

BILL: House Bill 226
TITLE: Public Schools – Self–Contained Special Education Classroom – Use of Video Recording Devices
POSITION: OPPOSE
DATE: February 3, 2022
COMMITTEE: Ways and Means
CONTACT: John R. Woolums, Esq.

The Maryland Association of Boards of Education (MABE) opposes House Bill 226 to mandate the installation of video cameras in all self-contained special education classrooms.

MABE opposes this legislation based on concerns about the universal scope of the mandate to include video cameras in all self-contained special education classrooms, the unfunded costs for installation and monitoring the cameras, the administrative costs of retaining, redacting, and responding to requests to view the video, and the privacy of the students recorded in the continuous classroom surveillance.

Reports of passing and implementing similar legislation in Texas, Georgia and West Virginia raise questions that MABE believes deserve more scrutiny before mandating a statewide mandate on cameras in special education classrooms. A key question is whether to enact a one-size-fits-all mandate for all of these classrooms, or tailor the availability of a camera to a parent or guardian's request regarding an individual student. Not only would the cost of any mandated camera installation program be significantly less if the program was limited to responding to requests, but responses to requests could be discussed in the context of the student's Individualized Education Program (IEP) and thereby ensure the parent's or guardian's engagement in the decision-making process. Similarly, other states have provided the opportunity for a parent to opt out of their student being continuously monitored on camera.

Separately the impact of this legislation on school system responsibility to manage the video itself under the Family Educational Rights and Privacy Act (FERPA) is daunting. Video recordings which become a part of a student's education record must be maintained in accordance with established education record procedures governing access, review and release of education records. However, FERPA does not specifically reference the type of video images of students and staff which are routinely recorded in the school and school bus setting in a manner not intended to enter an individual student's education record.

In this context, video images raise a complex set of questions regarding the school system's recording, maintaining, and disclosing of images which typically depict multiple students. For example, a parent may request a copy of a video containing images of their child and other children, e.g., video of a fight on a school bus. The school system must determine whether the video is an education record, whether it is an education record for each student depicted in the video, or is a student record but only for those students directly involved in the activity under scrutiny.

Lastly, the bill does not appear to encompass Maryland's publicly funded nonpublic special education schools, an omission that would limit the applicability of this bill's provisions to many self-contained special education classrooms.

For these reasons, MABE requests an unfavorable report on House Bill 226.