

SPECIAL EDUCATION
VIDEO/AUDIO MONITORING

EHBAF
(LEGAL)

PARENTAL CONSENT
NOT REQUIRED

An employee of a school district is not required to obtain the consent of a child's parent before the employee may make a videotape of a child or authorize the recording of a child's voice if the videotape or voice recording is to be used for a purpose related to the promotion of student safety under Education Code 29.022. *Education Code 26.009(b)*

VIDEO SURVEILLANCE
UPON REQUEST TO
PROMOTE STUDENT
SAFETY

In order to promote student safety on request by a parent, trustee, or staff member, a school district shall provide video equipment to each campus in the district in which a student who receives special education services in a self-contained classroom or other special education setting is enrolled.

Each campus that receives video equipment shall place, operate, and maintain one or more video cameras in self-contained classrooms or other special education settings in accordance with Education Code 29.022 and 19 Administrative Code 103.1301.

The requirements of Education Code 29.022 and 19 Administrative Code 103.1301 apply to video surveillance during the regular school year and during extended school year services.

DEFINITIONS

"PARENT"

"Parent" means a person described in Education Code 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. "Parent" also means a student who 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 and who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Family Code, Chapter 31, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order.

"STAFF MEMBER"

"Staff member" means a teacher, related service provider, paraprofessional, or educational aide assigned to work in the self-contained classroom or other special education setting. "Staff member" also includes the principal or an assistant principal of the campus at which the self-contained classroom or other special education setting is located.

"TRUSTEE"

"Trustee" means a member of a school district's board of trustees.

"SELF-
CONTAINED
CLASSROOM"

"Self-contained classroom" means a classroom on a regular school campus (i.e., a campus that serves students in general education and students in special education) of a school district in which a majority of the students in regular attendance are provided special education and related services and have one of the following in-

structional arrangements/settings described in TEA's *Student Attendance Accounting Handbook (SAAH)*:

1. Self-contained (mild/moderate/severe) regular campus;
2. Full-time early childhood (preschool program for children with disabilities) special education setting;
3. Residential care and treatment facility—self-contained (mild/moderate/severe) regular campus;
4. Residential care and treatment facility—full-time early childhood special education setting;
5. Off home campus—self-contained (mild/moderate/severe) regular campus; or
6. Off home campus—full-time early childhood special education setting.

“OTHER SPECIAL
EDUCATION
SETTING”

“Other special education setting” means a classroom on a separate campus (i.e., a campus that serves only students who receive special education and related services) of a school district in which a majority of the students in regular attendance are provided special education and related services and have one of the following instructional arrangements/settings described in TEA's *SAAH*:

1. Residential care and treatment facility—separate campus; or
2. Off home campus—separate campus.

“VIDEO CAMERA”

“Video camera” means a video surveillance camera with audio recording capabilities.

“VIDEO
EQUIPMENT”

“Video equipment” means one or more video cameras and any technology and equipment needed to place, operate, and maintain video cameras as required by Education Code 29.022 and 19 Administrative Code 103.1301. “Video equipment” also means any technology and equipment needed to store and access video recordings as required by Education Code 29.022 and 19 Administrative Code 103.1301.

“INCIDENT”

“Incident” means an event or circumstance that:

1. Involves alleged “abuse” or “neglect,” as those terms are described in Family Code 261.001, of a student by an employee of the school district or alleged “physical abuse” or “sexual abuse,” as those terms are described in Family Code 261.410, of a student by another student; and
2. Allegedly occurred in a self-contained classroom or other special education setting in which video surveillance under

Education Code 29.022 and 19 Administrative Code 103.1301 is conducted.

- EXCLUSIONS** A district is not required to provide video equipment to a campus of another district or charter school or to a nonpublic school. The Texas School for the Deaf, the Texas School for the Blind and Visually Impaired, the Texas Juvenile Justice Department, and any other state agency that provides special education and related services to students are not subject to the requirements in Education Code 29.022 and 19 Administrative Code 103.1301.
- WRITTEN NOTICE** Before placing a video camera in a classroom or setting, the campus shall provide written notice of the placement to all campus staff and to the parents of a student receiving special education services in the classroom or setting.
- DISPUTE RESOLUTION** The special education dispute resolution procedures in 34 C.F.R. 300.151–300.153 and 300.504–300.515 do not apply to complaints alleging that a school district has failed to comply with Education Code 29.022 or 19 Administrative Code 103.1301. Complaints alleging violations of the law or rules must be addressed through the district's local grievance procedures or other dispute resolution channels.
- LOCAL POLICY** Each district board of trustees must adopt written policies relating to video surveillance under Education Code 29.022 and 19 Administrative Code 103.1301. At a minimum, the policies must include:
1. A statement that video surveillance is for the purpose of promoting student safety in certain self-contained classrooms and other special education settings;
 2. The procedures for requesting video surveillance and the procedures for responding to a request for video surveillance;
 3. The procedures for providing advance written notice to the campus staff and the parents of the students assigned to a self-contained classroom or other special education setting that video and audio surveillance will be conducted in the classroom or setting;
 4. A requirement that video cameras be operated at all times during the instructional day when students are in the self-contained classroom or other special education setting;
 5. A statement regarding the personnel who will have access to video equipment or video recordings for purposes of operating and maintaining the equipment or recordings;

6. A requirement that a campus continue to operate and maintain any video camera placed in a self-contained classroom or other special education setting for as long as the classroom or setting continues to satisfy the requirements in Education Code 29.022(a);
7. A requirement that video cameras placed in a self-contained classroom or other special education setting be capable of recording video and audio of all areas of the classroom or setting, except that no video surveillance may be conducted of the inside of a bathroom or other area used for toileting or diapering a student or removing or changing a student's clothes;
8. A statement that video recordings must be retained for at least six months after the date the video was recorded;
9. A statement that the regular or continual monitoring of video is prohibited and that video recordings must not be used for teacher evaluation or monitoring or for any purpose other than the promotion of student safety;
10. At the district's discretion, a requirement that campuses post a notice at the entrance of any self-contained classroom or other special education setting in which video cameras are placed stating that video and audio surveillance are conducted in the classroom or setting;
11. The procedures for reporting a complaint alleging that an incident occurred in a self-contained classroom or other special education setting in which video surveillance under Education Code 29.022 and 19 Administrative Code 103.1301 is conducted;
12. The local grievance procedures for filing a complaint alleging violations of Education Code 29.022 or 19 Administrative Code 103.1301; and
13. A statement that video recordings made under Education Code 29.022 and 19 Administrative Code 103.1301 are confidential and a description of the limited circumstances under which the recordings may be viewed.

GIFTS, GRANTS,
AND DONATIONS

A school district may solicit and accept gifts, grants, and donations from any person to implement the requirements in Education Code 29.022 and 19 Administrative Code 103.1301. A district is not permitted to use Individuals with Disabilities Education Act, Part B, funds or state special education funds to implement these requirements.

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NO WAIVER OF
IMMUNITY

The requirements described by this policy do not:

1. Waive any immunity from liability of a school district, or of district officers or employees; or
2. Create any liability for a cause of action against a school district or against district officers or employees.

CONFIDENTIALITY

A video recording made under Education Code 29.022 and 19 Administrative Code 103.1301 is confidential and may only be viewed by the following individuals, to the extent not limited by the Family Educational Rights and Privacy Act (FERPA) or other law.

LIMITED
RELEASE

A school district shall release a recording for viewing by:

1. A staff member or other school district employee or a parent of a student involved in an incident that is documented by a video recording for which a complaint has been reported to the district, on request of the staff member, employee, or parent, respectively;
2. Appropriate Department of Family and Protective Services (DFPS) personnel as part of an investigation of alleged or suspected abuse or neglect of a child under Family Code 261.406;
3. A peace officer, a school nurse, a district administrator trained in de-escalation and restraint techniques as provided by commissioner of education rule, or a human resources staff member designated by the board in response to a complaint or an investigation of an incident; or
4. Appropriate TEA or State Board for Educator Certification personnel or agents as part of an investigation.

DUTY TO
REPORT

If a person described by item 3 or 4 above views a video recording and has cause to believe that the recording documents possible abuse or neglect of a child under Family Code, Chapter 261, the person must submit a report to DFPS or other authority in accordance with FFG.

USE IN
DISCIPLINARY
ACTIONS
AGAINST
DISTRICT
PERSONNEL

If any person described by item 2, 3, or 4 above views a video recording and believes that it documents a possible violation of district or campus policy, the person may allow access to the recording to appropriate legal and human resources personnel of the district to the extent not limited by FERPA or other law. A recording believed to document a possible violation of district or campus policy may be used in a disciplinary action against district personnel and shall be released in a legal proceeding at the request of a parent of the student involved in the incident documented by the re-

ording. A recording believed to document a possible violation of district or campus policy must be released for viewing by the district employee who is the subject of the disciplinary action at the request of the employee.

FERPA

State law does not limit the access of a student's parent to an educational record of the student under FERPA or other law. To the extent any provisions in Education Code 29.022 and 19 Administrative Code 103.1301 conflict with FERPA or other federal law, federal law prevails.

Education Code 29.022; 19 TAC 103.1301

Note: Unless otherwise noted, the terms “video recording,” “video surveillance,” and “video monitoring” shall also include any associated audio recordings.

REQUESTS AND
NOTICE

The District shall comply with requests for video and audio monitoring of certain self-contained special education classrooms and settings as required by law to promote student safety in those settings. Regular or continual monitoring of video recordings shall be prohibited. Video recordings shall not be used for teacher evaluation or monitoring or for any purpose other than the promotion of student safety.

A parent, Trustee, or staff member making a request for video surveillance under this policy shall submit the request to the campus principal on a form provided by the District, and the principal shall provide a response to the requestor within ten District business days. The principal shall provide advance written notice to staff on the campus and to parents of the students assigned to the classroom or setting that video and audio surveillance will be conducted in the classroom or setting. The Superintendent shall develop administrative regulations as necessary to implement these request, response, and notice provisions.

INSTALLATION AND
OPERATION

When the District has installed video cameras in a classroom or other setting as required by law, the District shall operate the cameras during the instructional day at all times when students are in the classroom or other setting. For purposes of this policy, the instructional day shall be defined as the portion of a school day during which instruction is taking place in the classroom or other setting.

A campus shall continue to operate and maintain any video cameras placed in the classroom or other setting for as long as the classroom or other setting continues to satisfy the requirements in Education Code 29.022(a).

Video cameras must be capable of recording video and audio of all areas of the classroom or setting, except that no video surveillance shall be conducted of the inside of a bathroom or other area used for toileting or diapering a student or removing or changing a student’s clothes.

The District shall post notice at the entrance to a classroom or other setting in which video cameras are placed stating that video and audio surveillance is conducted in that classroom or setting.

RETENTION OF
RECORDINGS

Video recordings shall be retained for at least six months after the date of the recording but may be retained for a longer period in accordance with the District's records management program or as required by law. [See CPC]

CONFIDENTIALITY OF
RECORDINGS

Video recordings made in accordance with this policy shall be confidential and shall only be accessed or viewed by the individuals and in the limited circumstances permitted by law. Contractors and District personnel with job duties related to the installation, operation, or maintenance of video equipment, or the retention of video recordings, who incidentally view recordings when performing regular job duties such as ensuring the proper functioning of the equipment or pulling specific footage shall not be considered in violation of the confidentiality provisions.

The following individuals shall have authority to view video recordings to the extent permitted by the Family Educational Rights and Privacy Act (FERPA):

1. A District employee or a parent of a student who is involved in an incident documented by a recording for which a complaint has been reported to the District;
2. Appropriate Department of Family and Protective Services (DFPS) personnel as part of an investigation of alleged abuse or neglect of a child;
3. A peace officer, school nurse, District administrator trained in de-escalation and restraint techniques, or human resource staff member in response to a complaint or an investigation of an incident; and
4. Appropriate TEA or State Board for Educator Certification personnel or their agents as part of an investigation.

For purposes of this policy, the term "human resource staff member" shall include the Superintendent, a principal, an assistant principal or other campus administrator, and any supervisory position within the District's human resources office. If an individual listed in items 2 through 4 above believes that a recording shows a violation of District policy or campus procedures, the individual may allow access to the recording by appropriate legal and human resources personnel designated by the District for the purpose of determining whether a policy or procedure has been violated.

Any person who suspects that child abuse or neglect has occurred shall report this suspicion as required by law and District policy. [See FFG]

REPORTING AN
INCIDENT

A person alleging that an incident, as defined by law, has occurred in a classroom or other setting in which video surveillance is conducted shall file a report on the form provided by the District with the principal as soon as possible after the person suspects the alleged incident. If possible, an incident report form shall be filed within 48 hours of the facts giving rise to the allegation. The principal shall promptly view, or direct an authorized individual to view, the video surveillance footage to identify the relevant portion of the recording. No later than ten District business days after the report is filed, the principal or designee shall respond by notifying the person whether the alleged incident was recorded in the District's video surveillance footage and shall initiate other steps as required by law, District policy, or local procedures.

COMPLAINTS

Complaints related to video and audio recordings under this policy shall be filed in accordance with DGBA, FNG, or GF, as applicable.