

To Whom it May Concern:

The Texas Classroom Teachers Association, representing 50,000 classroom teachers and instructional personnel statewide, has the following comments regarding Proposed New 19 TAC Chapter 103, Health and Safety, Subchapter DD, Commissioner's Rules Concerning Video Surveillance of Certain Special Education Settings, §103.1301, Video Surveillance of Certain Special Education Settings.

**Regarding Proposed Section 103.1301(b), subdivision (2) "Staff member"**, we support the proposed definition because it includes all teachers, whether special or regular education, who are assigned to work in a self-contained classroom or other special education setting. Given the wide array of instructional delivery arrangements used by schools to provide instruction to special education students, some of which involve both regular education and special education teachers (like co-teaching), we appreciate the inclusion of regular education teachers in the proposed definition. Likewise, we appreciate the inclusion of paraprofessionals and educational aides in the proposed definition, as these personnel are very often assigned to work in self-contained classrooms or other special education settings.

**Regarding Proposed Section 103.1301(b), subdivision (9) "Incident"**, the proposed definition includes two separate sets of circumstances: one which involves alleged "abuse" or "neglect," as those terms are described in Texas Family Code, §261.001, of a student by an employee of the school district or charter school or alleged "physical abuse" or "sexual abuse," as those terms are described in Texas Family Code, §261.410, of a student by another student; **OR**

One which allegedly occurred in a self-contained classroom or other special education setting in which video surveillance under TEC, §29.022, and this section is conducted.

However, the statute clearly contemplates any "incident" to mean any incident documented by a video recording of a student made according to TEC Section 29.022, which is limited to video recordings in a self-contained classroom or other special education setting in which a majority of the students in regular attendance are provided special education and related services and assigned to a self-contained classroom or other special education setting for at least 50 percent of the instructional day. (TEC Section 29.022(a)).

**Accordingly, the word "and" should be substituted for the word "or" in the proposed rule such that it reads** "Incident means an event or circumstance that:

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

**Proposed Section 103.1301(g) Policies and Procedures**, requires school district boards of trustees and governing bodies of open-enrollment charter schools to adopt written policies relating to video surveillance under TEC Section 29.022. It also sets out a list of items that, at a minimum, each policy must include.

For example, **subdivision (2)** of subsection(g) states “the procedures for requesting video surveillance;” We believe that this is an important component of these policies, and support its inclusion in the list.

However, related to this is something that we feel is equally important, but not addressed in subsection (g), and that is a statement regarding the procedures for a school district/open-enrollment charter school to respond to requests for video surveillance. Just as important to the public/parents as knowing how to request video surveillance, is information about what procedures the school district/open-enrollment charter school will use to respond to such requests. **Accordingly, we recommend that the phrase “the procedures for the school district or open-enrollment charter to respond to requests for video surveillance” be included in the list of items required in policy under subsection (g).**

**Regarding subdivision (3) of subsection (g)**, the proposed rule provides “the procedures for providing written notice to the campus staff and the parents of the students assigned to a self-contained classroom or other special education setting that video and audio surveillance will be conducted in the classroom or setting;”

However, the enabling statute, TEC Section 29.022(d) emphasizes that such notice shall be provided “before a school or campus places a video camera in a classroom or other special education setting”, which is an important component that is missing from the proposed rule text. **Accordingly, we recommend that the phrase ““before a school or campus places a video camera in a classroom or other special education setting” be added to subdivision (3)** so that it reads “the procedures for providing written notice to the campus staff and the parents of the students assigned to a self-contained classroom or other special education setting before placing a video camera in the classroom or setting, that video and audio surveillance will be conducted in the classroom or setting;”

**Regarding subdivision (5) of subsection (g)**, the proposed rule provides “a statement regarding the individuals who will have access to video cameras and video recordings and the roles and responsibilities of those individuals;”

Additionally, subdivision (13) of this subsection provides “a statement that video recordings made under TEC, §29.022, and this section are confidential and a description of the limited circumstances under which the recordings may be viewed.”

This is followed by subsection (h) of the proposed rules which addresses the confidentiality of video recordings and sets out the circumstances under which video recordings can be viewed and by whom.

**First, it is unclear whether the Agency’s intent in including both subdivisions (5) and (13) is to distinguish between individuals who “will have access to” video recordings from individuals who can “view” video recordings.**

If the Agency’s intent is to distinguish between these two, we would assume that although there may be some overlap between the individuals who will have access to video recordings and those who may view them, the list of individuals in each situation will not necessarily be the same. Otherwise, there would be no reason to have both subdivisions.

If this is indeed the case, then **we recommend that the Agency give further clarity in subdivision (5) as to what “access to” a video recording means in order to differentiate it from “viewing” a video recording, which is addressed in subdivision (13). Additionally, we recommend that the phrase “under what circumstances” be added to subdivision (5) such that it reads “a statement regarding under what circumstances and which the individuals will have access to video cameras and video recordings, and the roles and responsibilities of those individuals;”**

Additionally, **we note that subdivision (13) does not include anything about *which individuals can view and what the procedures are for viewing the video recordings***. Because the enabling statute places such emphasis on the confidentiality of these recordings as well as under what circumstances they may be viewed and who may view them, we recommend that the phrases “and by whom” and “and a description of the procedures for viewing the videos” be added to subdivision (13) so that it reads “a statement that video recordings made under TEC, §29.022, and this section are confidential ~~and~~ , a description of the limited circumstances under which the recordings may be viewed **and by whom, and a description of the procedures for viewing the videos.**”

**Finally, if it is not the Agency’s intent to distinguish between the individuals referred to in subdivision (5) and those in subdivision (13), then the two subdivisions should be collapsed into one, or it confuses the situation.**

**Last, given the sensitive nature of the video recordings, and the accompanying prescriptive procedures for releasing and storing the recordings, we believe that Proposed Section 103.1301(g) Policies and Procedures should include a requirement for district policies to address district training regarding confidentiality requirements for district staff and other district employees charged with overseeing the use, release and storage of the video recordings.**

**Proposed Section 103.1301(h)**, regarding to whom video recordings made under TEC Section 29.022 can be viewed, includes subdivision (1): “a staff member or other school district or charter school employee or a parent of a student involved in an incident described in subsection (b)(9) of this section that is documented by **a** video recording for which a complaint has been reported to the district or charter school.” (emphasis added)

However, the enabling statute, TEC Section 29.022(i)(1) uses the phrase “documented by **the** recording” (emphasis added). This is an important difference because using the word “the” clarifies that the video recording referred to subsection (h) is the one that can be viewed by the individuals listed in subdivision (1). Otherwise, using the word “a” arguably allows any school district staff member or other employee, or parents of a student documented by any video recording for which a complaint has been reported to view any other video recording made under TEC Section 29.022.

**Accordingly, we strongly recommend that the word “a” in the phrase “documented by a video recording” be replaced with the word “the” such that the language reads:** subdivision (1): “a staff member or other school district or charter school employee or a parent of a student involved in an incident described in subsection (b)(9) of this section that is documented by **a-the** video recording for which a complaint has been reported to the district or charter school.”

**Proposed subsection (j) Disciplinary actions and legal proceedings**, addresses who may have access to a video recording believed to document a possible violation of school district, open-enrollment charter school, or campus policy and which may be used in a disciplinary action against district or charter school personnel. However, the proposed rule language does not include the school district or charter school personnel who are the subject of the video recording among those who can access the video. We believe that this is an oversight, and that it is only fair for such school district or charter school personnel to be able to also access the video if it is to be used in an disciplinary action against them.

Accordingly, we recommend that **language be added to allow a staff member or other district or charter school employee who is the subject of a video recording that is believed to document a possible violation of school district, charter school or campus policy to have access to the recording such that the language reads:**

“Disciplinary actions and legal proceedings. If a person described in subsection (h)(2), (3), or (4) of this section views a video recording and believes that it documents a possible violation of school district, open- enrollment charter school, or campus policy, the person may allow access to the recording to appropriate legal and human resources personnel of the district or charter school to the extent not limited by FERPA or other law. **If the video recording documents a possible violation of school district, open-enrollment charter school or campus policy by district or charter school personnel, the district or charter school personnel who are the subject of the video recording may have access to the video recording.** A recording believed to document a possible violation of school district, open-enrollment charter school, or campus policy may be used in a disciplinary action against district or charter school personnel and must be released in a legal proceeding at the request of a parent of the student involved in the incident documented by the recording.”

We appreciate the opportunity to comment and look forward to working with the Agency to further improve the rules.

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