



Book	Board of Trustees Policy
Section	900 Community
Title	Prohibition from Recording Policy
Code	910
Status	Active
Last Revised	October 6, 2022

## **Agora Cyber Charter School**

### **Board of Trustees Policy**

#### **PROHIBITION FROM RECORDING POLICY**

It is the goal of the Board of Trustees ("Board") of the Agora Cyber Charter School ("Charter School") to protect Charter School employees, independent contractors and/or volunteers from parents/guardians, students and others who attempt to record them and/or do record them in the course of their professional and/or volunteer duties at the Charter School. This includes while such persons are working with students in the home classroom, testing site, clinical setting, private school, Intermediate Units, other placements made by the Charter School, school sponsored event, activity, on school transportation, and/or any partial program and/or residential placements made by Student's parents/guardians or outside entities other than the Charter School.

The Board declares it to be their policy to ensure that the Charter School is protected from any unlawful video or audio recording of the provision of educational programming to Charter School students, including but not limited to academic instruction, related services, behavioral supports, and the like, during a school day, after school at a school-sponsored event or activity, or on school transportation. These unlawful recordings could potentially put the Charter School at risk for liability. Charter School employees, independent contractors, and volunteers have an expectation of privacy when they provide services to the Charter School and to its students. No Charter School employees, independent contractors, or others may be recorded, videotaped, or audio taped, in the course of their duties with the Charter School without the express written consent of the Chief Executive Officer ("CEO") or designee.

**Definitions:**

“Recording” refers to any audio or video taping, by any method used to record sounds or visual images, stored on any device.

“Charter School employees” refers to any employees, with requisite background clearances, of the Charter School, acting in their professional capacity.

“Independent Contractors” refers to any certified and/or licensed professional, with requisite background clearances with whom the Charter School contracts.

**Pennsylvania Wiretapping Statute:**

18 Pa.C.S.A. § 5703 states the general rule for the interception, disclosure or use of wire, electronic or oral communications:

*Except as otherwise provided in this chapter, a person is guilty of a felony of the third degree if he/she:*

- 1. intentionally intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire, electronic or oral communication;*
- 2. intentionally discloses or endeavors to disclose to any other person the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire, electronic or oral communication; or*
- 3. intentionally uses or endeavors to use the contents of any wire, electronic or oral communication, or evidence derived therefrom, knowing or having reason to know, that the information was obtained through the interception of a wire, electronic or oral communication.*

18 Pa.C.S.A § 5704 states exceptions to the rule, most of which pertain to law enforcement investigations. However, subsection (4) states that it is an exception to the prohibition of interception and disclosure of communications of a person, to intercept a wire, electronic or oral communication, “**where all parties to the communication have given prior consent to such interception.**” 18 Pa.C.S.A § 5704(4) (emphasis added).

**Prohibition Against Consent:**

Charter School personnel, independent contractors, volunteers and others do **not** have authority to consent to be recorded while in the course of performing their professional duties with the Charter School. The only person at the Charter School who has the authority to consent to any recordings of anyone is the CEO and/or his or her designee. Parents/guardians, students, and others are not permitted to record any Charter School personnel without the express written permission of the Charter School’s CEO and/or his or her designee.

As soon as any Charter School personnel, independent contractors, volunteers and others learn that they are being privately recorded by parents/guardians, students or others without the express written permission of the Charter School's CEO and/or his or her designee, such persons must immediately report this matter in writing to the Charter School's CEO and/or designee. Any and all programming or services being provided will cease immediately upon notice of recording and will only begin again once recording devices are stopped and/or disabled and recording is turned over to the Charter School personnel, independent contractor, volunteer, or other agent of the Charter School.

**Penalties:**

The Pennsylvania Wiretapping Act carries both civil and criminal penalties.

- Criminal penalties: A person found guilty of violating the wiretapping statute could be subject to a third degree felony conviction and face up to seven (7) years in prison.
- Civil penalties: A successful plaintiff seeking damages against a person who has violated the wiretapping act can seek:
  - Actual damages, but not less than liquidated damages computed at the rate of \$100 a day for each day of violation, or \$1,000, whichever is higher.
  - Punitive damages.
  - Reasonable attorney's fees and other litigation costs reasonably incurred.

If the Charter School becomes aware of a person who records, or attempts to record Charter School personnel or contracted personnel without the express written permission of the Charter School's CEO, such persons could be subject to both civil and criminal penalties, including the penalties and consequences outlined in the Charter School Student and Parent/Guardian handbooks and Student Code of Conduct.

The Charter School has the right to retrieve, from the unauthorized maker, any recordings of its personnel and contracted personnel, made without the express written permission of the Charter School's CEO or designee. The Charter School may seek court involvement to secure the recording, including injunctive relief to prevent dissemination of the unlawful recording.

**Notice Provisions:**

The Board authorizes the Charter School Administration to include, in the Student/Parent Handbook, notice of this prohibition of unauthorized recording of Charter School employees, independent contractors and/or volunteers, and the penalties for such unauthorized recording.

The Student/Parent Handbook shall also provide notice to parents/guardians, and students of the need to secure written authorization from the Charter School CEO or designee before any such recording shall be permitted and that any such unauthorized recording shall be retrieved on-site by the Charter School employee or independent contractor or by legal means if not turned over voluntarily at the time of recording.

The Student/Parent Handbook shall also contain a provision that notifies parents/guardians that any/all programming and services being provided will cease immediately upon notice of recording such programming and services. Programming and services will only begin again once the recording device is stopped and/or disabled and the unauthorized recording is turned over to the Charter School personnel or to the independent contractor or other agent of the Charter School, who will forward such recording(s) to the Charter School.

The Charter School administration is also directed to include notice to Charter School employees in their handbook and/or by other means of the prohibition of recording by a parent/guardian, student or other person of the provision of programming, services, supports, and the like, of a Charter School employee without the express written authorization of the Charter School CEO or designee.

The Charter School administration is further directed to include notice in any/all independent contractor agreements of the prohibition of recording by a parent/guardian, student or other person of the provision of programming, services, supports, and the like, of an independent contractor without the express written authorization of the Charter School CEO or designee.

**TO THE EXTENT THAT ANYTHING IN THIS POLICY COULD BE CONSTRUED TO CONFLICT WITH THE SCHOOL'S CHARTER OR APPLICABLE STATE AND/OR FEDERAL LAWS, THE APPLICABLE STATE AND/OR FEDERAL LAWS AND/OR CHARTER CONTROL.**