

Department of Legislative Services  
Maryland General Assembly  
2020 Session

FISCAL AND POLICY NOTE  
First Reader

House Bill 1292  
Ways and Means

(Delegate Guyton)

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**Public Schools - Special Education Classrooms - Use of Video Recording Devices**

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This bill requires each county board of education to, beginning with the 2020-2021 school year, install at least one video recording device in each 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. The bill specifies how long recordings may be stored and who may view the recordings and under which circumstances. If a public school employee observes an action that could be considered abuse or neglect of a student in a special education classroom, the employee must report the action to the principal of the school 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, 2020.**

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**Fiscal Summary**

**State Effect:** Maryland State Department of Education (MSDE) finances are not affected.

**Local Effect:** 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.

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## Analysis

**Bill Summary:** “Exclusion area” means a supervised area to which a student who receives special education instruction is taken for a limited time to regain self-control.

Video recordings made pursuant to the bill may be viewed by:

- an employee who has reported an incident that occurred in the special education classroom while the video recording device was recording;
- the parent of a student who reports an incident that is alleged to have been documented by the video recording; and
- a person investigating a request, complaint, or claim from Child Protective Services, law enforcement, a school resource officer, a school, a county board, or MSDE concerning an incident that is alleged to have occurred in the special education classroom while the video recording device was recording.

Otherwise, the recordings are confidential. 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.

Each county board of education must collect data on the number of requests to view a video recording made under this section 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/Background:** 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 signed and dated written consent from a parent or eligible student or one of FERPA's exceptions applies. A 2018 National School Boards Association briefing report indicates that FERPA does not allow or prohibit recording in schools, but districts must protect student privacy. The report suggests that a video recording may in some cases constitute a student record, especially if only one student is the subject of the recording.

Guidance from the U.S. Department of Education indicates that 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. According to this guidance, one factor to consider in determining if a photo or video directly relates to a student is if it "shows a student getting injured, attacked, victimized, ill, or having a health emergency."

The U.S. Department of Education finds that school officials are regularly asked to balance the interests of safety and privacy for individual students and indicates that 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 Fiscal Effect:** 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 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.

Wicomico County Public Schools (WCPS) estimates a cost of \$1,500 per camera and estimates a total one-time cost of \$255,000 based on 170 WCPS special education classrooms. Montgomery County Public Schools (MCPS) indicates that about 7 classrooms in each of 208 public schools (or about 1,460 classrooms) will be required to include video recording equipment, in addition to about 160 classrooms across four special schools in the county. Though MCPS did not provide a per-classroom cost estimate, at the WCPS estimate of \$1,500 per camera, this would amount to approximately \$2.4 million for MCPS for the purchase price of camera alone. Baltimore City Public Schools estimates its initial costs under the bill at \$1.3 million. To the extent that one camera in a classroom is not sufficient to capture all areas of the room, as required by the bill, costs may be greater to install more than one camera in some classrooms.

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### **Additional Information**

**Prior Introductions:** None.

**Designated Cross File:** SB 1019 (Senator Hester) - Rules.

**Information Source(s):** Baltimore City Public Schools; Montgomery County Public Schools; Wicomico County Public Schools; Maryland State Department of Education; Maryland Center for School Safety; National School Boards Association; U.S. Department of Education; Department of Legislative Services

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