

ATTACHMENT II
Text of Proposed Revisions to 19 TAC

Chapter 103. Health and Safety

Subchapter DD. Commissioner's Rules Concerning Video Surveillance of Certain Special Education Settings

§103.1301. Video Surveillance of Certain Special Education Settings.

- (a) Requirement to implement. In ~~[Beginning with the 2016-2017 school year, in]~~ order to promote student safety, on written request by a parent, school district board of trustees, governing body of an open-enrollment charter school, principal, assistant principal ~~[trustee]~~, or staff member, as authorized by Texas Education Code (TEC) §29.022(a-1), a school district or an open-enrollment charter school must provide video equipment to campuses in accordance with TEC ~~[Texas Education Code (TEC)]~~, §29.022, and this section. Campuses that receive video equipment must place, operate, and maintain video cameras in self-contained classrooms or other special education settings in accordance with TEC, §29.022, and this section.
- (b) Definitions. For purposes of TEC, §29.022, and this section, the following terms have the following meanings.
- (1) Parent means a person described in TEC, §26.002, whose child receives special education and related services in one or more ~~[for at least 50 percent of the instructional day in a]~~ self-contained classrooms ~~[classroom]~~ or other special education settings ~~[setting]~~. Parent also means a student who receives special education and related services in one or more ~~[for at least 50 percent of the instructional day in a]~~ self-contained classrooms ~~[classroom]~~ or other special education settings ~~[setting]~~ and who is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Texas 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.
- (2) Staff member means a teacher, a related service provider, a paraprofessional, a counselor, or an educational aide assigned to work in a self-contained classroom or other special education setting ~~[an employee of the school district or open enrollment charter school]~~.
- ~~[(3) — Trustee means a member of a school district's board of trustees or a member of an open-enrollment charter school's governing body.]~~
- (3) ~~[(4)]~~ Open-enrollment charter school means a charter granted to a charter holder under TEC, §12.101 or §12.152, identified with its own county district number.
- (4) ~~[(5)]~~ 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 or an open-enrollment charter school, including a room attached to the classroom used for time-out, but not including a classroom that is a resource room instructional arrangement under TEC, §42.151, in which a majority of the students in regular attendance are provided special education and related services for at least 50 percent of the instructional day and have one of the following instructional arrangements/settings described in the student attendance accounting handbook adopted under §129.1025 of this title (relating to Adoption by Reference: Student Attendance Accounting Handbook):
- (A) self-contained (mild/moderate/severe) regular campus;
- (B) full-time early childhood (preschool program for children with disabilities) special education setting;
- (C) residential care and treatment facility--self-contained (mild/moderate/severe) regular campus;
- (D) residential care and treatment facility--full-time early childhood special education setting;

- (E) off home campus--self-contained (mild/moderate/severe) regular campus; or
- (F) off home campus--full-time early childhood special education setting.

(5) [(6)] 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 or open-enrollment charter school , including a room attached to the classroom or setting used for time-out, in which a majority of the students in regular attendance are provided special education and related services , are assigned to the setting for at least 50 percent of the instructional day, and have one of the following instructional arrangements/settings described in the student attendance accounting handbook adopted under §129.1025 of this title:

- (A) residential care and treatment facility--separate campus; or
- (B) off home campus--separate campus.

(6) [(7)] Video camera means a video surveillance camera with audio recording capabilities.

(7) [(8)] Video equipment means one or more video cameras and any technology and equipment needed to place, operate, and maintain video cameras as required by TEC, §29.022, and this section. Video equipment also means any technology and equipment needed to store and access video recordings as required by TEC, §29.022, and this section.

(8) [(9)] Incident means an event or circumstance that:

- (A) involves alleged "abuse" or "neglect," as those terms are described in Texas Family Code, §261.001, of a student by an employee of the school district or charter school or alleged "physical abuse" or "sexual abuse," as those terms are described in Texas Family Code, §261.410, of a student by another student; and
- (B) allegedly occurred in a self-contained classroom or other special education setting in which video surveillance under TEC, §29.022, and this section is conducted.

(9) School business day means a day that campus or school district administrative offices are open.

(10) Time-out has the meaning assigned by TEC, §37.0021.

- (c) Exclusions. A school district or open-enrollment charter school is not required to provide video equipment to a campus of another district or charter school or to a nonpublic school. In addition, 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 TEC, §29.022, and this section.
- (d) Use of funds. A school district or open-enrollment charter school may solicit and accept gifts, grants, and donations from any person to implement the requirements in TEC, §29.022, and this section. A district or charter school is not permitted to use Individuals with Disabilities Education Act, Part B, funds or state special education funds to implement the requirements of TEC, §29.022, and this section.
- (e) Dispute resolution. The special education dispute resolution procedures in 34 Code of Federal Regulations, §§300.151-300.153 and 300.504-300.515, do not apply to complaints alleging that a school district or open-enrollment charter school has failed to comply with TEC, §29.022, and/or this section. Complaints alleging violations of TEC, §29.022, and/or this section must be addressed through the district's or charter school's local grievance procedures or other dispute resolution channels.
- (f) Regular school year and extended school year services. TEC, §29.022, and this section apply to video surveillance during the regular school year and during extended school year services.
- (g) Policies and procedures. Each school district board of trustees and open-enrollment charter school governing body must adopt written policies relating to the placement, operation, and maintenance of video cameras [surveillance] under TEC, §29.022, and this section. 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) information on how a person may appeal an action by the school district or open-enrollment charter school that the person believes to be in violation of this section or a policy adopted in accordance with this section, including the appeal and expedited review processes under §103.1303 of this title (relating to Commissioner's Review of Actions Concerning Video Cameras in Special Education Settings) and the appeals process under TEC, §7.057;
- (3) a requirement that the school district or open-enrollment charter school provide a response to a request made under this section not later than the seventh school business day after receipt of the request by the person to whom it must be submitted under TEC, §29.022(a-3), that authorizes the request or states the reason for denying the request;
- (4) except as provided by paragraph (6) of this subsection, a requirement that a school or campus begin operation of a video camera in compliance with this section not later than the 45th school business day, or the first school day after the 45th school business day if that day is not a school day, after the request is authorized unless the Texas Education Agency (TEA) grants an extension of time;
- (5) a provision permitting the parent of a student whose admission, review, and dismissal committee has determined that the student's placement for the following school year will be in a classroom or other special education setting in which a video camera may be placed under this section to make a request for the video camera by the later of:
 - (A) the date on which the current school year ends; or
 - (B) the 10th school business day after the date of the placement determination by the admission, review, and dismissal committee;
- (6) a requirement that, if a request is made by a parent in compliance with paragraph (5) of this subsection, unless the TEA grants an extension of time, a school or campus begin operation of a video camera in compliance with this section not later than the later of:
 - (A) the 10th school day of the fall semester; or
 - (B) the 45th school business day, or the first school day after the 45th school business day if that day is not a school day, after the date the request is made;
- (7) ~~(2)~~ the procedures for requesting video surveillance and the procedures for responding to a request for video surveillance;
- (8) ~~(3)~~ the procedures for providing advanced 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 or cease in the classroom or setting, including procedures for notice of the opportunity to request continued video and audio surveillance if video and audio surveillance will otherwise cease ;
- (9) ~~(4)~~ a requirement that video cameras be operated at all times during the instructional day when students are present in a self-contained classroom or other special education setting in which video cameras are placed;
- (10) ~~(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;
- (11) ~~(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 TEC, §29.022(a) , for the remainder of the school year in which the school or campus received the request, unless the requestor withdraws the request in writing ;
- (12) ~~(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 visual monitoring of bathrooms and areas in which a student's clothes are changed may occur. Incidental visual coverage of the inside of a bathroom or any area of the classroom or other special education setting in which a student's clothes are changed is permitted only to the

extent that such coverage is the result of the layout of the classroom or setting. Audio recording of the inside of a bathroom or any area of the classroom or other special education setting in which a student's clothes are changed is required [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] ;

(13) ~~(8)~~ a statement that video recordings must be retained for at least three ~~six~~ months after the date the video was recorded and that video recordings will be maintained in accordance with the requirements of TEC, §29.022(e-1), when applicable ;

(14) ~~(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;

(15) ~~(10)~~ at the school district's or open-enrollment charter school'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;

(16) ~~(11)~~ the procedures for reporting an allegation to the school district, charter school, or school ~~[a complaint alleging]~~ that an incident occurred in a self-contained classroom or other special education setting in which video surveillance under TEC, §29.022, and this section is conducted;

(17) ~~(12)~~ the local grievance procedures for filing a complaint alleging violations of TEC, §29.022, and/or this section; and

(18) ~~(13)~~ a statement that video recordings made under TEC, §29.022, and this section are confidential and a description of the limited circumstances under which the recordings may be viewed.

(h) Confidentiality of video recordings. A video recording made under TEC, §29.022, and this section is confidential and may only be released and/or viewed by the following individuals, to the extent permitted by TEC, §29.022(i), and to the extent not limited by the Family Educational Rights and Privacy Act of 1974 (FERPA) or other law:

- (1) a staff member or a parent of a student involved in an incident described in subsection ~~(b)(8)~~ ~~(b)(9)~~ of this section that is documented by a video recording for which an incident ~~[a complaint]~~ has been reported to the district , ~~or~~ charter school , or school ;
- (2) appropriate Texas Department of Family and Protective Services personnel as part of an investigation under Texas Family Code, §261.406;
- (3) a peace officer, school nurse, or school district or school administrator trained in de-escalation and restraint techniques as provided by commissioner rule, or a human resources staff member designated by the school district's board of trustees or open-enrollment charter school's governing body in response to a report ~~[complaint]~~ or an investigation of an incident described in subsection ~~(b)(8)~~ ~~(b)(9)~~ of this section; or
- (4) appropriate TEA ~~[Texas Education Agency]~~ or State Board for Educator Certification personnel or agents as part of an investigation.

~~(i)~~ Exception to restrictions on viewing. A contractor or employee performing job duties relating to the installation, operation, or maintenance of video equipment or the retention of video recordings who incidentally views a video recording does not violate subsection (h) of this section.

~~(j)~~ ~~(4)~~ Child abuse and neglect reporting. If a person described in subsection (h)(3) or (4) of this section views a video recording and has cause to believe that the recording documents possible abuse or neglect of a child under Texas Family Code, Chapter 261, the person must submit a report to the Texas Department of Family and Protective Services or other authority in accordance with the local policy adopted under §61.1051 of this title (relating to Reporting Child Abuse and Neglect) and Texas Family Code, Chapter 261.

~~(k)~~ ~~(4)~~ Disciplinary actions and legal proceedings. If a person described in subsection (h)(2), (3), or (4) of this section views a video recording and believes that it documents a possible violation of school district, open-

enrollment charter school, or campus policy, the person may allow access to the recording to appropriate legal and human resources personnel of the district or charter school to the extent not limited by FERPA or other law. A recording believed to document a possible violation of school district, open-enrollment charter school, or campus policy relating to the neglect or abuse of a student may be used in a disciplinary action against district or charter school personnel and must be released in a legal proceeding at the request of a parent of the student involved in the incident documented by the recording. A recording believed to document a possible violation of school district, open-enrollment charter school, or campus policy relating to the neglect or abuse of a student must be released for viewing by the district or charter school employee who is the subject of the disciplinary action at the request of the employee.

- (l) ~~(4)~~ Access rights. Subsections ~~(i) and~~ (j) and (k) of this section do 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 TEC, §29.022, and this section conflict with FERPA or other federal law, federal law prevails.

§103.1303. Commissioner's Review of Actions Concerning Video Cameras in Special Education Settings.

- (a) Applicability. This section shall apply to all hearings and reviews of actions taken under Texas Education Code (TEC), §29.022, concerning denials of requests for the installation of cameras, denials of requests to release a video, and requests of a school district for an extension of time for the installation of cameras. To the extent that this section conflicts with any other sections governing hearings before the commissioner of education, including Chapter 157, Subchapter AA of this title (relating to General Provisions for Hearings Before the Commissioner of Education) and Subchapter BB of this title (relating to Specific Appeals to the Commissioner), this section shall prevail.
- (b) Denial of request. The following standards and procedures apply to a denial of a request made under TEC, §29.022(a), for the placement of a video camera or to the denial of a request to release a video made under TEC, §29.022(i) or (l)(2).
- (1) Once a request for placement of a video camera or a request to release a video is administratively denied, the requestor must exhaust administrative remedies through the school district's grievance process even if the requestor opts for the expedited review process. However, a school district, parent, staff member, or administrator may request an expedited review even before local remedies are exhausted.
- (2) After local remedies are exhausted by filing a grievance with the school board and obtaining a school board determination, the requestor may appeal the denial to the commissioner of education under TEC, §7.057, by filing a petition for review.
- (3) In a case where there is a denial of a request for the placement of a video camera, the commissioner will determine whether the person requesting placement is a person allowed to request placement under TEC, §29.022(a-1), and whether the requestor made a proper request under TEC, §29.022(a-3), and school district policy. The commissioner in such a case will not consider the cost to the district of installing cameras or releasing a video.
- (4) In a case where there is a denial of a request to release a video, the commissioner will determine whether the requestor is a person allowed to receive a video under TEC, §29.022(i). The commissioner may make an in-camera inspection of the video in question in the appropriate case.
- (5) The following timelines are established for filing a petition for review.
- (A) A petition for review shall be filed with the commissioner within 10 calendar days of the decision of the board of trustees denying the request being first communicated to the requestor or requestor's counsel, whichever occurs first. The petition for review shall be made in accordance with §157.1073(c) of this title (Relating to Hearings Brought Under Texas Education Code, §7.057) and may include a request for expedited review.
- (B) The district's answer and local record shall comply with §157.1052(b) and (c) of this title (relating to Answers) and §157.1073(d) of this title and shall be filed with the commissioner within 10 calendar days of the school district receiving notification from the commissioner of the appeal.

- (C) The procedures specified in §§157.1059; 157.1061; and 157.1073(e)-(h), (j), and (k) of this title apply to a case brought to the commissioner under this section.
- (6) A request for expedited review is governed by the following.
- (A) The expedited review process is designed to allow a requestor to promptly receive a preliminary judgment from the commissioner as to a decision to deny a request for the installation of cameras or a decision to deny a request to release a video while at the same time respecting the school grievance process. Invoking the expedited review process results in a prompt initial determination. However, the final commissioner's determination is to be based on a substantial evidence review of the school district's grievance record. This allows for a full record to be developed at the school district level and does not require the requestor and the school district to make an evidentiary record before the Texas Education Agency (TEA) in Austin, Texas. Because the requirements of TEC, §7.057, are met when the school board's decision is heard by the commissioner, an appeal to district court is allowed under TEC, §7.057(d). TEC, §29.022, does not by itself allow an appeal to district court.
- (B) A school district, parent, staff member, or administrator may request an expedited review. Any request for an expedited review shall include the names, telephone numbers, and addresses of all interested parties to the request. "Interested parties" are all persons who brought the grievance, all persons who have testified or provided written statements as part of the grievance process, and the school district. The request for expedited review shall specify whether the school district denied a request for the placement of a video camera or the school district denied a request to release a video and briefly describe why that decision is either correct or incorrect. The party who requests an expedited review shall send a copy of the request for expedited review to all interested parties and shall state in the request for expedited review that all interested parties have been sent a copy of the request for expedited review.
- (C) A request for expedited review shall be filed with the commissioner no earlier than 14 business days after a request for placement of a video camera or a request to release a video is administratively denied under TEC, §29.022(i) or (l)(2), and no later than the fifth business day after a school board resolves a grievance as to a request for placement of a video camera or a request to release a video. A request for expedited review shall be filed with the commissioner by U.S. mail, facsimile, hand delivery, or by a commercial delivery service.
- (D) Whenever an interested party files a document with the commissioner, the interested party shall send the same document to all other interested parties by the same method that the document was sent to the commissioner. Hand-delivery of the document by the next day may be substituted for service by facsimile delivery.
- (E) If a request for expedited review is timely filed, the commissioner will establish a briefing schedule.
- (F) All briefing shall clearly state the facts relied upon. Documents relevant to the issues presented may be attached to a brief. All briefing shall provide the reasons why the commissioner should or should not grant the request for expedited review. Citations to statutes, rules, commissioner decisions, and caselaw are important to identify the legal basis for the claims made.
- (G) All interested parties who are in favor of granting the request for expedited review shall file briefing at the time specified for the requestor of the expedited review.
- (H) All interested parties who are opposed to granting the request for expedited review shall file briefing at the same time.
- (I) Briefing is not limited to the issues specifically raised in the pleadings in the case. However, no new arguments may be raised in the reply briefs. Reply briefs may contain new citations to the record and legal authority as to issues previously raised.

(J) A preliminary judgment shall be issued based on the briefing of the interested parties. The preliminary judgment will be sent to the requestor, the school district, and all interested parties. If it is determined that a school district is not likely to prevail on the issue of a request for the placement of video cameras or the issue of a request to view a video under full review, the school district will fully comply with TEC, §29.022.

(K) After a preliminary judgment is made, a final judgment will be made in accordance with the procedures set forth in paragraphs (1)-(5) of this subsection.

(c) Extension of time. A request by a school district for an extension of time to begin the operation of a video camera under TEC, §29.022, shall be made and decided using the following procedures.

(1) Any request by a school district for an extension of time to begin the operation of a video camera shall be filed with the commissioner prior to the 45th school business day after a request to begin operating a video camera is received.

(2) A request for an extension of time to begin the operation of a video camera shall specify why an extension of time should be granted. The request shall include affidavits supporting any factual claims made in the request and reference any legal authority as to why the request should be granted. The request may include a request for expedited review. The request shall name the individual who requested the installation of cameras and provide the individual's address and telephone number. Immediately following the individual's address and telephone number there shall appear in bold type: "You have been identified as the individual who requested the operation of a video camera that is the subject of this request to the commissioner of education to extend the statutory timeline. You may, but are not required to, participate in the proceedings before the commissioner concerning the school district's request for an extension of time. It is entirely up to you whether and to what extent you wish to participate in these proceedings. The procedures governing these proceedings are found at 19 Texas Administrative Code §103.1303(c) and Texas Education Code, §29.022."

(3) A request for an extension of time to begin the operation of a video camera shall list the names, telephone numbers, and addresses of all interested parties to the request. All interested parties include all parents of students in the classroom or other special education setting for which a video camera has been requested and all staff who provided services in a classroom for which a video camera has been requested.

(4) All documents in a case shall be filed with the Division of Hearings and Appeals, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, facsimile number (512) 475-3662. Documents can be filed by mail, delivery, or facsimile. All documents must be actually received by the Division of Hearings and Appeals by the date specified in this section. The mailbox rule does not apply to filings in a case filed under this subsection. Filing by facsimile is strongly encouraged.

(5) All filings in a case shall be sent to the school district, the individual who initially requested the installation of the cameras, and all interested parties who have filed a request to receive documents filed in the case by the same method as the request is filed with the commissioner. Due to the requirements of the Family Educational Rights and Privacy Act of 1974, the names, telephone numbers, and addresses of parents and other publicly identifiable student information may not be given to the interested parties. The copies of the filings sent to interested parties shall be redacted to remove all personally identifiable student information.

(6) Any response to a request for an extension of time to begin the operation of a video camera shall be filed with the commissioner by an interested party within 10 calendar days of the filing of the request. If no response to the request is timely filed, the commissioner shall issue a final decision within 20 calendar days of the filing of the request.

(7) A response to a request for an extension of time to begin the operation of a video camera shall specify why an extension of time should or should not be granted. The response shall include affidavits concerning any factual claims made in the request and reference any legal authority as to

why the request should or should not be granted. The response may include a request for expedited review.

- (8) A request for expedited review must be filed with the commissioner within 10 calendar days of the filing of the request for an extension of time to begin the operation of a video camera. If a request for expedited review is made, all interested parties shall be notified that they have been identified as interested parties in the request for an extension of time to begin the operation of a video camera. In particular, the interested parties will be informed that it is their choice whether to participate in the proceedings before the commissioner, that it is entirely up to them to determine to what extent they wish to participate in the proceedings, that the procedures governing these proceedings are found in this subsection and TEC, §29.022, and that upon their written request filed with the commissioner they will be sent all filings in this case.
- (9) If a request for an expedited review is not made, the commissioner shall issue a final decision within 45 calendar days of the filing of the request for an extension of time to begin the operation of a video camera, unless the commissioner determines that an evidentiary hearing would be helpful in deciding the issues raised. If the commissioner decides to hold an evidentiary hearing, the commissioner shall establish the timelines and procedures to be used. Whether to conduct the hearing by telephone or other electronic methods will be considered.
- (10) If a request for expedited review is made, the following procedures shall be followed.

 - (A) Any reply by the school district to any response to the request shall be filed with the commissioner within 25 calendar days of the filing of the request for an extension of time to begin the operation of a video camera.
 - (B) A preliminary judgment shall be made by the commissioner within 35 calendar days of the filing of the request for an extension of time to begin the operation of a video camera.
 - (C) Any interested party or the school district may file objections to the preliminary judgment within 40 calendar days of the filing of the request for an extension of time to begin the operation of a video camera.
 - (D) Any reply to an objection to a preliminary judgment must be filed within 45 calendar days of the filing of a request for an extension of time to begin the operation of a video camera.
 - (E) The commissioner shall issue a final decision within 55 calendar days of the filing of the request for an extension of time to begin the operation of a video camera, unless the commissioner determines that an evidentiary hearing would be helpful in deciding the issues raised. If the commissioner decides to hold an evidentiary hearing, the commissioner shall establish the timelines and procedures to be used. Whether to conduct the hearing by telephone or other electronic methods will be considered.
- (11) In making either a preliminary judgment or a final judgment under this subsection, the commissioner will consider whether granting the requested extension is reasonable considering all factors, including contracting statutes, architectural and structural issues, and the difference in costs to the district if a moderate extension of time is granted.
- (12) A commissioner's final decision under this subsection is not subject to appeal.