

Tomball ISD

Video Recording 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 and 19 § T.A.C. 103.1301, the following Procedures apply to video recording of special education settings:

I. GENERAL REQUIREMENTS

Authority

The following Procedures are required pursuant to 19 T.A.C. § 103.1301(g).

Governing Law

Video recording of special education settings is subject to TEC § 29.022, 19 § T.A.C. 103.1301, 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, or these Procedures conflict with FERPA or other federal law, federal law prevails. These Procedures are subject to change upon release of the Attorney General’s Opinion Regarding Texas Education Code 29.022 (RQ-0103-KP).

Purpose

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

Background

Beginning with the 2016-2017 on the request of a parent, trustee, 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 released for viewing to certain individuals as defined by statute.

Retention Requirements

While the Texas Education Code only requires that the District retain video recordings for at least six months after the date the video was recorded, **the District shall retain video recordings for seven months on a rolling basis.**

Liability for Non-Compliance

TEC § 29.022 does not waive any immunity from liability of a school district, its officers, and its employee nor does TEC § 29.022 create any liability for a cause of action against a school district, its school officers, or its employees.

Definitions

The following definitions apply when used in these Procedures:

A. Parent:

- A person described in TEC § 26.022, whose child receives special education and related services for at least 50% of the instructional day in the Self-Contained Classroom or Other Special Education Setting; or
- A student who:
 - receives special education and related services for at least 50% of the instructional day in the Self-Contained Classroom or Other Special Education Setting; 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, or educational aide assigned to work in the Self-Contained Classroom or Other Special Education Setting; or
- The principal or an assistant principal of the campus at which the Self-Contained Classroom or Other Special Education Setting is located.

C. Trustee

- A member of the school district’s board of trustees or a member of the Open-Enrollment Charter School’s governing body.

D. Open-Enrollment Charter School

- A charter granted to a charter holder under TEC §§ 12.101 or 12.152, identified with its own county district number.

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 or an Open-Enrollment Charter School 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 or open-enrollment charter school 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 recording 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 recording under TEC § 29.022 and 19 T.A.C. § 103.1301.

J. Abuse

- As defined in TFC § 261.001(1), means the following acts or omissions by a school district employee:
 - mental or emotional injury to a child that results in an observable and material impairment in the child’s growth, development, or psychological functioning;
 - 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;
 - 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;
 - 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;
 - 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;
- failure to make a reasonable effort to prevent sexual conduct harmful to a child;
- 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;
- 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;
- 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;
- causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code;
- causing, permitting, encouraging, engaging in, or allowing a sexual performance by a child as defined by Section 43.25, Penal Code; or
- 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

- 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

- 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. Sexual Abuse

- sexual conduct harmful to a child’s mental, emotional, or physical welfare; or
- failure to make a reasonable effort to prevent sexual conduct harmful to a child.

II. REQUESTING VIDEO RECORDING

Who may Request

A Parent, Trustee, or Staff Member may request video recording.

How to Request

An eligible individual may request video recording by submitting the Form A, Request for Video Recording², to Heather Nichols in accordance with the instructions found on the Form. **A request for video recording is only valid for one school year. If the requestor wishes to continue recording beyond that time period, the requestor must submit another request for the next year.**

² All forms referenced in these Procedures may be found in the Appendix attached hereto.

The completed request must be signed and must contain, at a minimum, the following information:

1. Name of requestor;
2. Status of requestor (*i.e.*, Parent, Trustee, or Staff member); and
3. Campus(es) and Classroom(s)/Setting(s) subject to the request.

Eligibility for Video Recording

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

1. The Requestor must be either a:
 - a. Parent;
 - b. Trustee; or
 - c. Staff Member; and
2. The request must be for video recording at a campus that has a:
 - a. Self-Contained Classroom; or
 - b. Other Special Education Setting.

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 Recording Obligation

A request for video recording, if approved, obligates the District to provide the video recording for that school year only. A separate request must be submitted to trigger the District's obligations under Senate Bill 507 for each successive year.

District Steps upon Request for Video Recording

Upon receipt of a request for video Recording, Heather Nichols shall:

1. Notify the requestor of receipt using Form B, Response to Request for Video Recording.
2. Review the request to determine eligibility (*i.e.*, is the requestor a Parent, Trustee, or Staff Member, and does the requested campus(es) and classroom(s)/setting(s) meet the criteria for a Self-Contained Classroom or Other Special Education Setting?).
3. After the request is reviewed for eligibility, send the requestor written notice of the District's decision using Form B, Response to Request for Video Recording.
4. Contact Tom Brawley to facilitate installation.

5. Before recording begins, Heather Nichols shall send advance written notice via First Class Mail and/or Email with a read receipt to the affected Staff Member(s) and Parents that video and audio recording will be conducted in the Classroom or Setting using Form C, Notice of Video recording. You may not operate the Video Equipment to record the Classroom(s)/Setting(s) until the notice is sent and ample time is allowed for its receipt; and
6. At the District's discretion, the District may post a notice at the entrance of any Class/Setting in which Video Cameras are placed stating that video and audio recording is conducted in the Class/Setting.

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; and
 - b. recording video from all areas of the Classroom or Setting, *except inside of the bathroom or area where students' clothes are changed*; **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);
 - 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.

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 District must place, operate, and maintain Video Cameras and Equipment in the relevant Self-Contained Classroom(s) and Other Special Education Setting(s) during the regular school year and in relevant Self-Contained Classroom(s) and Other Special Education Setting(s) where extended school year services are provided.

IV. ACCESS TO VIDEO RECORDINGS

Confidentiality

Video recordings are confidential and may only be viewed by certain individuals 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 these Procedures.

Use of Video Recordings in Disciplinary Actions

A video recording believed to document a possible violation of district or campus policy may be used as part of a disciplinary action against the District or school personnel. A recording believed to document a possible violation of district policy 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 must be released in a legal proceeding at the request of a Parent of the student involved in the incident documented by the recording.

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

Information Technology personnel shall have access to recordings and Video Equipment for the purposes of operating and maintaining the Video Equipment and recordings.

Persons Eligible to Request Access in Response to an Alleged Incident

Under limited circumstances, the following individuals may access video recordings in response to an alleged Incident (*i.e.*, an “Eligible Requestor”):

- (1) a Staff Member involved in an Incident (as defined on p. 2 of these Procedures) that is documented by a video recording for which a complaint has been reported to the District;
- (2) other school district employees involved in an Incident documented by a video recording for which a complaint has been reported to the District;
- (3) a Parent of a student involved in an Incident that is documented by a video recording for which a complaint has been reported to the District;
- (4) appropriate Texas Department of Family and Protective Services (“TDFPS”) personnel as part of an investigation under TFC § 261.406;
- (5) a peace officer in response to a complaint or investigation of an Incident;*
- (6) a school nurse in response to a complaint or investigation of an Incident;*
- (7) an administrator trained in de-escalation and restraint techniques in response to a complaint or investigation of an Incident;*
- (8) a human resources staff member designated by the District’s Board of Trustees in response to a complaint or an investigation of an Incident; or*
- (9) appropriate TEA or State Board for Educator Certification personnel or agents as part of an investigation.*

*** Child Abuse and Neglect Reporting**

If a person described by numbers 5-9 above views a video recording and has cause to believe that the recording documents possible abuse or neglect of a

child under TFC, Chapter 261, the person must file a report with TDFPS or other authority in accordance with Board policy, FFG(Local).

Requirements to Request Access

The requestor must fall into one of the above categories and, in good faith, allege an “Incident,” as that term is defined in 19 T.A.C. § 101.301(b)(9). The individual must file an Incident Complaint and Request to Access Video Recordings using Form D. On this Form, the individual must assert an:

- (1) Event or circumstance involving alleged:
 - a. Abuse of a student by a school district employee;
 - b. Neglect of a student by a school district employee;
 - c. Physical Abuse of a student by another student; or
 - d. Sexual Abuse of a student by another student; and
- (2) The event or circumstance must have allegedly occurred in a Self-Contained Classroom or Other Special Education Setting in which video recording is conducted under these Procedures.

Procedures for Filing Complaint/Requesting Access

To file a complaint regarding an alleged Incident and to request access to video recordings, the requestor shall complete Form D, Complaint and Request for Access to Video Recordings. Completed forms shall be sent to Heather Nichols according to the instructions on the form. If someone other than Heather Nichols receives a complaint/request, whether oral or in writing, forward the complaint/request or the information to Heather Nichols.

District Steps upon Receipt of Complaint/Request to Access Video Recordings

- (1) Notify the requestor of the District’s receipt. Heather Nichols shall conduct an investigation into the complaint and respond to requestor within 15 days.
- (2) To investigate, Heather Nichols may need to contact the requestor to clarify his or her complaint.
 - a. Based on the request/complaint and information obtained from the requestor, if any, Heather Nichols shall make a preliminary determination of whether the complaint involves:
 - i. an event or circumstance involving alleged:
 1. Abuse of a student by a school district employee;
 2. Neglect of a student by a school district employee;
 3. Physical Abuse of a student by another student; or
 4. Sexual Abuse of a student by another student;
 - ii. that allegedly occurred in a Self-Contained Classroom or Other Special Education Setting in which video is conducted under these Procedures.
 - b. If the preliminary investigation reveals that these conditions are potentially met, contact Tom Brawley to access the applicable recording(s).
 - c. Heather Nichols] shall view the applicable recording(s). No other person may be present.
 - d. After completing the investigation, Heather Nichols shall notify the requestor of its decision using Form E, Response to Request for Access to Video Recordings.

- e. If Heather Nichols approves the request, prior to allowing the requestor to view the recording(s), contact Heather Nichols to redact students from the recordings (other than the requestor's child, if the requestor is a parent) in accordance with FERPA.
- f. If Heather Nichols views a video recording and has cause to believe that the recording documents possible abuse or neglect of a child under TFC, Chapter 261, they must file a report with TDFPS or other authority in accordance with Board policy, FFG(Local).

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

The requestor 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 and/or 19 T.A.C. § 103.1301. 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 and/or 19 T.A.C. § 103.1301. To file a complaint alleging a violation of TEC § 29.022 and/or 19 T.A.C. § 103.1301, the individual must comply with the District's 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/600>.

No Admission of Fault or Liability

The approval of a Request to Access Video Recordings shall in no way be construed as an admission of fault or liability.

Procedures for Approved Requests to Access Video Recordings

If a Request to Access Video Recordings is approved, Form E directs the requestor to contact the District to schedule a viewing appointment. Video recordings will be made available at the John P. Neubauer Administration Building between the hours of 10:00 am and 2:00 pm on Tuesday, Wednesday and Thursday. If these times do not work for the requestor, attempt to arrange for an alternative time.

When a Staff Member involved in an Incident, a District employee involved in an Incident, or Parent of a student involved in an Incident views a video recording, the following rules apply:

- **The right to access video recordings in certain circumstances does not equate to the right to receive a copy of the video recording(s). For the 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;**
 - **an 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 Requestor and the District Representative may be present.**
- **Recording is strictly prohibited while viewing. The District Representative will monitor for unauthorized recording during the viewing.**