

ATTACHMENT I

Statutory Citation Relating to Revisions to 19 TAC Chapter 103, Health and Safety, Subchapter DD, Commissioner's Rules Concerning Video Surveillance of Certain Special Education Settings

Texas Education Code (TEC), §29.022, Video Surveillance of Special Education Settings, as amended by Senate Bill 1398, 85th Texas Legislature, Regular Session, 2017 (excerpts):

- (a) In order to promote student safety, on receipt of a written request authorized under Subsection (a-1) ~~[by a parent, trustee, or staff member]~~, a school district or open-enrollment charter school shall provide equipment, including a video camera, to ~~the~~ [each] school or schools in the district or ~~the~~ [each] charter school campus or campuses specified in the request ~~[in which a student who receives special education services in a self-contained classroom or other special education setting is enrolled]~~. A [Each] school or campus that receives equipment as provided by this subsection shall place, operate, and maintain one or more video cameras in [each] self-contained classrooms and [classroom or] other special education settings [setting] in which a majority of the students in regular attendance are[;]

~~[(+)]~~ provided special education and related services[;] and are

~~[(2)]~~ assigned to one or more [a] self-contained classrooms [classroom] or other special education settings [setting] for at least 50 percent of the instructional day, provided that:

(1) a school or campus that receives equipment as a result of the request by a parent or staff member is required to place equipment only in classrooms or settings in which the parent's child is in regular attendance or to which the staff member is assigned, as applicable; and

(2) a school or campus that receives equipment as a result of the request by a board of trustees, governing body, principal, or assistant principal is required to place equipment only in classrooms or settings identified by the requestor, if the requestor limits the request to specific classrooms or settings subject to this subsection.

(a-1) For purposes of Subsection (a):

(1) a parent of a child who receives special education services in one or more self-contained classrooms or other special education settings may request in writing that equipment be provided to the school or campus at which the child receives those services;

(2) a board of trustees or governing body may request in writing that equipment be provided to one or more specified schools or campuses at which one or more children receive special education services in self-contained classrooms or other special education settings;

(3) the principal or assistant principal of a school or campus at which one or more children receive special education services in self-contained classrooms or other special education settings may request in writing that equipment be provided to the principal's or assistant principal's school or campus; and

(4) a staff member assigned to work with one or more children receiving special education services in self-contained classrooms or other special education settings may request in

writing that equipment be provided to the school or campus at which the staff member works.

(a-2) Each school district or open-enrollment charter school shall designate an administrator at the primary administrative office of the district or school with responsibility for coordinating the provision of equipment to schools and campuses in compliance with this section.

(a-3) A written request must be submitted and acted on as follows:

(1) a parent, staff member, or assistant principal must submit a request to the principal or the principal's designee of the school or campus addressed in the request, and the principal or designee must provide a copy of the request to the administrator designated under Subsection (a-2);

(2) a principal must submit a request by the principal to the administrator designated under Subsection (a-2); and

(3) a board of trustees or governing body must submit a request to the administrator designated under Subsection (a-2), and the administrator must provide a copy of the request to the principal or the principal's designee of the school or campus addressed in the request.

(b) A school or campus that places a video camera in a classroom or other special education setting in accordance with Subsection (a) shall operate and maintain the video camera in the classroom or setting, as long as the classroom or setting continues to satisfy the requirements under Subsection (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. If for any reason a school or campus will discontinue operation of a video camera during a school year, not later than the fifth school day before the date the operation of the video camera will be discontinued, the school or campus must notify the parents of each student in regular attendance in the classroom or setting that operation of the video camera will not continue unless requested by a person eligible to make a request under Subsection (a-1). Not later than the 10th school day before the end of each school year, the school or campus must notify the parents of each student in regular attendance in the classroom or setting that operation of the video camera will not continue during the following school year unless a person eligible to make a request for the next school year under Subsection (a-1) submits a new request.

(c) Except as provided by Subsection (c-1), video [Video] cameras placed under this section must be capable of:

(1) covering all areas of the classroom or other special education setting, including a room attached to the classroom or setting used for time-out [except that the inside of a bathroom or any area in the classroom or setting in which a student's clothes are changed may not be visually monitored]; and

(2) recording audio from all areas of the classroom or other special education setting, including a room attached to the classroom or setting used for time-out.

(c-1) The inside of a bathroom or any area in the classroom or other special education setting in which a student's clothes are changed may not be visually monitored, except for incidental coverage of a minor portion of a bathroom or changing area because of the layout of the classroom or setting.

- (d) Before a school or campus activates ~~[places]~~ a video camera in a classroom or other special education setting under this section, the school or campus shall provide written notice of the placement to all school or campus staff and to the parents of each ~~[a]~~ student attending class or engaging in school activities ~~[receiving special education services]~~ in the classroom or setting.
- (e) Except as provided by Subsection (e-1), a ~~[A]~~ school district or open-enrollment charter school shall retain video recorded from a video camera placed under this section for at least three ~~[six]~~ months after the date the video was recorded.
- (e-1) If a person described by Subsection (i) requests to view a video recording from a video camera placed under this section, a school district or open-enrollment charter school must retain the recording from the date of receipt of the request until the person has viewed the recording and a determination has been made as to whether the recording documents an alleged incident. If the recording documents an alleged incident, the district or school shall retain the recording until the alleged incident has been resolved, including the exhaustion of all appeals.
- (i) A video recording of a student made according to this section is confidential and may not be released or viewed except as provided by this subsection or Subsection (i-1) ~~or~~ (j). A school district or open-enrollment charter school shall release a recording for viewing by:
 - (1) an ~~[a school district]~~ employee ~~[or a parent or guardian of a student]~~ who is involved in an alleged incident that is documented by the recording and ~~[for which a complaint]~~ has been reported to the district or school, on request of the employee~~[-parent, or guardian, respectively];~~
 - (2) a parent of a student who is involved in an alleged incident that is documented by the recording and has been reported to the district or school, on request of the parent;
 - (3) appropriate Department of Family and Protective Services personnel as part of an investigation under Section 261.406, Family Code;
 - (4) ~~[(3)]~~ a peace officer, a school nurse, a 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 board of trustees of the school district or the governing body of the open-enrollment charter school in response to a report of an alleged incident ~~[complaint]~~ or an investigation of district or school personnel or a report ~~[complaint]~~ of alleged abuse committed by a student; or
 - (5) ~~[(4)]~~ appropriate agency or State Board for Educator Certification personnel or agents as part of an investigation.
- (i-1) 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 is not in violation of Subsection (i).
- (j) If a person described by Subsection (i)(4) ~~[(4)(3)]~~ or (5) ~~[(4)]~~ who views the video recording believes that the recording documents a possible violation under Subchapter E, Chapter 261, Family Code, the person shall notify the Department of Family and Protective Services for investigation in accordance with Section 261.406, Family Code. If any person described by Subsection (i)(3) ~~[(4)(2)]~~, ~~[(3), or]~~ (4), or (5) who views the recording believes that the recording documents a possible violation of district or school policy, the person may allow access to the

recording to appropriate legal and human resources personnel. A recording believed to document a possible violation of district or school policy relating to the neglect or abuse of a student may be used as part of a disciplinary action against district or school personnel and shall be released at the request of the student's parent ~~[or guardian]~~ in a legal proceeding. This subsection does not limit the access of a student's parent to a record regarding the student under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) or other law.

- (k) The commissioner may adopt rules to implement and administer this section, including rules regarding the special education settings to which this section applies.
- (l) A school district or open-enrollment charter school policy relating to the placement, operation, or maintenance of video cameras under this section must:
 - (1) include information on how a person may appeal an action by the district or school that the person believes to be in violation of this section or a policy adopted in accordance with this section, including the appeals process under Section 7.057;
 - (2) require that the district or 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 Subsection (a-3) that authorizes the request or states the reason for denying the request;
 - (3) except as provided by Subdivision (5), require that a school or a 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 agency grants an extension of time;
 - (4) permit 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; and
 - (5) if a request is made by a parent in compliance with Subdivision (4), unless the agency grants an extension of time, require that 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.
- (m) A school district, parent, staff member, or administrator may request an expedited review by the agency of the district's:
 - (1) denial of a request made under this section;
 - (2) request for an extension of time to begin operation of a video camera under Subsection (l)(3) or (5); or

- (3) determination to not release a video recording to a person described by Subsection (i).
- (n) If a school district, parent, staff member, or administrator requests an expedited review under Subsection (m), the agency shall notify all other interested parties of the request.
- (o) If an expedited review has been requested under Subsection (m), the agency shall issue a preliminary judgment as to whether the district is likely to prevail on the issue under a full review by the agency. If the agency determines that the district is not likely to prevail, the district must fully comply with this section notwithstanding an appeal of the agency's decision. The agency shall notify the requestor and the district, if the district is not the requestor, of the agency's determination.
- (p) The commissioner:
- (1) shall adopt rules relating to the expedited review process under Subsections (m), (n), and (o), including standards for making a determination under Subsection (o); and
- (2) may adopt rules relating to an expedited review process under Subsections (m), (n), and (o) for an open-enrollment charter school.
- (q) The agency shall collect data relating to requests made under this section and actions taken by a school district or open-enrollment charter school in response to a request, including the number of requests made, authorized, and denied.
- (r) A video recording under this section is a governmental record only for purposes of Section 37.10, Penal Code.
- (s) This section applies to the placement, operation, and maintenance of a video camera in a self-contained classroom or other special education setting during the regular school year and extended school year services.
- (t) A video camera placed under this section is not required to be in operation for the time during which students are not present in the classroom or other special education setting.
- (u) In this section:
- (1) "Parent" includes a guardian or other person standing in parental relation to a student.
- (2) "School business day" means a day that campus or school district administrative offices are open.
- (3) "Self-contained classroom" does not include a classroom that is a resource room instructional arrangement under Section 42.151.
- (4) "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.
- (5) "Time-out" has the meaning assigned by Section 37.0021.