

Department of Legislative Services
 Maryland General Assembly
 2022 Session

FISCAL AND POLICY NOTE
 Third Reader - Revised

House Bill 226

(Delegates Guyton and Luedtke)

Ways and Means

Education, Health, and Environmental Affairs

Public Schools - Self-Contained Special Education Classroom Video Recording Pilot Program

This bill establishes a Self-Contained Special Education Classroom Video Recording Pilot Program within the Maryland State Department of Education (MSDE). The Division of Early Intervention and Special Education Services (the division) within MSDE must select five local school systems in the State with attention to geographic diversity and where, in its judgment, video monitoring of self-contained special education classrooms is most acutely necessary. The local superintendent of each selected local school system must choose one public elementary school and one public high school within the local school system to install a video recording device in one self-contained special education classroom in each school. Beginning with the 2023-2024 school year, the division must install at least one video recording device in each selected self-contained special education classroom. The Governor must include \$100,000 in the annual budget in each of fiscal 2024 and 2025 to MSDE for administration of the program, including reimbursements to participating local boards. **The bill takes effect July 1, 2022, and terminates after June 30, 2026.**

Fiscal Summary

State Effect: General fund expenditures increase by \$100,000 in FY 2024 and by as much as \$100,000 in FY 2025. **This bill establishes a mandated appropriation in FY 2024 and 2025.**

(in dollars)	FY 2023	FY 2024	FY 2025	FY 2026	FY 2027
Revenues	\$0	\$0	\$0	\$0	\$0
GF Expenditure	100,000	100,000	0	0	0
Net Effect	(\$100,000)	(\$100,000)	\$0	\$0	\$0

Note: () = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate increase; (-) = indeterminate decrease

Local Effect: Any costs to local boards of education associated with participation in the pilot program must be reimbursed by the State. To the extent that participation in the program leads to more complaints of neglect and abuse, local expenditures may increase to adjudicate those complaints.

Small Business Effect: Minimal. Small businesses that sell and service video recording equipment and related data storage systems may benefit.

Analysis

Bill Summary: “Self-contained special education classroom” means a public school classroom in which all regularly attending students have a disability and are in that classroom for at least 50% of the instructional day.

The pilot program is administered by the division. The local superintendent must choose self-contained special education classrooms that have among the highest numbers of attendance in any self-contained special education classrooms in the local school system.

Recording devices must record all areas of the classroom 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. Each participating public school must provide specified notice of the use of the recording devices. Video recording devices must comply with federal fire and safety standards. The bill specifies how long recordings must be stored and who may view the recordings and under what 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 (1) to monitor the performance of school employees; (2) as evidence in a complaint against a student or school employee that is not related to a criminal complaint; or (3) in the observation or evaluation of a student for student placement decisions. A local 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.

The principal of a participating school must notify the appropriate law enforcement agency on receipt of a complaint of alleged neglect or abuse of a student occurring in a self-contained special education classroom while a video recording device was recording. Within three days of the complaint, the principal and the local superintendent’s office must review the video recording with law enforcement. Upon conclusion of a law enforcement investigation, a party directly involved in the complaint may inspect and review the recording. 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, the employee must report the action in accordance with any applicable child abuse and neglect reporting guidelines. A principal must, within 24 hours of receiving such a report, notify the parent of the student who is the subject of the report and a school employee who is involved with the allegation.

In the 2023-2024 and 2024-2025 school years, each participating local board must collect specified data on recording devices, complaints resulting in the viewing of a video and requests to view videos, and resolution of complaints, and provide annual reports on this data to MSDE. Upon receiving the final report, MSDE must evaluate the use of video recording devices in self-contained special education classrooms. By January 1, 2026, MSDE must report the results of its evaluation of the use of video recording devices in self-contained special education classrooms to the Governor and the General Assembly.

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.

State Expenditures: General fund expenditures increase by approximately \$100,000 in fiscal 2024 and up to \$100,000 in fiscal 2025. MSDE advises that the \$100,000 mandated appropriation in fiscal 2024 will cover the cost of (1) 20 cameras (2 cameras each for 10 classrooms) at \$3,000 per camera and (2) \$4,000 per each of 10 classrooms for installation and maintenance of up to 20 recording devices and data storage within each school. The Department of Legislative Services assumes that expenditures to maintain video camera and data storage equipment, and for any equipment replacement in fiscal 2025, will not exceed \$20,000, leaving approximately \$80,000 to reimburse local school systems for any additional costs not described above. Fiscal 2025 expenditures may be substantially less than \$100,000.

Although authorization for the program extends through fiscal 2026, the program evaluation must be completed by January 2026. Therefore, this analysis assumes that funding is not maintained beyond the two mandated years; in fiscal 2026, MSDE conducts the evaluation and prepares the report for the Governor and General Assembly.

MSDE can otherwise administer and evaluate the pilot program with existing resources.

Local Expenditures: To the extent that the increased use of cameras results in more complaints of abuse or neglect in self-contained classrooms, local expenditures for legal fees to adjudicate those complaints may increase in the counties selected to participate in the pilot program. As any such increase is contingent on more complaints being received, a reliable estimate is not feasible. Participating school systems can otherwise implement the pilot program and provide the required data to MSDE with existing resources.

Additional Information

Prior Introductions: None.

Designated Cross File: SB 577 (Senator Klausmeier, *et al.*) - Education, Health, and Environmental Affairs.

Information Source(s): Baltimore City Public Schools; Anne Arundel County Public Schools; Frederick County Public Schools; Montgomery County Public Schools; Prince George’s County Public Schools; Maryland State Department of Education; Department of Human Services; Department of State Police; Department of Legislative Services

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