TEA
Texas Education Agency

Commissioner Mike Morath

1701 North Congress Avenue • Austin, Texas 78701-1494 • 512 463-9734 • 512 463-9838 FAX • tea.texas.gov

March 11, 2016

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RQ-0103-KP

The Honorable Ken Paxton
Attorney General of Texas
Attention Opinion Committee
Post Office Box 12548
Austin, Texas 78711-2548

Re: Request for Expedited Opinion Regarding Texas Education Code Section 29.022

Dear General Paxton:

I am writing to ask for your opinion regarding the proper construction of Texas Education Code section 29.022, as enacted by Senate Bill 507, 84th Texas Legislature. The new section 29.022 requires video surveillance of certain special education settings upon request beginning with the 2016-2017 school year. Because the Texas Education Agency (TEA) needs to provide guidance and adopt rules as soon as possible, I would appreciate an expedited opinion.[1]

By way of background, the introduced bill required that on request by a parent, trustee, or staff member, a school district or open-enrollment charter school[2] provide video equipment to each campus in the district or charter school with a self-contained classroom.[3] The bill further required that each campus that received such equipment place and maintain a video camera in a classroom in which the only students in regular attendance are students with disabilities who are eligible to take alternative state assessments and who are nonverbal or have limited communication ability, except that a video camera could not be placed in a classroom if a parent of a student in the classroom objected.[4] The sponsor's statement of intent reflects that the purpose of the bill is to deter incidences of abuse against vulnerable non-verbal children while also protecting special education teachers from unfounded claims of misconduct.[5]

Senate Bill 507 was amended during both the Senate and House floor debates. After the Senate refused to concur in the House amendments, the bill was assigned to a conference committee. The conference committee report was adopted by both chambers on May 31, 2015. The enacted bill bears some significant differences from the introduced bill.[6] Most notably, the enacted bill requires video surveillance in self-contained instructional settings in which a majority of the students receive special education

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[1]Section 29.022(k) grants the commissioner the authority to adopt rules to implement and administer the section.

[2]The terms "open-enrollment charter school" and "charter school" refer to a public school operated by a charter holder under charter granted by the State Board of Education or the commissioner. A charter school may operate one campus or multiple campuses. *See* 19 TEX. ADMIN. CODE §100.1001.

[3]A "self-contained classroom" is defined as a classroom on a regular campus (i.e., a campus that serves both students in general education and in special education) in which students receive special education services for 50 percent or more of the regular school day. *See* 19 TEX. ADMIN. CODE §89.63(c)(6). Similar classrooms can also be found on separate campuses (i.e., campuses that only serve students who receive special education services). *See* 19 TEX. ADMIN. CODE §89.63(c)(7)(C). In this letter, TEA collectively refers to these classrooms as "self-contained instructional settings."

[4]A copy of the introduced version of Senate Bill 507 is attached at **Tab 1**. Senate Bill 507 was similar to a bill introduced during the 83rd legislative session (i.e., Senate Bill 1380) that was passed by the Senate but not voted on by the House. The text of Senate Bill 1380 is available at http://www.legis.state.tx.us/billlookup/text.aspx?LegSess=83R&Bill=SB1380.

[5]The *Author's/Sponsor's Statement of Intent* is attached at **Tab 2**.

[6]The enrolled version of Senate Bill 507 is attached at **Tab 3**.

services for at least 50 percent of the instructional day, not just self-contained classrooms comprised of students who are eligible to take alternative assessments and who have little or no communication ability. In addition, the enacted bill does not include a provision allowing parents to object to the placement of video cameras in their children's classrooms. And finally, the enacted bill contains a requirement that a campus that places a video camera in a classroom or setting must continue to operate and maintain the camera in the classroom or setting "as long as the classroom or setting continues to satisfy the requirements under [section 29.022(a)]."

Stakeholders have expressed that portions of the bill are unclear or subject to varying interpretations and are eager for TEA to provide clarification through rulemaking. For instance, section 29.022(a) provides that a "staff member" may request video surveillance but the term is not defined in the statute. Some contend that the term should be narrowly construed so that only a teacher or teacher assistant assigned to a self-contained instructional setting can request video surveillance. At the other end of the spectrum are those who maintain that any campus or district employee should be allowed to request surveillance.

Furthermore, stakeholders disagree as to the number of self-contained instructional settings affected by a request for video surveillance. Section 29.022(a) states as follows:

> (a) In order to promote student safety on request by a parent, trustee, or staff member, a school district or open enrollment charter school shall provide equipment, including a video camera, to each school in the district or each charter school campus in which a student who receives special education services in a self-contained classroom or other special education setting is enrolled. Each school or campus that receives equipment shall place, operate, and maintain one or more video cameras in each self-contained classroom or other special education setting in which a majority of the students in regular attendance are:
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> (1) provided special education and related services; and
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> (2) assigned to a self-contained classroom or other special education setting for at least 50 percent of the instructional day.

Some stakeholders assert that the intent of the bill is for a request to trigger video surveillance in a single self-contained instructional setting, while others contend that the language in the bill reflects that a request requires that video surveillance be conducted in all of the self-contained instructional settings in the district or charter school. Significantly, a representative of Disability Rights Texas, the federally designated legal protection and advocacy agency for people with disabilities in Texas and a proponent of the bill, recently provided written testimony at a legislative hearing that supports the "one request equals one classroom" position:

> There has been some discussion about how broadly a request for cameras applies – whether just to the individual classroom or beyond. Although there are mixed feelings on this question, it appears to us that most parents trust that the parents of students in other classrooms are in the best position to judge whether cameras are needed there. It would seem reasonable for TEA to interpret SB 507 that when parents of a student with a disability ask for video monitoring, they are speaking only to the need of the room where their child is assigned.[7]

[7] *See* attached *Statement of Disability Rights Texas* at **Tab 4.** Steven Aleman of Disability Rights Texas also provided live testimony during the hearing of the Senate Education Committee referenced in footnote 9.

Though TEA is aware that case law and previous Attorney General opinions advise that post-enactment statements of legislators are not entitled to probative weight in construing a statute,[8] for purposes of full disclosure, TEA notes that the sponsors of Senate Bill 507, as well as members of the Senate Education Committee, have made post-enactment statements of their intent. Specifically, the legislators have asserted that the intent was for one request to trigger video surveillance in one instructional setting.[9]

Some stakeholders have also requested clarification regarding the interpretation of section 29.022(b) which states that a campus must continue to operate and maintain the camera in a classroom as long as the classroom continues to satisfy the requirements of section 29.022(a). Specifically, school officials have asked whether video surveillance in an instructional setting must continue even if the student whose parent requested video surveillance is no longer assigned to that instructional setting or has withdrawn from the district or charter school.

My specific questions are as follows:

1. Can section 29.022(a) reasonably be construed to mean that a request for video surveillance only requires that video surveillance be conducted in one self-contained instructional setting?

2. If your response to question 1 is "no," can the statute reasonably be construed to allow a requestor to limit his or her request for video surveillance to one or more specific instructional settings? For example, if a parent's request reflects that the parent only wants video surveillance in his or her child's classroom, would it be permissible for the school district or charter school to only place and operate video cameras in that specific classroom?

3. Can the term "staff member" in section 29.022 reasonably be construed to mean only a campus employee who is assigned to a self-contained instructional setting described in the statute and certain campus employees with supervisory authority, such as a principal and assistant principal?

4. Can section 29.022(b) reasonably be construed to allow a school district or charter school to discontinue video surveillance in a self-contained instructional setting if the circumstances surrounding the request have changed substantially (e.g., the student whose parent requested video surveillance is no longer assigned to the classroom or has left the campus or district, the teacher who requested video surveillance is no longer assigned to the classroom, the term of office of the trustee who requested video surveillance has ended, etc.)?

With regard to questions 1 and 2, the legislative history surrounding Senate Bill 507 appears to be silent as to the "one classroom versus each classroom" issue. The literal text in section 29.022(a) appears to require that a request triggers the placement of one or more video cameras in each self-contained

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[8] *See, e.g., In re Doe*, 19 S.W.3d 346, 352 (Tex. 2000)("[C]ourts construing statutory language should give little weight to post-enactment statements by legislators. Explanations produced, after the fact, by individual legislators are not statutory history, and can provide little guidance as to what the legislature collectively intended.")(citations omitted); *Gen. Chem. Corp. v. De La Lastra*, 852 S.W.2d 916, 923 (Tex. 1993)("[T]he intent of an individual legislator, even a statute's principal author, is not legislative history controlling the construction to be given a statute."). *See also* Tex. Att'y Gen. Op. No. GA-0283 (2004) at 6; Tex. Att'y Gen. Op. No. GA-0016 (2003) at 6; Tex. Att'y Gen. Op. No. JC- 0567 (2002) at 7.

[9] *See* attached letter dated October 1, 2015, from State Senator Eddie Lucio, Jr. and State Representative Senfronia Thompson at **Tab 5**. In addition, members of the Senate Education Committee urged TEA staff during a recent hearing to adopt rules reflecting that a request for video surveillance requires the placement of video cameras in a single classroom. The audio recording of the February 10, 2016 hearing is available at http://www.senate.state.tx.us/avarchive/. The discussion of Senate Bill 507 begins at approximately 2:20:16.

instructional setting in the school district or charter school. A strict construction of the statute, however, would create quite an anomaly in that other provisions in the Texas Education Code that afford an individual the right to request an action do not require that the district or charter school implement the requested action across the district or charter school for all similarly situated individuals. In addition, applying a strict construction of the statute will likely result in unintended financial hardships on school districts and open-enrollment charter schools. According to school officials, the estimates that they have received reflect that the costs of purchasing, installing, and operating video equipment in each self-contained instructional setting and of storing video recordings for at least six months will be substantial and will require them to divert scarce educational resources.[10] If it is not inconsistent with the statute, it would be beneficial if a parent, trustee, or staff member were permitted to designate the specific setting or settings in which video surveillance is desired.

Regarding question 3, TEA finds no indication that there was a legislative intent for any district or campus employee to be allowed to request video surveillance. Accordingly, we are considering proposing a rule that defines the term "staff member" for purposes of section 29.022(a) as employees who are assigned to a self-contained instructional setting and certain campus employees with supervisory authority.

As for question 4, the legislative history does not reveal the legislative intent of section 29.022(b). The intent may be to keep the cameras in place for virtual perpetuity, or it may simply be to prevent school districts and charter schools from disabling or removing cameras from a setting when the requestor still wants video surveillance. While a student who receives special education services may be assigned to the same self-contained instructional setting for multiple school years, at some point the student's educational placement will change. The student may transition to a less restrictive educational environment, may move to another self-contained classroom, or may move up to the next grade-level campus. In any event, if the original requestor no longer has a valid interest in having video cameras in the self-contained classroom and no other parent, trustee, or staff member has an interest in continued surveillance, it seems sensible to allow the school district or charter school the discretion to use the video cameras as it sees fit.

Thank you for your consideration of these matters. Because school districts and charter schools need to begin planning for the 2016-2017 school year very soon, we hope that your office will accommodate our request for an expedited opinion. If you need any additional information, please feel free to contact me or Von Byer, TEA General Counsel, at (512) 463-9720.

Sincerely,

Mike Morath
Commissioner of Education

Enclosures

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[10]While the fiscal notes estimated that an inexpensive camera with limited-quality video or audio would cost $150, school districts have estimated that most classrooms will require more than one camera and that the initial costs of purchasing the necessary equipment and software will be between $3,000 and $5,000 per classroom.