

By: Lucio, et al.
(Thompson of Harris)

S.B. No. 1398

Substitute the following for S.B. No. 1398:

By: Bernal

C.S.S.B. No. 1398

A BILL TO BE ENTITLED

AN ACT

relating to the placement and use of video cameras in certain self-contained classrooms or other settings providing special education services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 29.022, Education Code, is amended by amending Subsections (a), (b), (c), (d), (e), (i), and (j) and adding Subsections (a-1), (a-2), (a-3), (c-1), (e-1), (i-1), (l), (m), (n), (o), (p), (q), (r), (s), and (t) to read as follows:

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

[~~(1)~~] provided special education and related services[+] and are

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

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

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

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

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

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

27 (3) the principal or assistant principal of a school

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

5 (4) a staff member assigned to work with one or more
6 children receiving special education services in self-contained
7 classrooms or other special education settings may request in
8 writing that equipment be provided to the school or campus at which
9 the staff member works.

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

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

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

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

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

1 addressed in the request.

2 (b) A school or campus that places a video camera in a
3 classroom or other special education setting in accordance with
4 Subsection (a) shall operate and maintain the video camera in the
5 classroom or setting, as long as the classroom or setting continues
6 to satisfy the requirements under Subsection (a), for the remainder
7 of the school year in which the school or campus received the
8 request, unless the requestor withdraws the request in writing. If
9 for any reason a school or campus will discontinue operation of a
10 video camera during a school year, not later than the fifth school
11 day before the date the operation of the video camera will be
12 discontinued, the school or campus must notify the parents of each
13 student in regular attendance in the classroom or setting that
14 operation of the video camera will not continue unless requested by
15 a person eligible to make a request under Subsection (a-1). Not
16 later than the 10th school day before the end of each school year,
17 the school or campus must notify the parents of each student in
18 regular attendance in the classroom or setting that operation of
19 the video camera will not continue during the following school year
20 unless a person eligible to make a request for the next school year
21 under Subsection (a-1) submits a new request.

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

24 (1) covering all areas of the classroom or other
25 special education setting, including a room attached to the
26 classroom or setting used for time-out [~~except that the inside of a~~
27 ~~bathroom or any area in the classroom or setting in which a~~

1 ~~student's clothes are changed may not be visually monitored~~]; and

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

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

10 (d) Before a school or campus activates [~~places~~] a video
11 camera in a classroom or other special education setting under this
12 section, the school or campus shall provide written notice of the
13 placement to all school or campus staff and to the parents of each
14 [a] student attending class or engaging in school activities
15 [receiving special education services] in the classroom or setting.

16 (e) Except as provided by Subsection (e-1), a [A] school
17 district or open-enrollment charter school shall retain video
18 recorded from a video camera placed under this section for at least
19 three [six] months after the date the video was recorded.

20 (e-1) If a person described by Subsection (i) requests to
21 view a video recording from a video camera placed under this
22 section, a school district or open-enrollment charter school must
23 retain the recording from the date of receipt of the request until
24 the person has viewed the recording and a determination has been
25 made as to whether the recording documents an alleged incident. If
26 the recording documents an alleged incident, the district or school
27 shall retain the recording until the alleged incident has been

1 resolved, including the exhaustion of all appeals.

2 (i) A video recording of a student made according to this
3 section is confidential and may not be released or viewed except as
4 provided by this subsection or Subsection (i-1) or (j). A school
5 district or open-enrollment charter school shall release a
6 recording for viewing by:

7 (1) an [~~a school district~~] employee [~~or a parent or~~
8 ~~guardian of a student~~] who is involved in an alleged incident that
9 is documented by the recording and [~~for which a complaint~~] has been
10 reported to the district or school, on request of the employee [~~,~~
11 ~~parent, or guardian, respectively~~];

12 (2) a parent of a student who is involved in an alleged
13 incident that is documented by the recording and has been reported
14 to the district or school, on request of the parent;

15 (3) appropriate Department of Family and Protective
16 Services personnel as part of an investigation under Section
17 [261.406](#), Family Code;

18 (4) [~~(3)~~] a peace officer, a school nurse, a district
19 or school administrator trained in de-escalation and restraint
20 techniques as provided by commissioner rule, or a human resources
21 staff member designated by the board of trustees of the school
22 district or the governing body of the open-enrollment charter
23 school in response to a report of an alleged incident [~~complaint~~] or
24 an investigation of district or school personnel or a report
25 [~~complaint~~] of alleged abuse committed by a student; or

26 (5) [~~(4)~~] appropriate agency or State Board for
27 Educator Certification personnel or agents as part of an

1 investigation.

2 (i-1) A contractor or employee performing job duties
3 relating to the installation, operation, or maintenance of video
4 equipment or the retention of video recordings who incidentally
5 views a video recording is not in violation of Subsection (i).

6 (j) If a person described by Subsection (i)(4) [~~(i)(3)~~] or
7 (5) [~~(4)~~] who views the video recording believes that the recording
8 documents a possible violation under Subchapter E, Chapter 261,
9 Family Code, the person shall notify the Department of Family and
10 Protective Services for investigation in accordance with Section
11 261.406, Family Code. If any person described by Subsection (i)(3)
12 [~~(i)(2)~~], [~~(3), or~~] (4), or (5) who views the recording believes
13 that the recording documents a possible violation of district or
14 school policy, the person may allow access to the recording to
15 appropriate legal and human resources personnel. A recording
16 believed to document a possible violation of district or school
17 policy relating to the neglect or abuse of a student may be used as
18 part of a disciplinary action against district or school personnel
19 and shall be released at the request of the student's parent [~~or~~
20 ~~guardian~~] in a legal proceeding. This subsection does not limit the
21 access of a student's parent to a record regarding the student under
22 the Family Educational Rights and Privacy Act of 1974 (20 U.S.C.
23 Section 1232g) or other law.

24 (1) A school district or open-enrollment charter school
25 policy relating to the placement, operation, or maintenance of
26 video cameras under this section must:

27 (1) include information on how a person may appeal an

1 action by the district or school that the person believes to be in
2 violation of this section or a policy adopted in accordance with
3 this section, including the appeals process under Section 7.057;

4 (2) require that the district or school provide a
5 response to a request made under this section not later than the
6 seventh school business day after receipt of the request by the
7 person to whom it must be submitted under Subsection (a-3) that
8 authorizes the request or states the reason for denying the
9 request;

10 (3) except as provided by Subdivision (5), require
11 that a school or a campus begin operation of a video camera in
12 compliance with this section not later than the 45th school
13 business day, or the first school day after the 45th school business
14 day if that day is not a school day, after the request is authorized
15 unless the agency grants an extension of time;

16 (4) permit the parent of a student whose admission,
17 review, and dismissal committee has determined that the student's
18 placement for the following school year will be in a classroom or
19 other special education setting in which a video camera may be
20 placed under this section to make a request for the video camera by
21 the later of:

22 (A) the date on which the current school year
23 ends; or

24 (B) the 10th school business day after the date
25 of the placement determination by the admission, review, and
26 dismissal committee; and

27 (5) if a request is made by a parent in compliance with

1 Subdivision (4), unless the agency grants an extension of time,
2 require that a school or campus begin operation of a video camera in
3 compliance with this section not later than the later of:

4 (A) the 10th school day of the fall semester; or

5 (B) the 45th school business day, or the first
6 school day after the 45th school business day if that day is not a
7 school day, after the date the request is made.

8 (m) A school district, parent, staff member, or
9 administrator may request an expedited review by the agency of the
10 district's:

11 (1) denial of a request made under this section;

12 (2) request for an extension of time to begin
13 operation of a video camera under Subsection (1)(3) or (5); or

14 (3) determination to not release a video recording to
15 a person described by Subsection (i).

16 (n) If a school district, parent, staff member, or
17 administrator requests an expedited review under Subsection (m),
18 the agency shall notify all other interested parties of the
19 request.

20 (o) If an expedited review has been requested under
21 Subsection (m), the agency shall issue a preliminary judgment as to
22 whether the district is likely to prevail on the issue under a full
23 review by the agency. If the agency determines that the district is
24 not likely to prevail, the district must fully comply with this
25 section notwithstanding an appeal of the agency's decision. The
26 agency shall notify the requestor and the district, if the district
27 is not the requestor, of the agency's determination.

1 (p) The commissioner:

2 (1) shall adopt rules relating to the expedited review
3 process under Subsections (m), (n), and (o), including standards
4 for making a determination under Subsection (o); and

5 (2) may adopt rules relating to an expedited review
6 process under Subsections (m), (n), and (o) for an open-enrollment
7 charter school.

8 (q) The agency shall collect data relating to requests made
9 under this section and actions taken by a school district or
10 open-enrollment charter school in response to a request, including
11 the number of requests made, authorized, and denied.

12 (r) A video recording under this section is a governmental
13 record only for purposes of Section 37.10, Penal Code.

14 (s) This section applies to the placement, operation, and
15 maintenance of a video camera in a self-contained classroom or
16 other special education setting during the regular school year and
17 extended school year services.

18 (t) In this section:

19 (1) "Parent" includes a guardian or other person
20 standing in parental relation to a student.

21 (2) "School business day" means a day that campus or
22 school district administrative offices are open.

23 (3) "Self-contained classroom" does not include a
24 classroom that is a resource room instructional arrangement under
25 Section 42.151.

26 (4) "Staff member" means a teacher, related service
27 provider, paraprofessional, counselor, or educational aide

1 assigned to work in a self-contained classroom or other special
2 education setting.

3 (5) "Time-out" has the meaning assigned by Section
4 [37.0021](#).

5 SECTION 2. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section [39](#), Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2017.