the subject of concern in a request is educated or to which the staff member is assigned). The attorney general has opined, however, that the law as written requires districts to place cameras in all the self-contained classrooms in the district based on one request. Further, the attorney general stated:

⁷ Tex. Educ. Code § 29.022(a).

⁸ 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/.

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

¹⁰ Tex. Educ. Agency, *Summary of Public Comments and Agency Responses Related to Proposed New 19 TAC Chapter 103, Health and Safety, Subchapter DD, Commissioner’s Rules Concerning Video Surveillance of Certain Special Education Settings* at [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/).

Given the anticipated expense of providing this equipment to each school with special education services in a district, it would seem reasonable to allow a requestor to limit the expanse of his or her request to one specific instructional setting. However, the language chosen by the Legislature narrowly phrases the nature of the request to require the provision of equipment “to each school in the district or each charter school campus in which a student who receives special education services in a self-contained classroom or other special education setting is enrolled. [. . .] Construing the statute otherwise would contradict the plain language of the statute.”¹¹

Notably, the purpose of attorney general opinions is to clarify existing provisions in state law. The attorney general cannot make new law or correct unintended consequences of the laws as written.¹² Legislators who sponsored the bill that added Section 29.022 to the Education Code have unequivocally stated that their intent was to limit a request for video and audio surveillance to a single classroom or setting.¹³ Legislators are likely to propose amendments to the statute when lawmakers return to the Capitol in January 2017. In the meantime, districts should assess their facilities and consult with legal counsel regarding how to respond to a request. In large districts, installing cameras in every self-contained classroom may not be feasible right away. These districts may need to install cameras promptly in the specific classroom related to a request, while scheduling broader installation as funds and supplies become available. In the event of a request, school officials should take care to be transparent and document communications with requestors, especially during any delays in compliance with a request.

4. What is the scope of the required surveillance?

Video cameras must be capable of covering all areas of an applicable classroom or setting, except that 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.¹⁴ This does not mean that audio equipment is required in every locker room or restroom where a student receiving special education might change clothes. Rather, the duty to record video or audio depends on whether the location meets the statutory criteria based on the students in regular attendance.

5. Do parents have the right to consent to, or opt out of, surveillance of their children?

No. Under prior law, 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

¹¹ Op. Tex. Atty. Gen. No. KP-0113 (Sept. 13, 2016).

¹² “About Attorney General Opinions,” at texasattorneygeneral.gov/opinion/about-attorney-general-opinions.

¹³ See Request for Attorney General Opinion—RQ 0103-KP (Mar. 11, 2016), at fn. 9, citing Letter from State Sen. Eddie Lucio, Jr., and State Rep. Senfronia Thompson to Commissioner Michael Williams (Oct. 1, 2015).

¹⁴ Tex. Educ. Code § 29.022(c).

¹⁵ Tex. Educ. Code § 26.009(b).

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

Before a camera is installed under Section 29.022, a district must provide written notice to all school staff and to the parents of students receiving special education 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.

6. *Are the recordings confidential?*

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 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.

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

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 bus or 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.

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 new 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

¹⁶ Tex. Educ. Code § 26.009(b)(5).

¹⁷ Tex. Educ. Code § 29.022(d).

¹⁸ Tex. Educ. Code § 29.022(h), (i).

¹⁹ Tex. Educ. Code § 29.022(i).

record includes information on more than one child, 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 be required to redact the other students' images and voices before releasing the footage.

8. *Are districts required to adopt a local policy to implement SB 507?*

Yes. TEA's rules, which went into effect on August 15, 2016, require districts to adopt local policies and procedures regarding 13 aspects of the required video surveillance, including procedures for responding to a request to install cameras. See TASB Policies EHBAF(LEGAL) and (LOCAL).²¹ Many districts are also developing regulations, forms, and procedures to address implementation of Section 29.022.

9. *What practical steps should we be taking now to prepare for a request to install cameras?*

While a school district's duty to install cameras in special education classrooms or settings is not triggered without an authorized request, there is no reason to wait for a request to begin assessing which classroom, or classrooms, might be subject to a request. If multiple locations could meet the definition of a self-contained classroom or other special education setting, then the district should also seek legal advice regarding the attorney general's conclusion that the plain language of the statute does not permit limiting a request to a single classroom or setting.

Note that the law requires maintaining footage from the cameras for at least six months and releasing a recording that documents an incident, as defined by law, in limited circumstances.²² As such, school officials would be wise to review available data storage options and to plan appropriate procedures for accessing, reviewing, and releasing a recording to an authorized person. Due to privacy concerns, districts should also assess whether current technology resources include the ability to redact student images when a recording shows multiple students.

10. *Does a request for cameras need to be in writing?*

Section 29.022 does not specify whether a request must be in writing or addressed to a specific administrator. As a practical matter, using a request form will help to document the timing of a request and the administrative response. TASB Policy Service has developed a sample request form and other forms to implement Section 29.022 at EHBAF(EXHIBIT) in the Regulations Resource Manual on myTASB.

²⁰ 34 C.F.R. §§ 99.12(a), 300.615.

²¹ TASB Policy EHBAF(LEGAL) will be revised when TEA adopts new regulations to amend the commissioner's rules concerning video surveillance of certain special education settings.

²² Tex. Educ. Code § 29.022(e), (i)-(j).

11. When should a district respond to a request to install cameras?

Neither Section 29.022 nor TEA’s rules require districts to install cameras within a certain time after a request, but a district should take prompt and reasonable action in order to carry out the purpose of the statute to promote student safety. TASB Policy EHBAF(LOCAL) requires the principal to respond to a request within 10 district business days. In accordance with local procedures or regulations, the initial response to a request may give the requestor an estimated timeline for when cameras would actually be installed and operational. The sample response form at EHBAF(EXHIBIT) in the Regulations Resource Manual can be used for this purpose. When planning procedures that address the timeline for a response, districts should take into consideration the procurement requirements under state law and local policy.

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.²³

For more information on this and other school law topics,
visit TASB School Law eSource online at schoolawesource.tasb.org.

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This document is provided for educational purposes only and contains information to facilitate a general understanding of the law. It is not an exhaustive treatment of the law on this subject nor is it intended to substitute for the advice of an attorney. Consult with your own attorneys to apply these legal principles to specific fact situations.

²³ tasb.org/Services/Legal-Services/Telephone-Consultations.aspx.