Seguin Independent School District
Video and Audio Monitoring Equipment In Classrooms

OPERATING PROCEDURES OF VIDEO AND AUDIO SURVEILLANCE OF SPECIAL EDUCATION SETTINGS

Implementing TEC 29.022 (as amended by SB 1398) and Commissioner's Rules

SUMMARY / PURPOSE

Texas Education Code 29.022 requires school districts and open-enrollment charter schools, to place, operate, and maintain video cameras with audio recording capability in certain Special Education Classroom or Special Education Settings for students with disabilities, upon the request of a parent, the District's Board of Trustees, or staff member, as defined herein for the purpose of promoting safety of students with disabilities in these classrooms.

DEFINITIONS

Alleged Incident – An event or circumstance that allegedly occurred in a Special Education Classroom or Special Education Setting in which video surveillance under TEC 29.022 is conducted that involves alleged "abuse" or neglect," as defined in the Texas Family code, of a student by an employee of the District, or alleged "physical abuse" or "sexual abuse," as defined in the Texas Family Code, of a student by another student.

Designated District Coordinator – An administrator, designated by the Superintendent, at the primary administrative office of the District responsible for coordinating the provision of equipment to schools and campuses in compliance with TEC 29.022 and these Operating Guidelines.

Human Resource Staff Member - Superintendent, a principal, an assistant principal or other campus administrator, and any supervisory position within the District's human resources office, including Director of Special Education.

Incident Report (i.e. Complaint) - Notification to the District of an Alleged Incident that occurred in a Special Education Classroom or Other Special Education Setting in which video surveillance under TEC 29.022 is conducted by completing and providing an Incident Report form to the campus principal.

Other Special Education Setting – A classroom on a separate campus (i.e. a campus that serves only students who receive special education and related services), 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 (i.e. PEIMS codes) as described in the Student Attendance Accounting Handbook: 86 or 96.

Parent / Guardian – A parent, guardian or other person standing in parental relation to the student, whose rights have not been terminated, and whose child receives special education and related services in one or more Self-contained Classrooms or Other Special Education Settings. "Parent" also means a student who receives special education and related services in one or more Self-contained Classrooms or Other Special Education Settings and who is 18 years of age or older or whose disabilities of minority have been removed, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order

School Business Day - A day that campus or District administrative offices are open.

Special Education Classroom – Special education classroom or other special education setting" means a classroom or setting primarily used for delivering special education services to students who spend on average less than 50 percent of an instructional day in a general education classroom or setting.

Staff Member – A teacher, related services provider, paraprofessional, counselor, or educational aide assigned to work in a Self-contained Classroom or Other Educational Setting.

Time-out – 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 a setting that is not locked and from which the exit is not physically blocked by furniture, a closed door held shut from the outside, or another inanimate object (TEC 37.0021)

Video Camera - A video surveillance camera with audio recording capabilities.

Video Equipment – one or more video cameras and any technology and equipment needed to place, operate, and maintain video cameras, and any technology and equipment needed to store and access video recordings as required by TEC 29.022.

PROCEDURES for Responding to Requests for Video/Audio Surveillance, Including Notice

1. Upon receipt of a Request for Installation / Activation form, the District will determine if the requested location is subject to video/audio surveillance.

2. Within seven (7) School Business Days from receipt of the Request for Installation/Activation form by an authorized person, the Director of Special Education or Designated District Coordinator, as applicable, will provide a written response to the requestor, authorizing the request or stating the reason for denying the request. The response shall include a copy of these Operating Guidelines. A denial can be appealed as described herein.

3. If the requested location is subject to video/audio surveillance, the District will purchase, install, and operate video/audio recording equipment in the classroom(s) or setting(s) to which the request applies.

4. Except as provided in these Operating Guidelines, the purchase, installation, and operation of the video/audio recording equipment will take place not later than the 45th School Business Day, or the 1st 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, as discussed herein).

5. If a request is received from a parent of a student whose ARD committee has determined that the student will be served in a Self-contained Classroom(s) or Other Special Education Setting(s) the following year, the purchase, installation, and operation of the video/audio recording equipment will take place not later than the later of: the 10th school day of the fall semester of the next school year, or the 45th School Business Day, or the 1st school day after the 45th School Business Day if that day is not a school day, after the request is made (unless the TEA grants an extension of time as discussed herein).

6. The video/audio recording equipment will not be activated until after the campus principal provides advanced written notice, of at least five School Business Days, of the placement of the video camera to (a) the parents of each student attending class, or engaging in school activities in the classroom or setting, by sending notice to the parents that video and audio surveillance will be conducted in the classroom or setting, and (b) all campus staff by posting a notice at the entrance to the classroom or setting stating "This classroom is subject to ongoing video and audio surveillance that is not regularly live monitored."

7. The video recording will cover all areas of the classroom or setting, including a room attached to the classroom or setting used for time-out.

8. The inside of a bathroom or area used for toileting or diapering a student or removing or changing a student's clothes may not be visually monitored, except for incidental coverage of a minor portion of the bathroom or changing area because of the layout of the classroom or setting.

9. The audio recording will cover all areas of the classroom or setting, time-out room, and bathroom or changing area.

10. Once the video equipment is installed, the District will not allow regular or continual monitoring of the video/audio recordings.

11. The video camera will be operated at all times during which one or more students are present in the Special Education Classroom or Other Special Education Setting. The video camera may also, but is not required to, be operational at times when students are not in the classroom or setting.

12. The District will continue to operate and maintain the video/audio recording in the Self-contained Classroom or Other Special Education Setting for the remainder of the regular school year, or for the remainder of the Extended School Year ("ESY") services for which the school or campus received the request, as long as the classroom or setting continues to meet the definition of a Special Education Classroom or Other Special Education Setting. If the requestor withdraws the request in writing, or if the make-up of the classroom or setting changes such that the location no longer meets the definition of a Special Education Classroom or Other Special Education Setting, the video/audio recording may be discontinued. Written notice of the discontinuation of video/audio surveillance, along with notice of the opportunity to request continued video and audio surveillance, will be provided to:

(a) the parents of the students assigned to the self-contained classroom or other special education setting at least five (5) school days prior to the discontinuation, and

(b) all campus staff by posting a notice at the entrance to the classroom or setting stating "The video/audio recording of this classroom will cease on [insert date]."

13. At least ten (10) school days before the end of each school year, the school or campus shall 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 submits a new request.

14. The video/audio recordings will be stored in a safe and secure manner whether on on-site or off-site servers or in cloud storage.

15. The District will retain the video/audio recordings for at least three (3) months after the video was recorded, and may retain them longer, pursuant to TEC §29.022(e-1), if a request for viewing is made.

16. These requirements apply to video/audio surveillance during the regular school year and during ESY services.

PROCEDURES for Making an Incident Report

A person may notify the District of an alleged incident occurring in a Special Education classroom or other special education setting where video/audio surveillance is in effect by completing an Incident Report form and providing it to the campus principal. The person making the Incident Report should be as specific as possible regarding the date, time, and location of the alleged incident, should include any witnesses, and should describe the suspected incident as clearly as possible. The Incident Report should be provided to the campus principal as soon as possible, and if at all possible within 48 hours after the reporter becomes aware of an alleged incident.

PROCEDURES for Responding to an Incident Report

1. If an alleged incident, as defined herein, is reported, absent extenuating circumstances, within seven (7) School Business Days from receipt of the Incident Report form, an appropriate District Administrator will review the footage to determine whether the recording contains evidence of abuse or neglect, as defined in the Texas Family Code, of a student by a staff member of the District, or physical abuse or sexual abuse, as defined in the Texas Family Code, of a student by another student. If so, the appropriate District Administrator shall initiate other steps as required by law, District policy, or local procedures.

2. The appropriate District administrator(s) will determine whether any additional safety measures should be taken in the Special Education Classroom or Other Special Education Setting pending a review of the relevant video/audio recording.

3. If the alleged incident, as set forth on the Incident Report form, cannot as described on the form, qualify as abuse or neglect, as defined in the Texas Family Code, of a student by a staff member of the District, or physical abuse or sexual abuse, as defined in the Texas Family Code, of a student by another student, the District will provide written notice to the person making the report that the allegations on the Incident Report form do not set forth an alleged incident (i.e. abuse or neglect, as defined in the Texas Family Code, of a student by employee staff member of the District, or physical abuse or sexual abuse, as defined in the Texas Family Code, of a student by another student.)

4. Following the initial review of the video/audio recording by the District's eligible persons, the District will notify the Campus Administrator and the Parent who made the Incident Report as to whether the recording documented abuse or neglect, as defined in the Texas Family Code, of a student by a staff member of the District, or physical abuse or sexual abuse, as defined in the Texas Family Code, of a student by another student within three (3) School Business Days. The District will notify the Campus Administrator and the Parent of one of the following:

   a. The recording documenting abuse or neglect, as defined in the Texas Family Code, of a student by a staff member of the District, or physical abuse or sexual abuse, as defined in the Texas Family Code, of a student by another student, is available for viewing by the Parent upon making an appointment;

   b. While the recording did not document abuse or neglect, as defined in the Texas Family Code, of a student by a staff member of the District, or physical abuse or sexual abuse, as defined in the Texas Family Code, of a student by another student, it did document a significant act involving the student, such that the recording is an educational record pursuant to the Family Educational Rights and Privacy Act (FERPA) and is available for viewing by the Parent upon making an appointment; or

   c. The recording does not depict abuse or neglect, as defined in the Texas Family Code, of a student by an employee of the District, physical abuse or sexual abuse, as defined in the Texas Family Code, of a student by another student, or a significant act involving the student such that the recording is not an educational record pursuant to FERPA, and access to view the recording will not be provided.

5. Additionally, the District will notify any non-reporting parent of a child who is subject to abuse or neglect, as defined in the Texas Family Code, of a student by employee staff member of the District, or physical abuse or sexual abuse, as defined in the Texas Family Code, of a student by another student, as documented on the recording within three (3) School Business Days of the initial review of the video/audio recordings.

ACCESS TO VIDEO / AUDIO RECORDINGS

1. A video/audio recording made as a result of these provisions is confidential.

2. The District will not allow regular or continual monitoring of video/audio recordings.

3. The District will not use the video/audio recordings for teacher evaluation or monitoring or for any purpose other than the promotion of safety of students receiving special education in a Special Education Classroom or Other Special Education Setting.

4. In response to an Incident Report setting forth an Alleged Incident, the District will allow viewing of the video/audio recording only by the following eligible persons:

a. An employee who is involved in an Alleged Incident that is documented by the recording and who requests to view the recording;

b. A parent/guardian of a student who is involved in an Alleged Incident documented by the recording who requests to view the recording;

c. A peace officer;

d. A school nurse;

e. A District or school administrator trained in de-escalation and restraint techniques; and

f. A Human Resources Staff Member designated by the Board of Trustees.

5. As part of an investigation of district or school personnel, or a report of alleged abuse committed by a student, the District will allow viewing of the video/audio only by the following:

a. A peace officer;

b. A school nurse;

c. A District or school administrator trained in de-escalation and restraint techniques; and

d. A Human Resource Staff Member designated by the Board of Trustees.

6. The District will also allow viewing of the video/audio recording to the following under the following conditions:

a. Appropriate Department of Family and Protective Services ("DFPS") personnel as part of an investigation of alleged or suspected abuse or neglect of a child in a public or private school under the jurisdiction of the TEA;

b. Appropriate TEA or State Board for Educator Certification ("SBEC") personnel or agents as part of an investigation; and

c. If DFPS personnel, a peace officer, school nurse, administrator, human resources staff member or SBEC personnel/agent view the video/audio recording and believes that the recording documents a possible violation of district or school policy, relating to the neglect or abuse of a student, the person may allow appropriate legal and human resources personnel access to the recording, and the recording may be used as part of a disciplinary action against district or school personnel;

d. A District employee who is the subject of the disciplinary action must be allowed to view a recording believed to document a possible violation of District or campus policy, relating to abuse or neglect of a student, if the employee requests to view the recording.

e. In accordance with Board Policy FL (LEGAL and LOCAL), District personnel or contractors whose job duties involve installation, operation, or maintenance of the video equipment or the retention of the video recordings will have access to the equipment and recordings only to the extent necessary to ensure the functionality of the equipment.

7. No one has any right to obtain a copy of a video/audio recording except that a copy will be released at the request of the student's parent or guardian in a legal proceeding.

8. Nothing in these procedures limits a parent's right to access educational records of a child under the Family Educational Rights and Privacy Act. However, not all surveillance video/audio recordings are educational records of a student. If the recording is directly related to a student who is the focus of the video, only that portion of the recording is an educational record of that student and may be viewed by that student's parent upon request. The recording is not an educational record of students who are merely present and not the focus of the recording, and may not be viewed by the parents of these students.

9. If the District receives a request to view a recording, the District will provide a written response to the requestor within seven (7) School Business Days that access will or will not be provided.

CHILD ABUSE REPORTING

If a peace officer, school nurse, administrator, human resources staff member or SBEC personnel/agent views the recording and believes that the recording documents possible abuse of a child as defined by the Family Code, the person shall submit a report to the DFPS for investigation in accordance with the Family Code.

PROCEDURES for Requesting an Extension of Time

1. Any request by the District for an extension of time to begin the operation of a video camera will be filed with the Commissioner of Education as soon as the District determines that an extension of time is needed but no later than prior to the 45th School Business Day after a request to begin operating a video camera is received.

2. The request for an extension of time to begin the operation of a video camera will specify why an extension of time should be granted and include the information required by 19 TAC §103.1303(c). The request may include a request for expedited review.

3. The request will 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."

4. The request for an extension of time to begin the operation of a video camera will 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.

5. Any response to a request for an extension of time to begin the operation of a video camera must be filed with the Commissioner of Education within ten (10) calendar days of the filing of the request.

6. A response to a request for an extension of time to begin the operation of a video camera must specify why an extension of time should or should not be granted. The response shall include the information required by 19 TAC §103.1303(c). The response may include a request for expedited review. If no response to the request is timely filed, the Commissioner shall issue a final decision within twenty (20) calendar days.

7. If a request for an expedited review is not made, the Commissioner shall issue a final decision within forty-five (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.

DISPUTE RESOLUTION

1. Special education dispute resolution procedures (i.e. due process hearing, mediation, TEA complaint) do not apply to any dispute arising under TEC §29.022 or these provisions. Such disputes must be addressed through the District's grievance procedures or other local dispute resolution channels. These grievance procedures are available to address denials of requests for the installation of cameras, denials of requests to view a video, denials of requests to release a video, and requests of a school district for an extension of time for the installation of cameras.

2. Employee complaints/grievances must be made in accordance with Board Policy DGBA (LEGAL and LOCAL); Student and/or Parent complaints/grievances must be made in accordance with Board Policy FNG (LEGAL and LOCAL), and public complaints must be made in accordance with Board Policy GF (LEGAL and LOCAL).

3. Once local remedies are exhausted by filing a grievance with the School Board and obtaining a School Board determination, the requestor may appeal the District's decision by filing a written petition, pursuant to Tex. Educ. Code §7.057, with the Commissioner of Education.

4. The appeal must be made in writing to the Commissioner within 10 calendar days of the District's decision being communicated to the requestor or requestor's counsel, whichever occurs first.

5. The District's answer must be filed with the Commissioner of Education within 10 calendar days of the District receiving notification from the Commissioner of the appeal.

Expedited Review of Denial of a Request for Installation or Request to Release Video

1. The District, parent, staff Member, or administrator may seek expedited TEA review if a request for installation of cameras or a request to release a video is denied. The expedited review process does not apply to a request to only view a video.

2. The request for expedited review must be made in writing and filed with the Commissioner by U.S. mail, facsimile, hand delivery, or by a commercial delivery service no earlier than fourteen (14) School Business Days after a request for placement of a video camera or a request to release a video is administratively denied, and no later than the fifth (5th) School Business Day after the School Board resolves a grievance as to a request for placement of a video camera or a request to release a video.

3. Any request for an expedited review must 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 District. The request for expedited review must specify whether the 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.

Expedited Review of Requested Extension of Time to Begin Operation of Video Cameras

1. The District may seek expedited TEA review for a request for extension of time for installation.

2. A request for expedited review must be filed with the Commissioner within ten (10) calendar days of the filing of the request for an extension of time to begin the operation of a video camera.

3. Any reply by the District to any response to the request will be filed with the Commissioner within twenty-five (25) calendar days of the filing of the request for an extension of time to begin the operation of a video camera.

4. A preliminary judgment will be made by the Commissioner within thirty-five (35) calendar days of the filing of the request for an extension of time to begin the operation of a video camera.

5. Any interested party or the District may file objections to the preliminary judgment entered by the Commissioner of Education within forty (40) calendar days of the filing of the request for an extension of time to begin the operation of a video camera.

6. Any reply to an objection to a preliminary judgment must be filed within forty-five (45) calendar days of the filing of a request for an extension of time to begin the operation of a video camera.

7. The Commissioner will issue a final decision within fifty-five (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.

8. The Commissioner's decision is final and not subject to appeal.