



**Public Comments on 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**

May 9, 2016

The Association of Texas Professional Educators (ATPE) is the preeminent educator association in Texas that, with a strong collaborative philosophy, speaks for classroom teachers, administrators, paraprofessionals, and teacher trainees. We work to create better opportunities for 5 million public schoolchildren. ATPE is a member-owned, member-governed professional association with more than 100,000 members, making it the leading educators' association in Texas and the largest independent association for public school educators in the nation. **ATPE appreciates the opportunity to offer the following comments on the 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.**

ATPE comment on 103.1301(b)(9)

103.1301(b)(9) of the proposed rule states that an incident only involves circumstances where there is an allegation against an employee involving a student or an allegation against a student involving another student.

103.1301(b)(9) is important because while the cameras placed in a classroom will record everything that happens in that room, only events that meet the definition of an incident under these rules may be accessed for viewing or use. ATPE requests that that the commissioner add to the list of incidents for which this footage may be used those in which a student or other adult is alleged to have assaulted or otherwise harmed a teacher or other school employee.

ATPE comment on 103.1301(g)(6)

103.1301(g)(6) of the proposed rule states that once a video is set up, it must be maintained as long as the classroom or setting continues to satisfy the requirements in TEC §29.022(a).

ATPE requests further clarification. The rule could mean either (1) that as long as the setting continues to be used as a self-contained classroom that provides special education and related services for at least half the day to a majority of students in regular attendance, the video recording equipment must remain; or (2) that the recording equipment must remain only so long as the requester has a relationship to the room. For

example, if the student on whose behalf the request is made transfers to another location, must the video cameras remain? ATPE therefore requests that TEA clarify in rule that TEC §29.022(a) would allow a district to remove video recording equipment or make other modifications upon a withdrawal of a request or of the requester leaving the setting.

ATPE comment on 103.1301(g)(7)

103.1301(g)(7) of the proposed rule states that the video is to record “all areas” of the setting.

ATPE requests further clarification of the statutory phrase “covering all areas of the classroom.” If “all areas” is to be taken literally, then districts need to be aware of the full extent of the coverage requirements. For example, the video footage would need to be able to cover spaces behind or underneath obstructions, such as a bookcase a student could get behind or a table that a student could get under. ATPE is aware of incidents resulting in student injury that involved a student behind a bookcase or under a table. As this provision creates a mandate and can be expected to be a significant matter when incidents occur, it is imperative that districts be aware of their legal responsibility.

ATPE comment on 103.1301(h)(3) and 103.1301(j)

103.1301(h) of the proposed rule states that the video will be governed by FERPA.

ATPE appreciates the agency pointing out that the Family Educational Rights and Privacy Act (FERPA) applies to these recordings to the extent they are considered confidential student records. However, ATPE requests that additional guidance be added with regard to the availability of these records to a district’s human resources personnel. FERPA provides that a district staff has a right to confidential student records based on that individual’s “legitimate educational interest” in the records. Human resources personnel have no “legitimate educational interest” in confidential student records as the human resources interest is strictly related to the employment of the educator. ATPE requests additional guidance to limit the likelihood that a district would unintentionally violate FERPA in reliance on the commissioner’s rules.

Thank you again for your consideration of our comments on the proposed commissioner’s rules with regard to innovation districts. For additional information, contact the ATPE Governmental Relations department at government@atpe.org or (512) 467-0071.