

BRINGING LEGISLATION ON CAMERAS IN CLASSROOMS INTO FOCUS

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ABSTRACT

This paper will provide an overview of the laws and policies governing the implementation and use of cameras in special education classrooms. The paper begins with an overview of the topic and the current legal landscape surrounding this issue. There is no federal law expressly prohibiting or requiring cameras in special education classrooms and there is variance among the states. Currently, only three states have successfully passed legislation addressing the use of cameras in special education classrooms. Many other states have pursued legislation unsuccessfully or have legislation currently pending. Despite similarities among the proposed, passed, and rejected bills, numerous important differences exist. This paper will highlight the different approaches to, and outcomes of, legislation across the country. It will also highlight common themes emerging from the nationwide conversation about the usefulness of cameras in special education classrooms.

BACKGROUND

In some states, parents and advocates have lobbied state legislatures to introduce bills that would mandate video camera surveillance in schools, specifically self-contained classrooms, due to concerns that students in these classrooms are more susceptible to abuse by school staff.¹ This paper will address the issue of cameras in special education classrooms, considerations related to the use of cameras in special education classrooms, and whether and how states and local educational agencies (LEAs) throughout the United States are addressing the issue.

Types of Classroom Settings

Typically, cameras in special education classrooms are used in three ways. First, entire schools may be monitored by cameras, including hallways, cafeterias, and all classrooms in the school. Second, specific classrooms may be monitored based on the percentage of students in the classroom receiving special education and related services. Finally, self-contained classrooms in a school may be monitored.

LAWS AND POLICIES

Federal Laws

¹ Alyssa Morones. (May 31, 2013). *Surveillance Cameras Gain More Ground in Schools*, Educ. Wk. (May 31, 2013).

There is no federal law that directly requires or prohibits cameras in classrooms; however, there are federal laws that may be implicated when cameras are installed in schools.

FERPA

The Family Educational Rights and Privacy Act (FERPA) is the federal law that protects the privacy of students' educational records. The law applies to all schools that receive federal funding from the U.S. Department of Education. FERPA provides parents and legal guardians with specific rights related to their child's educational records.² These rights include access to their child's educational records; the ability to review and amend educational records that the parent or legal guardian believes to be inaccurate; and the requirement that consent be provided for disclosure of personally identifiable information from the educational records, except as specified in a few circumstances under the law.

The term "educational record" is defined as records that are directly related to a student and that are maintained by an educational agency or institute or a party acting for or on behalf of the agency or institution.³ Examples of educational records include, but are not limited to, grades, transcripts, class lists, student course schedules, health records (at the K-12 level), student financial records (at the postsecondary level), and student discipline files.⁴ Educational records may be created in any way, including, but not limited to, handwriting, print, computer media, videotape, audiotape, film, microfilm, microfiche, and e-mail.⁵

FERPA requires that a visual representation, such as photos or videos, be *directly related* to a student to include it as part of the protected educational record. However, there is no clear definition in the law defining whether a visual representation of a student is *directly related* to a student, or merely incidentally related to a student.⁶ In general, this inquiry is context-specific, and requires educational agencies to make determinations on a case-by-case basis. There are factors which may help an educational agency to determine if a photo or video is directly related to a student, including: the photo or video is used for an official purpose or disciplinary action involving the student; the video shows the student in violation of federal, local, or state law; the video shows the student being victimized, injured, attacked, or having a health emergency; the person taking the video intends to make the student the specific focus of the photo or video (e.g., school photos, recording of student presentations, etc.); or the photo or video contains personally identifiable information otherwise contained in a student's record.⁷ However, "a photo or video should not be considered directly related to a student in the absence of these factors and if the student's image is incidental or

² Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g, 1974.

³ 20 U.S.C. § 1232g(a)(4)

⁴ 34 CFR § 99.3

⁵ 34 CFR § 99.3

⁶ <https://studentprivacy.ed.gov/faq/faqs-photos-and-videos-under-ferpa>

⁷ <https://studentprivacy.ed.gov/faq/faqs-photos-and-videos-under-ferpa>

captured only as part of the background, or if a student is shown participating in school activities that are open to the public and without a specific focus on any individual.”⁸

IDEA

The Individuals with Disabilities Education Act (IDEA) is the federal statute which was established to “ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for further education, employment, and independent living.”⁹ Part B of the IDEA protects school-aged children with disabilities, and includes provisions related to providing a free appropriate public education to children ages three through 21.

The IDEA adopts FERPA’s definition of an educational record, stating that under the IDEA, “[e]ducation records means the type of records covered under the definition of ‘education records’ in the regulations implementing the Family Educational Rights and Privacy Act of 1974.”¹⁰ FERPA applies to all students receiving special education and related services under the IDEA. Further, FERPA provides the foundation for the additional confidentiality provisions of Part B of the IDEA.¹¹

Enacted State Laws and Policies

States have approached the implementation of cameras in special education classrooms in a number of ways. Some states have successfully enacted relevant legislation, while others have rejected bills seeking cameras in special education classrooms. Other states have legislation that is currently pending on this matter. To date, three states have successfully enacted laws to implement video cameras with audio capabilities into special education classrooms. The enacted legislation differs in each of the three states.

Texas

Texas was the first state to implement comprehensive laws governing the use of cameras in special education settings. Section 29.022 of the Texas Education Code was first enacted in 2015, and thereafter amended in 2017 and 2019.¹² Currently, the law provides that “[i]n order to promote student safety, on receipt of a written request authorized under Subsection (a-1), a school district or open-enrollment charter school shall provide equipment, including a video camera, to the school or schools in the district, or the charter school campus or campuses, specified in the request.”¹³ Notably, cameras are placed only upon request, and the request must come from a person

⁸ <https://studentprivacy.ed.gov/faq/faqs-photos-and-videos-under-ferpa>

⁹ Individuals with Disabilities Education Act, 20 U.S.C. § 1400(d)(1)(A) (2004)

¹⁰ 34 CFR § 300.611(b).

¹¹ 34 CFR 300.560–300.577

¹² Tex. Educ. Code § 29.022 (2015, 2017, 2019).

¹³ Tex. Educ. Code § 29.022(a).

specified in Subsection (a-1) of the statute. Subsection (a-1) provides that these requests can come from: “a parent of a child who receives special education services in one or more self-contained classrooms or other special education settings,” “the board of trustees or governing body,” “the principal or assistant principal of a school or campus at which one or more children receive special education services in self-contained classrooms or other special education settings,” or “a staff member assigned to work with one or more children receiving special education services in self-contained classrooms or other special education settings.”¹⁴ A school that receives equipment in response to a request made under this statute “shall place, operate, and maintain one or more video cameras in self-contained classrooms and other special education settings in which a majority of students in regular attendance are provided special education and related services and are assigned to one or more self-contained classrooms or other special education settings for at least 50% of the instructional day.”¹⁵ Before a camera is placed, schools must notify parents of students who regularly attend class in that setting in writing of the intent to install a camera.¹⁶

Once the request is made, notification is given, and cameras are installed, schools must continue to maintain the camera for the remainder of the school year in which the request was received unless the requestor withdraws the request in writing.¹⁷ If the school determines that it will no longer continue to operate the cameras prior to the conclusion of the school year in which the request was received, the school must notify the parents of all students in regular attendance within that classroom that the operation of the camera(s) will discontinue. This notification must be made to parents no less than five days before the discontinuation. This gives parents the opportunity to renew the request, in writing, should they wish for filming to continue.¹⁸ No later than 10 days prior to the conclusion of the school year, the school must notify parents that filming will not continue the following year unless expressly requested by a qualified individual.¹⁹

Once cameras have been established in the classroom, the resulting videos must be stored for at least three months from the date of recording. If an individual²⁰ makes a request to view a recording, it must be maintained from the date of the request until the individual has viewed it and a determination has been made as to whether the video captures an alleged incident. If it is determined that the video captures an alleged incident, the video must be maintained until the incident is resolved, including the exhaustion of all appeals.²¹ The law does not permit regular, continued monitoring of the video, meaning the video is only reviewed upon request.²²

¹⁴ Tex. Educ. Code § 29.022(a-1)(1-4).

¹⁵ Tex. Educ. Code § 29.022(a).

¹⁶ Tex. Educ. Code § 29.022(d).

¹⁷ Tex. Educ. Code § 29.022(b).

¹⁸ Tex. Educ. Code § 29.022(b).

¹⁹ Tex. Educ. Code § 29.022(b).

²⁰ Qualified individuals who are able to make such requests are enumerated in Subsection (i) of the statute.

²¹ Tex. Educ. Code § 29.022(e).

²² Tex. Educ. Code § 29.022(h).

Of note, the Texas law provides that these cameras may be funded through the solicitation or acceptance of “gifts, grants, and donations from any person for use in placing video cameras in classrooms and other special education settings.”²³ Further, the law expressly states that the use of these videos is limited in scope. The videos cannot be used “for teacher evaluation or for any other purpose other than the promotion of safety of students receiving special education in a self-contained classroom or other special education setting.”²⁴

The Texas Association of School Boards maintains a comprehensive technical assistance guide to aid local school systems (LSSs) in the proper implementation of this law.²⁵

Georgia

In 2016, Georgia became the second state to enact legislation regarding cameras in special education classrooms when it enacted the Landon Dunson Act, H.B. 614. The bill was named after 10-year-old Landon Dunson, a non-verbal student with autism and cerebral palsy.²⁶ The law provides that “the Department of Education is authorized to provide guidance for the placement of video monitoring cameras and equipment by a school in self-contained classrooms in which students receive special education services.”²⁷ Additionally, the law gives the Department of Education the ability “to approve LSSs for participation and may approve LSSs which already utilize video monitoring cameras and equipment in their special education self-contained classrooms through an application process.”²⁸ Importantly, though, this law is not mandatory. The Official Code of Georgia Annotated expressly states that “a local school system or school may, in its sole discretion, agree to participate.”²⁹

For school systems who decide to participate in the placement of video cameras in self-contained classrooms and other settings where students receive special education and related services, there are certain minimum requirements which must be met. First, the school or school system must provide “prior notice of the placement of video monitoring cameras to the parents or guardians of each student in the approved classrooms.”³⁰ Additionally, footage obtained pursuant to this Code section must be retained by the school or school system “for no less than three months nor more than 12 months from the date of the recording.”³¹ Further, the coverage by video monitoring cameras must be

²³ Tex. Educ. Code § 29.022(f).

²⁴ Tex. Educ. Code § 29.022(h)(2).

²⁵ Available at: https://www.tasb.org/services/legal-services/tasb-school-law-resource/instruction/documents/update_video_cameras_sp_ed_classrooms.aspx

²⁶ <https://www.ajc.com/news/local-govt--politics/cameras-now-allowed-special-needs-classrooms-georgia/LHMmJ4Pt7hZkfHc7JesTWN/>

²⁷ O.C.G.A. § 20-2-324.2(a).

²⁸ O.C.G.A. § 20-2-324.2(a).

²⁹ O.C.G.A. § 20-2-324.2(a) (emphasis added).

³⁰ O.C.G.A. § 20-2-324.2(b)(1).

³¹ O.C.G.A. § 20-2-324.2(b)(2).

“of all areas of the approved classrooms, to the extent practical.”³² And finally, there must be “procedures and requirements to protect the confidentiality of student records contained in videos recorded from video monitoring cameras placed pursuant to this Code section in accordance with” FERPA and other applicable sections of the Official Code of Georgia.³³

The use of footage collected by the cameras is expressly limited to “monitoring classroom instruction, monitoring classroom interactions, and teacher observation,” and review of any footage generated is also limited to those purposes.³⁴ With respect to funding, the statute provides that the Georgia Department of Education “shall serve as a state level flow through point for any available state or federal funding.”³⁵ Further, the statute allows LSSs to “solicit and accept gifts, grants, and donations from any person or entity for use in placing video monitoring cameras in classrooms pursuant to this Code section.”³⁶

West Virginia

On March 9, 2019, the West Virginia legislature passed Senate Bill 632 which allows for the installation of cameras in special education classrooms. The Bill took effect July 1, 2019. This law is conditioned on the appropriation of state funds from the Safe Schools Fund, which explicitly provides that “moneys distributed from [the Safe Schools] fund... may be used for the purposes of §18-20-11 of this code, relating to video cameras in certain special education classrooms.”³⁷ The West Virginia law relating to cameras in special education classrooms provides that, “upon appropriation of funds by the Legislature, a county board of education shall ensure placement of video cameras in self-contained classrooms as defined in state board policy.”³⁸ The law requires that the “county board of education shall provide a video camera to a public school for each self-contained classroom that is a part of that school which shall be used in every self-contained classroom.”³⁹ The statute specifically defines self-contained classroom as “classroom at a public school in which a majority of the students in regular attendance are provided special education instruction and as further defined in state board policy.”⁴⁰

Under the law, any camera implemented must be capable of recording both audio and video of “all areas” of the special education classroom, including rooms attached to the self-contained classrooms used for “other purposes.” However, this does not include restrooms.⁴¹ Written notice of the recording must be provided to parents of students

³² O.C.G.A. § 20-2-324.2(b)(3).

³³ O.C.G.A. § 20-2-324.2(b)(4).

³⁴ O.C.G.A. § 20-2-324.2(c).

³⁵ O.C.G.A. § 20-2-324.2(e)(1).

³⁶ O.C.G.A. § 20-2-324.2(e)(1-2).

³⁷ W. Va. Code §18-5-48(c).

³⁸ W. Va. Code §18-20-11(a).

³⁹ W. Va. Code §18-20-11(c).

⁴⁰ W. Va. Code §18-20-11(b)(2).

⁴¹ W. Va. Code §18-20-11(e)(1-2).

assigned to the classroom, school employees assigned to work in the classroom, and the county board.⁴² Videos must be retained for three months after the date it was recorded. If a request is made to view the video, it must be kept until such time as the requestor views the video, and requestors are expected to make themselves available to view the video within 30 days.⁴³ If further investigation is warranted, the video must be maintained until the investigation is concluded and all relevant appeals are exhausted.

The statute expressly prohibits the use of captured footage for teacher evaluations or “any purpose other than the promotion of the health, well-being, and safety of students receiving special education and related services in a self-contained classroom.”⁴⁴ The law also indicates that video footage will not be continually monitored; rather, footage will be reviewed in response to specific requests.⁴⁵ Finally, the statute outlines procedures for requesting and reviewing footage in a manner consistent with FERPA.⁴⁶

Pending and Failed Legislation

Several states have proposed bills similar to those that have passed in Texas, Georgia and West Virginia that are currently pending in their respective state legislatures, including: Louisiana, New Jersey, Massachusetts, New York, and Florida.

Louisiana proposed a bill requiring cameras in special education classrooms during the 2019 legislative session. The bill passed the Louisiana House on May 23, 2019, and was referred to the Senate where it failed before the Senate Finance Committee.⁴⁷ In March 2020, H.B. 138 was introduced for the 2020 regular session, but the session was adjourned due to the Covid-19 pandemic. It has not since been reintroduced in the 2021 regular session.

In New Jersey, in 2019 two companion bills have been filed in the General Assembly and the Senate, but they did not pass before the respective Education Committees.⁴⁸ In 2020, a similar bill was sent to the Committee on Education, where it is still pending.⁴⁹

In Massachusetts, a bill to allow cameras in special education classrooms failed during the 2019 session. The provision requiring cameras is contained as part of an act requiring the monitoring and documentation of school discipline.⁵⁰

⁴² W. Va. Code §18-20-11(f)(1-3).

⁴³ W. Va. Code §18-20-11(g).

⁴⁴ W. Va. Code §18-20-11(i)(2).

⁴⁵ W. Va. Code §18-20-11(i)(1).

⁴⁶ W. Va. Code §18-20-11(j)-(o).

⁴⁷ Louisiana HB 283, 2019.

⁴⁸ New Jersey Assembly A4869, New Jersey Senate SB3246, 2019.

⁴⁹ N.J. S.B. 1492,

⁵⁰ Massachusetts HB 3758, 2019.

In New York in 2019, a bill is currently failed which would have required camera recording in special education classrooms where pupils are unable to communicate effectively.⁵¹ A similar bill was also introduced in 2020, which also failed.⁵²

In Florida, a bill is pending to allow cameras in special education classrooms. The original bill died before the Florida education committee; however, it is now being debated again following some revisions.⁵³

In Maryland, a bill is pending to require installation of at least one camera in self-contained special education classrooms. The bill requires notice to be posted in a conspicuous area outside of the classroom and written notice be provided to all parents or legal guardians of students in the classroom. A recording may not be stored for more than six months, unless a request is made to store the video until the reason for the request has been resolved. Each year, the county board is required to collect data regarding the number of requests made to view the video footage and the identity of the person who made the request.⁵⁴

Other states have proposed legislation that did not pass concerning permitting video surveillance in special education classrooms. For example, in 2019, Arkansas proposed a bill, but it died prior to the conclusion of the legislative session.⁵⁵ Nevada proposed a bill in the Senate during the 2019 legislative session, but it died in chamber.⁵⁶

Case Law

While no court has fully tackled the legal ramifications of installing cameras in special education classrooms, several courts have considered aspects of this debate which are instructive for analysis of this issue. Below are a few case examples which highlight different considerations and analyses courts are undertaking when tackling these complex issues.

In *Plock v. Board of Education of Freeport School District*,⁵⁷ the United States District Court for the Northern District of Illinois considered a suit seeking to enjoin a school district from carrying out its proposed policy of operating audio recording equipment in certain special education classrooms.⁵⁸ In considering the plaintiff's fourth amendment claim, the Court held:

A classroom in a public school is not the private property of any teacher. A classroom is a public space in which government employees communicate with

⁵¹ New York A2793, 2019.

⁵² N.Y. S.B. 7276

⁵³ Florida HB 1231, 2020.

⁵⁴ Maryland HB 715, 2021.

⁵⁵ Arkansas HB 1019, 2019.

⁵⁶ Nevada SB 109, 2019.

⁵⁷ *Plock v. Bd. of Edn. of Freeport School Dist.* No 145, 545 F. Supp. 2d 755, 2007 U.S. Dist. LEXIS 93141 (N.D. Ill. Dec. 18, 2007).

⁵⁸ *Id.* at 756.

members of the public. There is nothing private about communications which take place in such a setting. Any expectations of privacy concerning communications taking place in special education classrooms such as those subject to the proposed audio monitoring in this case are inherently unreasonable and beyond the protection of the Fourth Amendment.⁵⁹

The court concluded that the plaintiff school teachers did not have a reasonable expectation of privacy in their classrooms, and therefore, Defendant's Motion for Judgment on the Pleadings was granted.

Other jurisdictions have also tackled the issue of audio recording. In *Pollack v. Regional School Unit 75*,⁶⁰ parents were concerned about a non-verbal student's treatment in school and they requested permission for the student to wear an audio recording device throughout his school day. Pointing to a school policy prohibiting the use of personal electronic devices, the school denied the parents' request. The Plaintiff parents filed suit. The parties filed cross-motions for summary judgment on the Plaintiff parents' claims that the school district violated the Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act (Section 504), and the First Amendment by refusing to allow the student to wear an audio recording device throughout his school day.⁶¹

The court considered the plaintiffs' claims under Section 504, the ADA, and the First Amendment, and ultimately determined that "[t]here is ample evidence in the record suggesting that the District could have reasonably forecast a substantial disruption if [the student] wore the recording device to school. There is also evidence suggesting that District officials could reasonably expect that allowing [the student] to wear a recording device at school would deprive other students of their right to be secure... Thus, viewed in the light most favorable to the District, a jury could reasonably find that the District was justified in refusing to allow [the student] to wear a recording device under *Tinker [vs. Des Moines]*."⁶²

CONSIDERATIONS

Technical

Quality Issues

Footage quality issues can occur when recording in the school setting. Classrooms are inherently noisy places and there are times when there is a lot of background noise. In addition, there may be periods of time that are not recorded due to camera malfunction. The West Virginia law provides that a written explanation should be submitted to the school principal and county board explaining the reason and length of time for which

⁵⁹ *Id.* at 758.

⁶⁰ *Pollack v. Regional School Unit 75*, D.Me. No. 2:13-cv-109-NT, 2017 U.S. Dist. LEXIS 64611 (April 28, 2017).

⁶¹ *Id.*

⁶² *Id.*

there is no recording and that the county board office shall maintain the written explanation for at least one year.⁶³

Microphone placement and quality may also impact the audio the quality of the recording. Depending on camera placement and quality, some areas of a classroom may be out of the view of the camera. Incidents that occur in areas not monitored by a camera would not be able to be reviewed.

Camera Operation

An additional consideration is the camera's operator. Busy teachers designated to start and stop the recording in the classroom may forget to or selectively start and stop the recording. Schools may also place additional responsibility on an existing staff member or hire someone to operate the cameras; however, these options cost money, require training, and impact a staff person's already existing job duties.

Camera Coverage Area

Depending on camera placement and quality, it also may be difficult to see footage and not all areas of a classroom may be recorded by the camera. Texas law requires that the camera placement cover the entire special education setting except for changing areas and bathrooms.⁶⁴ Georgia requires coverage of all areas of the approved classrooms, to the extent practical.⁶⁵ West Virginia law requires that cameras implemented record both audio and video of all areas of the special education classroom, including rooms attached to the self-contained classrooms used for other purposes, but not including restrooms.⁶⁶

Length of Time of Camera Operation

Another consideration is the amount of time LEAs are required to operate a camera in a classroom. In Texas, once a parent requests a camera, surveillance must continue for the rest of the school year in which the request for the camera was received, unless the person who requested the camera withdraws the request in writing.⁶⁷ Also, the school must cease recording if a classroom no longer meets requirements for recording based on the number of students receiving special education and related services in the classroom.⁶⁸ Georgia's and West Virginia's laws, however, do not specify a length of time for camera operation.

Classroom Type

⁶³ W. Va. Code §18-20-11(d)(2).

⁶⁴ Tex. Educ. Code § 29.022(c-1).

⁶⁵ O.C.G.A. § 20-2-324.2(b)(3).

⁶⁶ W. Va. Code §18-20-11(e)(1-2).

⁶⁷ Tex. Educ. Code § 29.022(b).

⁶⁸ Tex. Educ. Code § 29.022(b).

The laws provide for recording in different types of special education classroom settings. In Texas, the law applies to self-contained classrooms and other special education settings where a majority of students in regular attendance are receiving special education and related services and assigned to one or more self-contained classrooms or other special education settings for at least 50 percent of the instructional day.⁶⁹ The Georgia law authorizes the Department of Education to provide guidance for the placement of video monitoring cameras and equipment by a school in self-contained classrooms in which students receive special education services.⁷⁰ The West Virginia law applies to self-contained classrooms, which are defined as a “classroom at a public school in which a majority of the students in regular attendance are provided special education instruction...”⁷¹

Monitoring of Camera Footage

Texas law does not permit regular, continued monitoring of the recording.⁷² In Georgia, the use of footage collected by the cameras is limited to monitoring classroom instruction, monitoring classroom interactions, and teacher observation.⁷³ In West Virginia, video footage cannot be continually monitored and is reviewed in response to a specific request.⁷⁴

Privacy

Student Privacy

Student privacy issues may arise when using video to monitor special education classrooms. First, there are the FERPA implications described earlier in this paper. In Texas, the attorney general provided guidance that indicates that a parent with a child in a special education classroom has a right to be notified before a camera is activated, but does not have a right to provide or withhold consent when the district is required to operate a camera within a classroom.⁷⁵ There is also the issue of why only special education classrooms have cameras and whether it is discriminatory towards students receiving special education and related services if only special education classrooms within a school building have cameras.

School Staff Privacy

Teachers have mixed perceptions on video surveillance in their classrooms. In a review published in 2019, teachers felt that recording is punishment and demonstrates a lack of trust. Other educators stated that they felt more protected from false allegations when

⁶⁹ Tex. Educ. Code § 29.022(a).

⁷⁰ O.C.G.A. § 20-2-324.2(a).

⁷¹ W. Va. Code §18-20-11(b)(2).

⁷² Tex. Educ. Code § 29.022(h).

⁷³ O.C.G.A. § 20-2-324.2(c).

⁷⁴ W. Va. Code §18-20-11(i)(1).

⁷⁵ Tex. Educ. Code § 29.022(b)(5)(d).

cameras are present in the classroom. If the state law permits it, there is also the potential for use of video analysis for professional development.⁷⁶

Video Monitoring and Access

Access to the recordings differs in each state. In Texas, the recordings are considered confidential under state law. They are not routinely monitored and cannot be used for any purpose other than promoting the safety of students in the classroom.⁷⁷ There are exceptions that indicate specific circumstances in which a district must release a recording to a parent, teacher, or public agencies.⁷⁸ In Georgia, the law requires that LSSs provide procedures and requirements to protect the confidentiality of student records contained in recordings from video monitoring cameras in accordance with FERPA.⁷⁹ The West Virginia law also indicates that footage cannot be continually monitored and will only be provided in response to specific requests consistent with FERPA.⁸⁰

Redaction

When there is a request to view a recording, LSSs must comply with FERPA requirements outlined previously in this paper. A potential issue is that footage might be edited or redacted to a point where a viewer cannot tell what happened.⁸¹

Retention and Storage

Texas, Georgia, and West Virginia each have different footage retention requirements. In Texas, schools are required to retain recordings for at least three months.⁸² However, if there is a request to review a recording, the LEA must retain the recording until the requestor has viewed the recording and a decision has been made as to whether the recording documents an alleged incident. If the recording documents an alleged incident, the district must retain the recording until the alleged incident has been resolved and all appeal rights have been exhausted.⁸³ In Georgia, footage must be retained by the school or school system for a minimum of three months and a maximum of 12 months from the date of the recording.⁸⁴ In West Virginia, schools must retain videos for three months after the date of recording. If a request is made to view the video, it must be kept until the requestor views the video. Requestors are expected to

⁷⁶ Morin, K., et. al. (2019). *A Systematic Review of Single-Case Research on Video Analysis and Professional Development for Special Educators*. The Journal of Special Education, 53(1).

⁷⁷ Tex. Educ. Code § 29.022(h)(i).

⁷⁸ Tex. Educ. Code § 29.022(i).

⁷⁹ O.C.G.A. § 20-2-324.2(b)(4).

⁸⁰ W. Va. Code §18-20-11(i-o).

⁸¹ Winton, A. (January 21, 2008). *What do Cameras Cure? System Gets Own Scrutiny*. Retrieved December 31, 2019 from <https://citylimits.org/2008/01/21/what-do-cameras-cure-system-gets-own-scrutiny/>.

⁸² Tex. Educ. Code § 29.022(e).

⁸³ Tex. Educ. Code § 29.022(e-1).

⁸⁴ O.C.G.A. § 20-2-324.2(b)(2).

make themselves available to view the video within 30 days.⁸⁵ If further investigation is warranted, the video must be maintained until the investigation is concluded and all relevant appeals are exhausted. One additional potential retention and storage issue is that school staff can delete or lose unfavorable footage so that it cannot be viewed.⁸⁶

Safety

School Climate

The National Autism Association supports the installation of surveillance cameras in self-contained classrooms, but acknowledges that cameras cannot be the primary strategy to ensure student and teacher safety and that the long-term goal should be properly supporting students with challenging behaviors through a high fidelity implementation of positive behavioral interventions and supports (PBIS) in all schools.⁸⁷ Others suggest that video cameras in special education classrooms may appear to be the most immediate solution, but are not a viable long-term solution to preventing abuse, and that LEAs should focus on supporting teachers and teaching strategies to address student behavior.⁸⁸

School Staff Behavior

Teachers and other school staff members who know that their classroom is monitored by a camera may be less likely to engage in behaviors that would be viewed as harmful towards students. However, installing cameras in special education classrooms may also drive abuse to areas that are not monitored by cameras.⁸⁹

Student Ability to Communicate Information

In instances where parents have a concern about a situation in their child's special education classroom, parents can request to review the video footage. This may allow parents who have children who are non-verbal or have limited expressive language skills to view classroom footage if their child arrives home from school with an unexplained physical injury or in emotional distress.

Some advocates argue that installing video cameras in special education classrooms instills a false sense of security for families of students in those classrooms.⁹⁰ Without constant monitoring of the video footage and video review at parent request, incidents likely will not be identified unless a parent submits a request to review the footage. For

⁸⁵ W. Va. Code §18-20-11(g).

⁸⁶ Winton (2008).

⁸⁷ Phillips, L., (January 25, 2012). *Behind Closed Doors: What's Happening to Students With Autism in America's Public Schools? The case for cameras in self-contained classrooms.*

<https://nationalautismassociation.org/wp-content/uploads/2013/01/CamerasWhitePaper.pdf>.

⁸⁸ Amos (2015).

⁸⁹ Amos (2015).

⁹⁰ Amos (2015).

example, a specific intention of the Texas law was to give a voice to non-verbal students.⁹¹ Since school officials are not allowed to continuously monitor the camera footage under the Texas law, the law provides little additional information to parents unless their child develops behavioral changes or physical injuries that might prompt them to request the video footage.⁹²

Financial

Cost of Equipment

There are costs associated with purchasing, installing, monitoring, and maintaining surveillance cameras in the school setting. In addition to installation and maintenance costs, there are also costs associated with responding to requests to review camera footage and follow-up for any external requests.

The Texas Legislature Budget Board estimated that approximately 73,375 special education students were impacted by the camera law, requiring the installation of approximately 14,675 video cameras at a cost of \$2.2 million for the camera installation alone. This did not include the cost of maintaining or upgrading the equipment.

Funding

Texas law provides that cameras may be funded through the solicitation or acceptance of “gifts, grants, and donations from any person for use in placing video cameras in classrooms and other special education settings.”⁹³ In Georgia, the statute provides that the Georgia Department of Education “shall serve as a state level flow through point for any available state or federal funding.” Further, the statute allows LSSs to “solicit and accept gifts, grants, and donations from any person or entity for use in placing video monitoring cameras in classrooms pursuant to this Code section.”⁹⁴ The West Virginia law relating to cameras in special education classrooms provides that, “upon appropriation of funds by the Legislature, a county board of education shall ensure placement of video cameras in self-contained classrooms as defined in state board policy.”⁹⁵

There is a potential for uneven outcomes among school districts depending on wealth of the district if the cameras are not fully funded and LEAs are expected to rely on gifts and donations to fund cameras.

Least Restrictive Environment

⁹¹ Heintzelman (2017).

⁹² Heintzelman (2017).

⁹³ Tex. Educ. Code § 29.022(h).

⁹⁴ O.C.G.A. § 20-2-324.2(e) (1-2).

⁹⁵ W. Va. Code §18-20-11(a).

Some advocates and advocacy groups express concerns about the use of cameras in self-contained classrooms related to the IDEA requirement that students must be educated in the least restrictive environment to the maximum extent appropriate (LRE).⁹⁶ One concern is that parents and school staff may come to view special education classrooms that are monitored by cameras as safer and more desirable because of the presence of cameras in the classroom. Parents and school staff may advocate for a student's placement in a classroom setting that is not the LRE because they want the student to be in a classroom with cameras or they believe that a student needs to be in a classroom with cameras to monitor problem behaviors.

The national organization TASH published a position paper, which indicates that relying on more restrictive settings as a way to keep students with disabilities safe contradicts research on inclusion.⁹⁷ TASH also asserts that the use of cameras in special education classrooms undermines the mandate that special education is a service, not a place.⁹⁸

STRATEGIES FOR PARENTS, GUARDIANS, ADVOCATES, AND ATTORNEYS

Parents, guardians, advocates, and attorneys should review the existing literature and research to determine whether they believe that the addition of cameras in special education classrooms is something that would be beneficial. For example, cameras may enable school staff and parents to review alleged incidents that occurred in the classroom, if the incident occurred in an area that was recorded, and potentially resolve the issue. It is also important to consider the costs of camera installation and monitoring, student and teacher privacy, potential impact on placement, and potential discrimination issues. If, after consideration, parents, guardians, advocates, and attorneys believe that cameras would be beneficial, they might advocate to the local or state boards of education or through the legislative process.

Parents, guardians, advocates, and attorneys should also analyze data on the use and impact of cameras in special education classrooms to determine whether the addition of cameras reduces rates of reported abuse. They should also consider the number of requests for footages submitted, the number of situations in which the footage verified whether abuse occurred, and the cost of running and maintaining the cameras.

FUTURE DIRECTION

Further data collection, monitoring, and review of the states with current laws is required to determine whether students in special education classrooms with cameras are safer because their classrooms are being recorded. Stakeholders should look at overall cost to LEAs and states. It is important that LEAs and states establish clear guidelines, if cameras will be installed in special education classrooms. Stakeholders should also

⁹⁶ Amos (2015).

⁹⁷ Amos (2015).

⁹⁸ Amos (2015).

consider whether resources are better spent on training school staff in PBIS and trauma-informed practices for all students as well as using the funding for increasing the number of mental health related service providers available to students.

RESOURCES

FERPA: <https://studentprivacy.ed.gov/node/548/>

IDEA: <https://sites.ed.gov/idea/>