



Update on Video Cameras in Special Education Classrooms

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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 in one or more self-contained classrooms or other special education settings,” or an adult student who receives special education and related services in such a 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.

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).

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.⁵

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).⁶ 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).⁷ 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.⁸

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 Texas Education Code section 29.022.

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.⁹ 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.¹⁰

⁵ Tex. Educ. Code § 29.022(a).

⁶ 19 Tex. Admin. Code § 103.1301(b)(5); Tex. Educ. Agency, [2018-2019 Student Attendance Accounting Handbook](#).

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

⁸ Tex. Educ. Code § 29.022(u)(3); 19 Tex. Admin. Code § 103.1301(b)(4).

⁹ 19 Tex. Admin. Code § 103.1301(g).

¹⁰ 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.¹¹

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*, defined as 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.¹² Video surveillance is prohibited inside of a bathroom or any other area in which a student's clothes are changed. Incidental visual recording of a minor portion of a restroom or changing area is permitted only to the extent that such coverage is due to the layout of the classroom or setting.¹³

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. Parents do not have a right to say yes or no when a district is required to operate a video camera in a special education classroom or setting. This is because Section 29.022 is an exception to the general rule that a district must obtain parental consent in order to record a student's voice or image.¹⁴

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.¹⁵ 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.

¹¹ Tex. Educ. Code § 29.022(l)(4), (5).

¹² Tex. Educ. Code §§ 29.022(c), (u)(5), 37.0021(b)(3).

¹³ Tex. Educ. Code § 29.022(c), (c-1).

¹⁴ Tex. Educ. Code § 26.009(b)(5).

¹⁵ 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.¹⁶ 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.¹⁷ TEA's rules define an *incident* as an event or circumstance that: (1) involves alleged abuse or neglect, as defined by the Texas Family Code, of a student by a staff member, or physical abuse or sexual abuse, as defined by the Texas Family Code, of a student by another student; and (2) allegedly occurred in a self-contained classroom or other special education setting in which video surveillance is conducted.¹⁸

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

A. Yes, depending on the content of the recording. A recording of a student in a special education classroom may 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 a student can be complicated, however. According to guidance issued by the U.S. Department of Education (DOE), a video recording of a student taken by district security cameras may be considered an education record subject to FERPA if the video depicts an activity:

- That resulted in the use of the video for disciplinary action or other official purposes regarding the student;
- That shows a student in violation of law; or
- That shows a student getting injured, attacked, victimized, ill, or having a health emergency.¹⁹

The DOE guidance also listed other factors and examples for determining when a video may be considered directly related to a student, including if the video contains personally identifiable information contained in a student's education record.²⁰

¹⁶ Tex. Educ. Code § 29.022(h), (i).

¹⁷ Tex. Educ. Code § 29.022(i).

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

¹⁹ U.S. Dept. of Ed., Privacy Technical Assistance Center and the Family Policy Compliance Office, [FAQs on Photos and Videos under FERPA](#).

²⁰ U.S. Dept. of Ed., Privacy Technical Assistance Center and the Family Policy Compliance Office, [FAQs on Photos and Videos under FERPA](#).

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.²¹ 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 allowing access to the video.²²

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 can locate their policies at EHBAF(LEGAL) and (LOCAL). In addition, sample forms for requesting video and audio surveillance, responding to a request, notice of activation and discontinuation of surveillance, and an incident report form can be found in TASB Policy Service’s Regulations Resource Manual at EHBAF(EXHIBIT).

Q. How long do cameras need to be operational?

- A. Surveillance must continue for the remainder of the school year in which the request was received, unless the requestor withdraws the request in writing. Recording may also be discontinued midyear if the room or setting no longer meets the statutory criteria for recording; for example, if the population in the room changes so that the majority of students in regular attendance are no longer receiving special education and related services in one or more self-contained classrooms or other special education settings for at last half of the instructional day.

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.²³

²¹ 34 C.F.R. §§ 99.12(a), 300.615.

²² See U.S. Dep’t of Educ., Family Policy and Compliance Office, [Letter to Wachter](#) (December 7, 2017) (advising that, if a school district could segregate or redact information in video of hazing incident involving multiple students in a manner that doesn’t destroy the education record’s meaning, then the district must do so prior to inspection and review or must obtain consent from other parents prior to disclosing the record).

²³ Tex. Educ. Code § 29.022(b).

Q. How long do we need to retain recordings?

- A. Section 29.022 generally requires retaining recordings for at least three months.²⁴ However, if the district receives a lawful request to view 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.²⁵

Q. What happens if someone disagrees with a district's decision to deny a request for installation of cameras or not to release a video for viewing?

- A. A person who disagrees with a district decision under Section 29.022 may file a complaint using the district's local grievance policies (DGBA, FNG, or GF, as applicable). A person who is dissatisfied with the outcome of the local complaint process may also file an appeal with the commissioner of education in accordance with Texas Education Code section 7.057, including requesting an expedited review. TEA rules address procedures for the commissioner's appeal process, including expedited review, regarding denial of a request to install a camera (including constructive denial, which occurs when a district fails to deny a request in a timely manner), denial of a request to view a video, denial of a request to release a video, and a district's request for an extension of time to install recording equipment.²⁶ The expedited review process does not apply when a district denies a request only to *view* a video, which the TEA rules distinguish from a district's denial of a request to *release for viewing*.²⁷

The required procedures for appeals to the commissioner are complex and time-sensitive. In the event of a complaint, TASB Legal Services recommends districts work with local counsel to ensure compliance.

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.²⁸

This document is continually updated, and references to online resources are hyperlinked, at tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Instruction/documents/update_video_cameras_sp_ed_classrooms.pdf. For more information on this and other school law topics, visit TASB School Law eSource at schoolawesource.tasb.org.

²⁴ Tex. Educ. Code § 29.022(e).

²⁵ Tex. Educ. Code § 29.022(e-1).

²⁶ 19 Tex. Admin. Code § 103.1303.

²⁷ 19 Tex. Admin. Code § 103.1303(b)(7).

²⁸ [TASB Legal Services Telephone Consultation Service](https://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Instruction/documents/update_video_cameras_sp_ed_classrooms.pdf).

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.

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