

Security camera surveillance systems: Best practices and policy concerns

By the New York State Association of School Attorneys

To address heightened community concerns about school safety, many school boards are considering installing surveillance security camera systems in their school and administration buildings. These systems can be used to detect suspicious behavior or other potential dangers to the health and well-being of its students and employees. Some systems are connected to local police. However, there are various legal and “best practices” considerations that ought to be taken into account before such a system is implemented, especially with regard to unionized employees subject to such surveillance.

Statutory considerations

Generally speaking, a public employer may install video-only security cameras in the “public spaces” of its facilities, where employees have no expectation of privacy. It is unlawful to record an employee in “a restroom, locker room, or room designated by an employer for employees to change their clothes” (NY Labor Law section 203-c) or to surveil employees involved in union activities (NY Labor Law sections 703-704 and the National Labor Relations Law, 29 U.S.C. sections 151-169).

Even in public areas in school buildings, where there is no expectation of privacy, cameras must be set up without audio feeds. New York’s eavesdropping law, NY Penal Law section 250.00, forbids “wiretapping,” which is the audio recording of a conversation without the consent of any party to said conversation. New York requires the consent of only one party to a conversation for an audio recording to legally be made, which is considerably less stringent than “two-party consent” laws in roughly a dozen other states, which require consent of all parties to a conversation. However, the indiscriminate, usually automated nature of security camera recording would de facto run afoul of the law. Therefore, audio capabilities – if any – must be permanently disabled, and cameras should be positioned with this in mind.

Collective bargaining considerations

Footage obtained through security cameras conceivably could become evidence used in an employee disciplinary procedure or work performance evaluation. Such usages may be subject to collective bargaining, if not already in your



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district’s union contracts.

The Public Employment Relations Board (PERB) has ruled that a school district’s regular video surveillance of its employees, footage of whom could be used in the pursuit of disciplinary charges and/or evaluation, is a mandatory subject of negotiation because it “bears a direct and significant relationship to working conditions [...] requires employees to be video-surveillance participants, and it intrudes upon employee interests including job security, privacy and personal reputation” (*Civil Serv. Emps. Ass’n, Local 1000*, 2011).

In contrast, such collective bargaining is not required in correctional facilities, where surveillance of the premises is considered integral to the mission of the employer. While an argument could be made that surveillance is integral or has become integral to the mission of a given school or district based on factors such as a pattern of threats or a history of incidents, the district would have to be able to support such claim if it neglects to collectively bargain the installation of security cameras and is challenged by a union.

The first step should be a review of your collective bargaining agreement by counsel for any existing, previously negotiated restrictions on employee monitoring. In such a review, it may be advisable to consult with unions to ensure agreement regarding interpretation of any relevant terms. Districts must therefore work with their unions in determining the number, types,

locations and uses of surveillance cameras.

Amid widespread agreement on the desirability of improving school security, unions may be amenable to installation of cameras despite their potential role in an employee disciplinary or performance evaluations. Union leaders probably will be most concerned with the placement of cameras and whether the plan will fulfill the goal of enhancing school security.

A school district may not need to engage in collective bargaining if it wishes to use video surveillance for specific purposes, such as gathering information in response to a complaint. In *Custodian Ass’n of Elmont* (1995), a PERB administrative law judge sanctioned a district’s use of video surveillance of a bus driver who had been the subject of parental complaints. According to the decision, “investigatory procedures in disciplinary matters are not mandatorily negotiable.” Requiring collective bargaining in such an instance “would interfere with an employer’s ability to inquire into employee conduct and would frustrate investigatory activity, which is an essential aspect of managerial prerogative and which overrides the duty to negotiate,” according to PERB.

Even with security cameras in full view of the public, a district should make sure that all employees are aware of where in district buildings they may be subject to surveillance. Posted notices reminding employees (and other members of the public on district premises) that a surveillance

system is in place helps to avoid possible claims of “invasion of privacy.” Also, the U.S. Court of Appeals for the Seventh Circuit has ruled that employers must disclose to employees relevant information that extends beyond their locations, such as the type of cameras being used (*Nar’i Steel Corp. v. NLRB*, 2003).

Policy considerations

The district’s policy manual is both a tool to allow the district to comply with applicable law and apply same in an even-handed manner and, implicitly, a form of transparency regarding district operations. Therefore, before implementing a surveillance system, the school district should review its board policy manual for any existing policies that might impact or conflict with the district’s intentions. Unless it would compromise other board goals, the board should amend the policy to be consistent with the installation plan before moving forward. Ideally, a school district’s decision to implement a security camera surveillance system will emerge from a collaborative process that reflects the concerns of all stakeholders and is consistent with law, regulation and local policy.



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