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FISCAL AND POLICY NOTE
First Reader

House Bill 715
Ways and Means

(Delegate Guyton)

Public Schools - Self-Contained Special Education Classrooms - Use of Video
Recording Devices

This bill requires each county board of education, beginning with the 2021-2022 school year, to install at least one video recording device in each self-contained public school classroom in which a majority of the regularly attending students are provided special education instruction. These devices must record all areas of the classroom, including all exclusion areas, during school hours and any time the space is being used. However, recording may not occur in bathroom areas or in areas students use to change clothing. A county board must provide specified notice of the use of these recording devices. If a public school employee observes an action that could be considered abuse or neglect of a student in a self-contained special education classroom or exclusion area, the employee must report the action in accordance with any applicable child abuse and neglect reporting guidelines. The principal must, within 24 hours of receiving such a report, notify the parent of the student who is the subject of the report. **The bill takes effect July 1, 2021.**

Fiscal Summary

State Effect: Maryland State Department of Education (MSDE) can adopt regulations and collect school system information with existing resources.

Local Effect: Beginning in FY 2022, local school systems incur significant additional costs related to the purchase, installation, maintenance and eventual replacement of video recording equipment, as well as costs associated with storing and accessing video recordings and for training employees in the use of recording systems. **This bill imposes a mandate on a unit of local government.**

Small Business Effect: Meaningful. Small businesses that sell and service video recording equipment may benefit.

Analysis

Bill Summary: “Special education classroom” means a classroom in a public school in which a majority of the regularly attending students are provided special education instruction, including students who are classified primarily as certificate track, are primarily nonverbal, and are participating in life skills or community-based programming.

“Exclusion area” means a supervised area to which a student who receives instruction in a self-contained special education classroom is taken for a limited time to regain self-control.

The bill specifies how long recordings may be stored and who may view the recordings and under which circumstances. The bill specifies procedures for reporting incidences of a video recording device being discovered to have been interrupted. Video recording devices may not be used to monitor the performance of school employees. A county board must make reasonable efforts to conceal the identity of students who appear in a recording but who are not involved in the incident that prompts viewing of the recording.

On complaint or report to the school, county board, or other legal authority from specified interested parties, regarding an incident that occurs in a self-contained special education classroom while the video device was recording, the school administration must review the video recording. After review of the video recording, if the school administration or, if applicable, a representative from child protective services believes that the video recording shows potential criminal conduct, the video must be made available only to law enforcement.

Each county board of education must collect data on the number of requests to view a video recording and the identity of the person who made the request and annually report this information to MSDE. MSDE must adopt regulations to carry out provisions of the bill.

Current Law: The federal Individuals with Disabilities Education Act (IDEA) requires that a child with disabilities be provided a free appropriate public education in the least restrictive environment from birth through the end of the school year in which the student turns 21 years old, in accordance with an individualized family service plan (IFSP) or individualized education program (IEP) specific to the individual needs of the child. An IFSP is for children with disabilities from birth up to age 3, and up to age 5 under Maryland’s Extended IFSP Option if a parent chooses the option. An IEP is for students with disabilities age 3 through 21. Local school systems are required to make a free appropriate public education available to students with disabilities from age 3 through 21. However, the State, under its supervisory authority required by IDEA, has the ultimate responsibility for ensuring that this obligation is met.

Privacy of Student Records and School Safety

The federal Family Educational Rights and Privacy Act (FERPA) generally prohibits the disclosure by schools that receive federal education funding of personally identifiable information from a student's education records, unless the educational institution has obtained written consent from a parent or eligible student or one of FERPA's exceptions applies. As with any other education record, a photo or video of a student is an education record, subject to specific exclusions, when the photo or video is (1) directly related to a student; and (2) maintained by an educational agency or institution or by a party acting for the agency or institution.

While FERPA generally requires schools to ask for written consent before disclosing a student's personally identifiable information to individuals other than his or her parents, it also allows schools to take key steps to maintain school safety, including the disclosure without consent during an emergency to protect the health or safety of students or other individuals. The FERPA statute and regulations exclude from the definition of education records those records created and maintained by a law enforcement unit of an educational agency or institution for a law enforcement purpose.

According to the Code of Maryland Regulations, individual student records maintained by teachers or other school personnel under certain provisions are to be confidential in nature, and access to these records may be granted only for the purpose of serving legitimate and recognized educational ends. Individual student records, with the exception of records that are designated as permanent and with other exceptions provided by law, must be destroyed when they are no longer able to serve legitimate and recognized educational ends.

Local Expenditures: Beginning in fiscal 2022, local school systems will incur substantial additional costs under the bill. Much of the cost to each school system will depend on the number of self-contained special education classrooms and exclusion areas in the school system and the per-classroom cost of (1) the initial purchase and installation of video recording equipment and (2) maintenance and replacement of video recording equipment. Local school systems may also incur costs related to training staff in the use of video recording devices and related to storing and accessing video recordings.

Frederick County Public Schools estimates a total one-time cost in fiscal 2022 of \$270,300 based on an estimated 125 self-contained special education classrooms, including \$50,000 in contractual services and \$220,300 for cameras, cables, monitors and other related equipment (approximately \$1,800 per classroom). Baltimore City Public Schools estimates its initial costs under the bill at \$1.3 million. Prince George's County Public Schools (PGCPS) estimates a total one-time cost of \$5.1 million based on \$6,000 for equipment and installation for each of 848 self-contained special education classrooms, and assuming

the need for two cameras per classroom. PGCPS also anticipates \$42,000 in ongoing costs in every other year following fiscal 2022.

Additional Information

Prior Introductions: HB 1292 of 2020, a similar bill, received a hearing in the House Ways and Means Committee, but no further action was taken. Its cross file, SB 1019, was assigned to the Senate Rules Committee, but no further action was taken.

Designated Cross File: SB 665 (Senator Peters) - Education, Health, and Environmental Affairs.

Information Source(s): Baltimore City Public Schools; Frederick County Public Schools; Prince George's County Public Schools; Maryland State Department of Education; Department of State Police; U.S. Department of Education; Department of Legislative Services

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Analysis by: Scott P. Gates

Direct Inquiries to:
(410) 946-5510
(301) 970-5510