



MONTGOMERY COUNTY BOARD OF EDUCATION

Expanding Opportunity and Unleashing Potential

850 Hungerford Drive ♦ Room 123 ♦ Rockville, Maryland 20850

BILL: SB0665 (Cross filed with HB0715)
TITLE: Public Schools - Self-Contained Special Education Classrooms - Use of Video Recording Devices
DATE: 3/9/2021
POSITION: OPPOSE
COMMITTEE: Education, Health, and Environmental Affairs
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The Montgomery County Board of Education (Board) **Opposes** SB0665.

Montgomery County Public Schools (MCPS) does not generally permit student recordings in the classroom to protect student privacy rights, the integrity of the teaching and learning environment, and to comply with state and federal laws. Specifically, MCPS Regulation ABA-RB, School Visitors, section (C)(1)(e) states: To facilitate implementation of federal and state law regarding students with disabilities, parents/guardians who wish to create an audio recording of an Individualized Education Program (IEP) team meeting will be permitted to do so. Video recordings are not permitted unless this prohibition denies the parent's/guardian's access to their rights under state and federal law. (bold added)

MCPS Regulation ABA-RB was revised in response to the October 11, 2016, Maryland State Department of Education, RE: Review and Update Policies Regarding Use of Audio/Video Recording Devices letter. In that letter, each local school system was asked to review their local recording policy, if one exists, and update the policy to address audio and video recording as necessary. Other than audio recordings of IEP team meetings, MCPS does not permit audio recordings at school, including video recordings.

Under the Maryland wiretapping law, recordings of conversations (including video recordings) are only permitted when all of the parties to the communication have given prior consent. See Annotated Code of Maryland, Courts and Judicial Proceedings, Article, Section I 0-402. This proposed bill directly contradicts the requirement of existing Maryland laws.

This proposed bill would usurp the rights of classroom teachers, related services providers, paraeducators, and other school staff members under these existing Maryland wiretapping laws to decline being video recorded. Since classroom instruction is inherently interactive and all students in the classroom may participate in the discussion at any time, student recording of classroom instruction has the potential to impede the privacy of any and all students within a classroom, discourage other students' robust engagement in classroom activities, expose information contained in other students' educational records, and violate state and federal law.

Under the Family Educational Rights and Privacy Act, MCPS would be required to obtain permission from all parents/guardians prior to any video recordings. This process would be burdensome and may result in parents/guardians revoking services if they refuse permission for their child to be video recorded in the special education classroom. The US Department of Education (DOE) has consistently determined that video recordings may constitute educational records. In other words, 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. (20 U.S.C. 1232g(a)(4)(A); 34 CFR § 99.3.

In the classroom setting, the recording would qualify as the educational record of multiple students. US DOE guidance has required redaction/segregation from local educational agencies if doing so can reasonably be accomplished without destroying the meaning of the record. Otherwise, the entirety of the video recording must be disclosed. This proposed bill would incur additional staff hours to complete redactions, and if redactions were not possible, MCPS would be placed in a position of being legally required to show confidential information about other students in the classroom to individual parents.

This proposed bill also creates inequity between special education classrooms and general education classrooms, by affording additional access to educational records, i.e., video recordings, to parents/guardians of students with disabilities.

For these reasons, the Board **Opposes** this legislation and urges an unfavorable report.