

## **CLEAR CREEK ISD Video Surveillance of Special Education Settings Procedures**

Pursuant to Section 29.022, Texas Education Code (“TEC”), as added by S.B. 507, 84th Texas Legislature, Regular Session, 2015, amended by S.B. 1398, 85th Texas Legislature, Regular Session, 2017, and codified in 19 T.A.C. § 103.1301, and Board Policy EHBAF, the following procedures apply to placement, operation, and maintenance of video cameras in certain special education settings:

### **I. GENERAL REQUIREMENTS**

#### **Governing Law**

Video surveillance of special education settings is subject to TEC § 29.022, 19 T.A.C. § 103.1301, Board Policy EHBAF, and these procedures. Nothing under these procedures limits the access of a student’s parent to an educational record regarding the student under the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Section 1232g) (“FERPA”) or other law. To the extent any provisions in TEC § 29.022, 19 T.A.C. § 103.1301, Board Policy EHBAF, or these procedures conflict with FERPA or other federal law, federal law prevails. These procedures may be revised upon release of any amendment(s) to TEC 29.022, 19 T.A.C. § 103.1301, or Board Policy EHBAF.

#### **Purpose**

**Video surveillance is for the purpose of promoting student safety in certain self-contained classrooms and other special education settings.**

#### **Background**

On the request of an eligible parent, governing body, principal, assistant principal, or staff member, the District must provide video equipment, including video cameras with audio recording capabilities, to campuses in accordance with TEC § 29.022 and 19 T.A.C. § 103.1301. Campuses that receive the equipment must place, operate, and maintain video cameras in certain self-contained classrooms or other special education settings. Video recordings are confidential and may only be accessed or viewed by certain individuals as defined by statute.

#### **Retention Requirements**

The Texas Education Code requires that the District retain video recordings for at least three months after the date the video was recorded. **The District will retain video recordings on a rolling basis for 6 months after the date the recording was made.**

In the event that an eligible Request to View Video Recording is made, the District shall retain video recordings subject to the request until the requester 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 shall retain the recording until the alleged Incident has been resolved, including the exhaustion of all appeals.

In the event of disciplinary or legal proceedings, the District shall retain video recordings subject to the proceeding until the proceeding has been resolved, including the exhaustion of all appeals.

**The District may retain recordings for a longer period as required under TEC § 29.022 and 19 T.A.C. § 103.1301 and as otherwise deemed appropriate by the District.**

**Video Recordings as Governmental Record**

A video recording made in accordance with TEC § 29.022 is a governmental record only for purposes of § 37.10 of the Penal Code, Tampering with Governmental Record.

**Liability for Non-Compliance**

TEC § 29.022 does not waive any immunity from liability of a school district, its officers, and its employees, nor does TEC § 29.022 create any liability for a cause of action against a school district, its school officers, or its employees. Complaints regarding the District's implementation of TEC § 29.022 or 19 T.A.C. § 103.1301 must be addressed through the District's local grievance policies and procedures. By law, 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 the District has failed to comply with TEC § 29.022 or 19 T.A.C. § 103.1301.

**Definitions**

The following definitions apply when used in these procedures:

**A. Parent:**

- A person, including a guardian or other person standing in parental relation to a student, described in TEC § 26.022, whose child receives special education and related services in one or more Self-Contained Classrooms or Other Special Education Settings; or
- A person, including a guardian or other person standing in parental relation to a student, whose child will receive special education and related services in one or more Self-Contained Classrooms or Other Special Education Settings in the following school year; or
- A student who:
  - receives special education and related services in one or more Self-Contained Classrooms or Other Special Education Settings; and
  - is 18 years of age or older or whose disabilities of minority have been removed for general purposes under Texas Family Code ("TFC"), Chapter 31, unless the student has been determined to be incompetent or the student's rights have been otherwise restricted by a court order.

**B. Staff Member:**

- A teacher, related service provider, paraprofessional, counselor, or educational aide assigned to work in Self-Contained Classrooms or Other Special Education Settings.

**C. Principal or Assistant Principal**

- The principal or an assistant principal of the campus at which a Self-Contained Classroom or Other Special Education Setting is located.

**D. Board**

- The Clear Creek ISD Board of Trustees.

**E. Self-Contained Classroom**

- 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, 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 and have one of the following instructional arrangements/settings described in the Student Attendance Accounting Handbook:
  - self-contained (mild/moderate/severe) regular campus;
  - full-time early childhood (pre-school program for children with disabilities) special education setting;
  - residential care and treatment facility—self-contained (mild/moderate/severe) regular campus;
  - residential care and treatment facility—full-time early childhood special education setting;
  - off home campus—self-contained (mild/moderate/severe) regular campus; or
  - off home campus—full-time early childhood special education setting.

**F. 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) of a school district, 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 and have one of the following instructional arrangements/settings described in the Student Attendance Accounting Handbook:
  - residential care and treatment facility—separate campus; or
  - off home campus—separate campus.

**G. Video Camera**

- A video surveillance camera with audio recording capabilities.

**H. Video Equipment**

- 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 19 T.A.C. § 103.1301.

**I. Incident**

- An event or circumstance that:
  - involves alleged “abuse” or “neglect,” as those terms are described in TFC § 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 TFC § 261.410, of a student by another student; and
  - allegedly occurred in a Self-Contained Classroom or Other Special Education setting in which video surveillance under TEC § 29.022 and 19 T.A.C. § 103.1301 is conducted.

**J. Abuse**

- As defined in TFC § 261.001(1), means the following acts or omissions by a school district employee:

- i. mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- ii. causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;
- iii. physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;
- iv. failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;
- v. sexual conduct harmful to a child's mental, emotional, or physical welfare, including conduct that constitutes the offense of continuous sexual abuse of young child or children under Section 21.02, Penal Code, indecency with a child under Section 21.11, Penal Code, sexual assault under Section 22.011, Penal Code, or aggravated sexual assault under Section 22.021, Penal Code;
- vi. failure to make a reasonable effort to prevent sexual conduct harmful to a child;
- vii. compelling or encouraging the child to engage in sexual conduct as defined by Section 43.01, Penal Code, including compelling or encouraging the child in a manner that constitutes an offense of trafficking of persons under Section 20A.02(a)(7) or (8), Penal Code, prostitution under Section 43.02(b), Penal Code, or compelling prostitution under Section 43.05(a)(2), Penal Code;
- viii. causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene as defined by Section 43.21, Penal Code, or pornographic;
- ix. the current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical, mental, or emotional injury to a child;
- x. causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;
- xi. causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code; or
- xii. knowingly causing, permitting, encouraging, engaging in, or allowing a child to be trafficked in a manner punishable as an offense under Section 20A.02(a)(5), (6), (7), or (8), Penal Code,

or the failure to make a reasonable effort to prevent a child from being trafficked in a manner punishable as an offense under any of those sections.

**K. Neglect**

- As defined in TFC § 261.001(1), means the following acts or omissions by a school district employee:
  - placing a child in or failing to remove a child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;
  - failing to seek, obtain, or follow through with medical care for a child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;
  - the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused;
  - placing a child in or failing to remove the child from a situation in which the child would be exposed to a substantial risk of sexual conduct harmful to the child; or
  - placing a child in or failing to remove the child from a situation in which the child would be exposed to acts or omissions that constitute abuse under Subdivision (1)(E), (F), (G), (H), or (K) committed against another child; or
  - the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.
- Neglect does not include the refusal by a person responsible for a child's care, custody, or welfare to permit the child to remain in or return to the child's home resulting in the placement of the child in the conservatorship of the department if:
  - the child has a severe emotional disturbance;
  - the person's refusal is based solely on the person's inability to obtain mental health services necessary to protect the safety and well-being of the child; and
  - the person has exhausted all reasonable means available to the person to obtain the mental health services described above.

**L. Physical Abuse**

- As defined in the TFC § 261.410(1), means the following acts or omissions by another student:
  - Physical injury that results in substantial harm to the child requiring emergency medical treatment; or
  - Failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child.

**M. District Business Day**

- As defined in TEC § 29.022, means a day that the campus or District administrative offices are open.

**N. Sexual Abuse**

- As defined in TFC § 261.410(2), means the following acts or omissions by another student:
  - i. Sexual conduct harmful to a child’s mental, emotional, or physical welfare; or
  - ii. Failure to make a reasonable effort to prevent sexual conduct harmful to a child.

**O. Time-Out**

- As defined in TEC § 37.0021, means a behavior management technique in which, to provide 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.

**P. 1398 Administrator**

- As required under TEC § 29.022, the District has identified the Assistant Superintendent of Human Resources as the administrator at the primary administrative office of the District with responsibility for coordinating the provision of equipment to schools and campuses in compliance with TEC § 29.022 and 19 T.A.C. § 103.1301.

Note: Any District representative to whom certain responsibilities are assigned under these procedures may, at his/her discretion, designate another District employee to perform such responsibilities.

## II. REQUESTING VIDEO SURVEILLANCE

### Who may Request

A Parent, Board, Principal, Assistant Principal, or Staff Member may request video surveillance.

### How to Request

- An eligible Parent, Staff Member, or Assistant Principal may request video surveillance by contacting the principal of the campus where the applicable Self-Contained Classroom or Other Special Education Setting is located. An eligible Principal or the Board may request video surveillance by contacting the Assistant Superintendent of Human Resources. The Assistant Superintendent of Human Resources will facilitate submission of the request through the appropriate channels within the District. In order to request video surveillance, the requester must complete the District’s Exhibit A, Request for Video Surveillance,<sup>1</sup> and submit the completed Exhibit A to the campus principal or the Assistant Superintendent of Human Resources, as appropriate, in accordance with the instructions found on the form. A valid request may also be considered through verified electronic communication. **A request for video surveillance is only valid for the current school year. Operation of the requested video camera(s) shall be**

---

<sup>1</sup> All forms referenced in these procedures may be found in the Appendix attached hereto.

**discontinued at the end of the current school year. If an eligible requester wishes to request video surveillance for a subsequent school year, the requester must submit a new request for video surveillance using Exhibit A.**

The completed Exhibit A or verified electronic communication must be signed and must contain, at a minimum, the following information:

1. Name of requester;
2. Status of the requester (i.e., Parent, Board, Principal, Assistant Principal, or Staff Member); and
3. Specific information identifying the Self-Contained Classroom or Other Special Education Setting subject to the request.

### **Eligibility for Video Surveillance**

The District must provide Video Equipment, including one or more Video Cameras with audio recording capabilities, to campuses when requested to do so in accordance with TEC § 29.022 and 19 T.A.C. § 103.1301. To trigger the District's obligations, the following conditions must be met:

1. The requester must be a:
  - a. Parent;
  - b. Principal;
  - c. Assistant Principal;
  - d. Board; or
  - e. Staff Member; and
2. The location subject to the request must be a:
  - a. Self-Contained Classroom; or
  - b. Other Special Education Setting.

A Parent may request that equipment be provided to the school or campus at which the Parent's child receives special education services in one or more Self-Contained Classrooms or Other Special Education Settings. The Parent of a student whose admission, review, and dismissal committee (ARDC) has determined that the student's placement for the following school year will be in a Classroom/Setting in which a Video Camera may be placed under TEC § 29.022 may make a request for a Video Camera by the later of: (1) the date on which the current school year ends; or (2) the tenth (10<sup>th</sup>) District Business Day after the date of the placement determination by the ARDC.

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 that equipment be provided to the school or campus at which the Staff Member works.

If the District receives a request from a Parent or Staff Member, the District is required to place equipment only in Classrooms/Settings in which the Parent's child is in regular attendance or to which the Staff Member is assigned, as applicable.

A 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 that equipment be provided to the Principal's or Assistant Principal's school or campus.

The Board may request 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.

If the District receives a request from a Principal, Assistant Principal, or the Board, the District is required to place equipment only in Classrooms/Settings identified by the requester, if the requester limits the request to specific Classrooms or Settings.

### ***Exclusions***

1. The District has **no** obligation to provide Video Equipment to:
  - a. A campus of another district;
  - b. A charter school; or
  - c. A non-public school.
2. In addition, the following are not subject to the requirements of TEC § 29.022:
  - a. The Texas School for the Deaf;
  - b. The Texas School for the Blind and Visually Impaired;
  - c. The Texas Juvenile Justice Department; and
  - d. Any other state agency that provides special education and related services to students.

### **Duration of Surveillance Obligation**

**A request for video surveillance, if approved, obligates the District to provide video surveillance for the current school year only. A new request must be submitted to trigger the District's obligations under law for any subsequent school year.**

### **District Steps upon Request for Video Surveillance**

Upon written receipt of a request for video surveillance;

1. The Assistant Superintendent of Human Resources shall convene a committee consisting of a representative of the Department of Special Services.
2. The committee will review the request to determine eligibility (*i.e.*, (i) whether the requestor a Parent, Board, Principal, Assistant Principal, or Staff Member, and (ii) whether the requested classroom/setting meets the criteria for a Self-Contained Classroom or Other Special Education Setting).
3. If the requestor chooses to withdraw the request, the Assistant Superintendent of Human Resources will provide Exhibit A1, Withdrawal of Request for Video Surveillance, to the requestor to document withdrawal of the request.
4. Within seven (7) District Business Days after the date of receipt noted on the completed Exhibit A, the Assistant Superintendent of Human Resources will send the requestor written notice of the District's decision using Exhibit A2, Notification Regarding Request for Video Surveillance. The appropriate assistant superintendent or Special Education district administrator and campus administrator will be copied on the response to the requestor.
5. After notice has been provided, unless TEA grants an extension of time, operation of the required equipment must begin not later than:
  - (1) forty-five (45) District Business Days after the date of approval noted on the completed Exhibit A; or
  - (2) the first school day after the forty-fifth (45<sup>th</sup>) District Business Day of that day not a school day; or

- (3) in the instance of a Parent requester whose child will be placed in a qualifying Classroom/Setting for the following school year per the ARDC decision, the later of:
1. the tenth (10<sup>th</sup>) school day of the fall semester; or
  2. the forty-fifth (45<sup>th</sup>) District Business Day (or the first school day after the 45<sup>th</sup> District Business Day if that day is not a school day) after the date of the request.
6. The Assistant Superintendent of Human Resources shall notify the Chief Technology Officer and the Director of Network and Tech Services to obtain any surveillance equipment and facilitate installation.
  7. The Chief Technology Officer and the Director of Network and Tech Services will assess the location of approved surveillance for placement of surveillance equipment.
  8. The Director of Network and Tech Services will contact the campus principal upon the completion of installation of equipment.
  9. Before activation of surveillance equipment begins, the campus principal shall send written notice of the placement to all school or campus staff and to the parents of students attending class or engaging in school activities in the Classroom/Setting using Exhibit A3, Notice of Video Surveillance. The District may not activate the Video Equipment to record the Classroom/Setting until the notice is sent and ample time is allowed for its receipt.
  10. When the requisite steps above have been completed, the campus principal will inform the Director of Network and Tech Services and request activation.
  11. The campus principal shall post a Notice of Video Surveillance at the entrance of any Classroom/Setting in which Video Cameras are placed stating that video and audio surveillance is conducted in the Classroom/Setting.
  12. In the event a student enrolls or otherwise begins regular attendance in a Classroom/Setting with Video Cameras after the initial notice of surveillance has been sent, the campus principal shall provide written notice of video surveillance to the student's parent using Exhibit A3, Notice of Video Surveillance.

### III. OPERATION AND MAINTENANCE

#### **Equipment Specifications**

Upon request, the District shall provide "equipment, including a video camera." This means the District must provide:

1. **Video Camera(s)** capable of:
  - a. recording audio from all areas of the Classroom or Setting, including a room attached to the Classroom or Setting used for Time-Out and the inside of a bathroom or any area in which a student's clothes are changed; and
  - b. recording video from all areas of the Classroom or Setting, including a room attached to the Classroom or Setting used for Time-Out, but *excluding the inside of the bathroom or areas where students' clothes are changed;*<sup>2</sup> **and**
2. **Video Equipment**, which includes:
  - a. one or more Video Cameras;
  - b. any technology and equipment needed to place, operate, and maintain the Video Camera(s);

---

<sup>2</sup> Incidental coverage of a minor portion of a bathroom or changing area may occur as a result of the layout of the Classroom or Setting.

- c. Any technology and equipment needed to store and access video recordings; and
- d. Any technology and equipment needed to redact images of student faces in accordance with FERPA or other applicable law.

**Time of Recording**

Video cameras must be operated at all times during the instructional day, when students are present in the Self-Contained Classroom or Other Special Education Setting. The Video Cameras are not required to be in operation when students are not present in the Self-Contained Classroom or Other Special Education Setting.

The District shall operate and maintain requested video camera(s) in a Classroom/Setting for the remainder of the school year in which the District received the request, unless the requester withdraws the request in writing or circumstances change such that the Classroom/Setting no longer continues to satisfy the requirements under TEC § 29.022 and 19 T.A.C. § 103.1301.

For purposes of these procedures, a Classroom/Setting continues to satisfy the requirements under TEC § 29.022 and 19 T.A.C. § 103.1301 if a majority of the students in regular attendance in the Classroom/Setting are:

- (1) Provided special education and related services; and
- (2) Assigned to one or more Self-Contained Classrooms or Other Special Education Settings for at least fifty percent of the instructional day.

**The District shall discontinue video surveillance at the end of the current school year, unless a person eligible to make a request for the next school year submits a new request.** Under TEC § 29.022, not later than the tenth (10<sup>th</sup>) school day before the end of the school year, the school or campus must notify the parents of each student in regular attendance in the Classroom/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. Provided that the parents of each student in regular attendance in the Classroom/Setting (including students, who joined the Classroom/Setting after video cameras were installed) has received Exhibit A3, Notice of Video Surveillance, which contains the required notice, no additional notice is required to be given prior to discontinuation at the end of the school year. On the date that video surveillance is actually discontinued, the campus principal shall remove the Posted Notice of Video Surveillance from the entrance of the affected Classroom/Setting.

**Discontinuation of Video Surveillance during the School Year**

For purposes of this Section, decisions whether to discontinue surveillance will be made by the committee consisting of the Assistant Superintendent of Human Resources, the campus principal and a representative of the Department of Special Services.

Withdrawal of Request by the Requester: A requester may withdraw a request for video surveillance at any time by submitting Exhibit A1, Withdrawal of Request for Video Surveillance, to the individual to whom the original request for video surveillance was submitted (i.e., campus principal or Assistant Superintendent of Human Resources, as appropriate). If a requester withdraws a request in writing as provided above, the District may discontinue video surveillance, unless another eligible person submits a new request for video surveillance. Notice of discontinued surveillance must be given as provided below. The District may also elect to continue video surveillance for the remainder of the

current school year and into the next school year as long as the Classroom/Setting continues to satisfy the requirements under TEC § 29.022 and 19 T.A.C. § 103.1301. If the District elects to continue video surveillance into the next school year, the District should send written notice of video surveillance to all school or campus staff and to the parents of students attending class or engaging in school activities in the Classroom/Setting using Exhibit A3, Notice of Video Surveillance, at the beginning of the next school year.

**Classroom/Setting No Longer Meets Requirements: If a Classroom/Setting no longer satisfies the requirements under TEC § 29.022 and 19 T.A.C. § 103.1301, the District must discontinue video surveillance.** Notice of discontinued surveillance must be given as provided below. The District may not continue video surveillance unless and until the District obtains parental consent from all parents in the affected Classroom/Setting. While not always possible, the District should try to anticipate changed circumstances to allow time to obtain parental consent to avoid any lapse in video surveillance. If the District wishes to continue video surveillance after a Classroom/Setting no longer satisfies the requirements under TEC § 29.022 and 19 T.A.C. § 103.1301, the District shall:

- (1) Notify the affected parents and staff members of discontinued surveillance as provided below;
- (2) Obtain written consent to continue video surveillance from all affected parents; and
- (3) If consent is obtained from all affected parents, notify the affected parents and staff member(s) that surveillance will continue using Exhibit A3, Notice of Video Surveillance (the District should indicate in the notice whether there was any lapse in video surveillance).

**Notice of Discontinuation during the School Year:** If for any reason the District will discontinue operation of a Video Camera during the school year (e.g., the Classroom/Setting no longer satisfies the requirements under TEC § 29.022 and 19 T.A.C. § 103.1301 or the requester withdraws the request), the campus principal must notify the parents of each student in regular attendance in the Classroom/Setting, using Exhibit A4, Notice of Discontinued Video Surveillance, that operation of the Video Camera(s) will be discontinued and will not continue unless requested by a person eligible to make a request. The required notice using Exhibit A4, Notice of Discontinued Video Surveillance, must be given not later than the fifth (5<sup>th</sup>) school day before the date the operation of the Video Camera(s) will be discontinued. It is also recommended, but not required, that the campus principal notify all campus staff that surveillance will be discontinued.

**Posted Notice:** If the District discontinues video surveillance during the school year, on the date that video surveillance is actually discontinued, the campus principal shall remove the Posted Notice of Video Surveillance from the entrance of the affected Classroom/Setting.

### **Extended School Year Services**

These procedures apply to the placement, operation, and maintenance of Video Cameras in Self-Contained Classroom(s) or Other Special Education Setting(s) during the regular school year and during extended school year services. If, at the time the District approves a Parent's request for video surveillance, the student's admission, review, and dismissal committee (ARDC) has determined that the student will receive extended school year services, Video Cameras shall be placed in the Classroom/Setting in which the student receives extended school year services, provided that the Classroom/Setting satisfies the requirements for video surveillance under TEC § 29.022 and 19 T.A.C. § 103.1301. If, at

the time the District approves a Parent's request for video surveillance, the student's admission, review, and dismissal committee (ARDC) has not determined that the student will receive extended school year services, the Parent must submit a new request for video surveillance for the Classroom/Setting in which the student receives extended school year services.

#### **IV. ACCESS TO VIDEO RECORDINGS**

##### **Confidentiality**

Video recordings are confidential and may only be released or viewed under the limited circumstances set forth under TEC § 29.022, to the extent not limited by FERPA. An individual may *not* view the recordings if prohibited to do so by FERPA, even if that individual is eligible to view the recording pursuant to TEC § 29.022 and 19 T.A.C. § 103.1301. The District must follow the procedures for maintaining the security and confidentiality of state assessments specified in 19 TAC § 101.301 and in relevant test administration materials.

##### **Use of Video Recordings in Disciplinary Actions**

A video recording believed to document a possible violation of District or campus policy relating to the Abuse or Neglect of a student may be used as part of a disciplinary action against the District or school personnel and must be released for viewing by the District employee who is the subject of the disciplinary action at the request of that employee.

##### **Release of Video Recordings in Legal Proceedings**

A video recording believed to document a possible violation of District or campus policy relating to the Abuse or Neglect of a student shall be released at the request of the student's parent in a legal proceeding.

##### **Prohibited Uses of Video Recordings**

The following uses are prohibited:

- Regular or continual monitoring of the video feed;
- Teacher/staff evaluation or monitoring; and
- Any purpose other than promoting the safety of students receiving special education services in Self-Contained Classrooms or Other Special Education Settings.

##### **Access by Personnel for Operation and Maintenance Purposes**

Contractors or employees may incidentally view a video recording in performing job duties relating to installation, operation, or maintenance of Video Equipment or the retention of video recordings.

##### **Persons Eligible to Request Access in Connection with an Alleged Incident**

Under TEC § 29.022, the following individuals may request to view a video recording in connection with an alleged Incident (an "Eligible Requester"):

- (1) An employee involved in an alleged Incident (as defined in these procedures) that is documented by a video recording and has been reported to the District or school, upon the employee's request;
- (2) a parent of a student involved in an alleged Incident that is documented by a video recording and has been reported to the District or school, upon the parent's request;
- (3) appropriate Texas Department of Family and Protective Services ("TDFPS") personnel as part of an investigation under TFC § 261.406;

- (4) the following individuals, in response to a report of an alleged Incident OR an investigation of District or school personnel OR a report of alleged abuse committed by a student:
- a. a peace officer;\*
  - b. a school nurse;\*
  - c. a District or school administrator trained in de-escalation and restraint techniques;\*
  - d. a human resources staff member designated by the Board;\*
- (5) appropriate TEA or State Board for Educator Certification personnel or agents as part of an investigation;\* or
- (6) if a person described in items 3, 4, or 5 above views a video recording and 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.

**\*Child Abuse and Neglect Reporting**

If a person described in items 4 or 5 above views a video recording and believes that the recording documents possible Abuse or Neglect of a child under TFC, Chapter 261, Subchapter E, the person must notify TDFPS for investigation in accordance with TFC § 261.406 and Board Policy, FFG(Local).

**Requirements to Request Access to Video Recordings**

The requester must fall into one of the above categories of Eligible Requesters and file an Incident Report and Request to View Video Recording using Exhibit B, or a Request to View Video Recording using Exhibit B1, as indicated below.

**Exhibit B, Incident Report and Request to View Recording, should be completed by:**

- a) **An employee involved in an alleged Incident** (as defined in these procedures) that is documented by a video recording and has been reported to the District or school, upon the employee's request;
- b) **A parent of a student involved in an alleged Incident** that is documented by a video recording and has been reported to the District or school, upon the parent's request.

**Exhibit B1, Request to View Recording, shall be completed by:**

- a) Appropriate **Texas Department of Family and Protective Services ("TDFPS") personnel** as part of an investigation under TFC § 261.406;
- b) The following individuals, in response to a report of an alleged Incident OR an investigation of District or school personnel OR a report of alleged abuse committed by a student:
  - a. **a peace officer;**
  - b. **a school nurse;**
  - c. **a District or school administrator trained in de-escalation and restraint techniques;**
  - d. **a human resources staff member designated by the Board;** or
- c) **Appropriate TEA or State Board for Educator Certification personnel or agents** as part of an investigation.

**Procedures for Filing an Incident Report and Request to View**

Eligible Requesters should contact the appropriate campus principal to request access to a video recording. If someone other than the campus principal receives a report of an

alleged Incident or a request to view a video recording, whether oral or in writing, he or she should forward the report/request or other information to the campus principal as soon as reasonably practicable. The campus principal shall provide the requester Exhibit B or Exhibit B1, as appropriate. Eligible Requesters shall submit the completed Exhibit B or Exhibit B1, as appropriate, to the campus principal according to the instructions on the form.

### **District Steps upon Receipt of Incident Report/Request to View**

**NOTE: NOTHING IN THESE PROCEDURES ALTERS OR OTHERWISE AFFECTS A DISTRICT EMPLOYEE'S REPORTING, INVESTIGATION, OR RESPONSE OBLIGATIONS UNDER OTHER DISTRICT POLICIES AND PROCEDURES OR APPLICABLE LAW WITH RESPECT TO ALLEGATIONS OF ABUSE OR NEGLECT.**

- (1) Upon receipt of a completed Exhibit B or Exhibit B1, as appropriate, the campus principal shall note the date of receipt on the completed form and notify the requester of the District's receipt of the request using Exhibit B2, Notification Regarding Request to View Video Recording.
- (2) Upon receipt of a completed Exhibit B or Exhibit B1, the campus principal will immediately contact the appropriate assistant superintendent, the Assistant Superintendent of Human resources, Legal Counsel, or the Executive Director of Special Services. A copy of Exhibit B or B1 should be emailed to the above designated personnel. **Authorized District personnel may view the requested video recording(s) in response to a report of an alleged Incident, an investigation of District personnel, or a report of alleged abuse committed by a student.**
- (3) Based on the report and other information obtained from the requester, if any, the above designated personnel shall make a preliminary determination of whether the complaint involves:
  - a. An event or circumstance involving alleged:
    - i. Abuse of a student by a district employee;
    - ii. Neglect of a student by a district employee
    - iii. Physical Abuse of a student by another student; and
    - iv. Sexual Abuse of a student by another student;
  - b. that allegedly occurred in a Self-Contained Classroom or Other Special Education Setting in which video surveillance is conducted under these procedures.
- (4) If the above designated personnel determine that the report involves an alleged Incident, the Chief Technology Officer (CTO) or designee will be contacted to access the applicable video recording(s).
- (5) A District peace officer, school nurse, human resources staff member designated by the District's Board of Directors, or other District or school administrator trained in de-escalation and restraint techniques may also view the video recording and aid in the determination. (If a restraint, other physical contact with a student, injury to a student, or event or circumstance that is in any way questionable is documented on the video recording, it is recommended that at least one other authorized District employee view the video recording in order to make a collaborative determination as to whether an alleged Incident is documented by the requested video recording.)
  - a. If the authorized District representatives determine that an alleged Incident is not documented by the requested video recording(s), the campus

principal shall note the date of denial of the request and notify the requester within ten (10) District Business Days of the District's decision using Exhibit B3, Notification Regarding Request to View Video Recording, denying the request because an alleged Incident is not documented by the requested video recording(s).

- b. If the authorized District representatives determine that an alleged Incident is documented by the requested video recording(s), the campus principal shall note the date of approval of the request and notify the requester within ten (10) District Business Days of the District's decision using Exhibit B3, Notification Regarding Request to View Video Recording.

- (6) **Exhibit B or B1** - If the request is approved, the campus principal shall reasonably coordinate with the requester to schedule a viewing appointment. Prior to allowing the requester to view the recording(s), CTO or designee will be contacted to prepare the relevant portion of the video recording(s) for viewing and redact students from the video recording(s) as may be required by FERPA.

### **Procedures for Approved Requests to View Video Recordings**

If a Request to View Video Recordings is approved, Exhibit B3 directs the requester to contact the campus principal to schedule a viewing appointment. Video recordings will be made available at the District's Education Support Center, located at 2425 W. Main Street, League City, Texas 77573, between the hours of 8:00 a.m. and 4:30 p.m. on regularly scheduled workdays or at the student's home campus. If these times do not work for the requester, the District shall reasonably attempt to arrange for an alternative time for the Eligible Requester to view the approved video recording(s).

Prior to allowing the Eligible Requester to view an approved video recording, appropriate Technology Department staff shall extract only the portion of the approved video recording documenting the alleged Incident and related events or circumstances and prepare the video recording for viewing by redacting confidential information, such as names or images of other students protected under FERPA and any protected state assessment information.

When an Eligible Requester views a video recording, the following rules apply:

- The right to view a video recording does not equate to the right to receive a copy of the video recording(s). For purposes of these procedures, "access" shall mean the right to view the video recording(s) in accordance with these procedures.
- A District representative must be present at all times during the viewing. Only the following individuals may act as the District representative at the viewing:
  - 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 District's Board of Trustees.
- No person other than the Eligible Requester and the District representative may be present during the viewing. If the Eligible Requester brings a representative or other individual to the viewing appointment, those individuals must remain outside the room during the viewing, unless the other individual is the student's other parent.

- **Recording is strictly prohibited during the viewing.** The District representative will monitor for unauthorized recording (e.g., by cell phone, etc.) during the viewing and shall immediately stop the viewing appointment if an Eligible Requester attempts to record the video during the viewing appointment.

#### **Local Grievance Procedures for Filing a Complaint Alleging Violation of TEC § 29.022/19 T.A.C. § 103.1301**

The requester has the right to file a grievance/complaint if he or she believes the District erroneously denied his or her request in violation of TEC § 29.022 or 19 T.A.C. § 103.1301. To file a complaint alleging a violation of TEC § 29.022 or 19 T.A.C. § 103.1301, the individual must comply with the District's local grievance procedures or other dispute resolution channels in accordance with Board Policies DGBA (employee complaints/grievances) or FNG (student and parent complaints/grievances) available at <http://pol.tasb.org/Home/Index/505>. Except as otherwise provided below, a TEA complaint, mediation, or due process procedures are not the appropriate channels to file a complaint alleging a failure to comply with TEC § 29.022 or 19 T.A.C. § 103.1301.

#### **Appeals to the Commissioner for a Violation of TEC § 29.022/19 T.A.C § 103.1301**

After exhausting the District's local grievance procedures, a person may appeal an action by the District or a school that the person believes to be in violation of TEC § 29.022, 19 T.A.C. § 103.1301, Board Policy EHBAF, or these procedures to the Commissioner through the appeals process set forth in TEC § 7.057.

#### **Expedited Review by TEA**

The District, a parent, a staff member, or an administrator may request an expedited review through TEA of the District's:

- a. Denial of a request made under TEC § 29.022;
- b. Request for an extension of time to begin operation of a Video Camera; or
- c. Determination to not release a video recording to an Eligible Requester.

If an expedited review is requested, TEA shall notify all other interested parties of the request. Additionally, TEA shall issue a preliminary judgement as to whether the District is likely to prevail on the issue under a full review by the agency. If TEA determines that the District is not likely to prevail, the District shall fully comply with TEC § 29.022, notwithstanding an appeal of the agency's decision. TEA shall notify the requester and the District, if the District is not the requester, of the agency's determination.

Additional rules relating to the expedited review process are anticipated from TEA.

#### **No Admission of Fault or Liability**

Approval of a Request to View Video Recording shall in no way be construed as an admission that an Incident occurred or as an admission of fault or liability by any person or entity.

#### **Request for Access under FERPA**

Generally, video recordings made pursuant to TEC § 29.022 and 19 T.A.C. § 103.1301 are surveillance videos and do not constitute a student's education record subject to disclosure in response to a request made under FERPA, unless an alleged Incident is documented on the video recording or the student otherwise becomes the "focus" of the video recording as defined by the U.S. Department of Education.