

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 1655 Exceptional Students and Video Cameras in Public Schools

SPONSOR(S): Choice & Innovation Subcommittee

TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1472

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Choice & Innovation Subcommittee		Wolff	Sleap

SUMMARY ANALYSIS

The bill requires each district school board to include the staffing and scheduling procedures for Exceptional Student Education (ESE) centers, special day schools, or separate classes in the ESE policies and procedures document submitted to the Department of Education. The ESE policies and procedures document must include the following: procedures to notify parents of teacher assignments within the first 10 school days of the school year or upon student’s entry to the school; procedures to notify parents of any changes in teacher assignments prior to the change in teacher assignment if not due to a temporary or incidental teacher absence; and procedures to notify parents of any permanent changes in physical classroom assignment prior to the change in classroom assignment. The State Board of Education (SBE) is required to adopt rules to implement these requirements and the rule must provide, at a minimum, that for students in ESE centers, special day schools, or separate classes, a student’s schedule may only be changed, and a student class may only be dissolved or combined with other such classes, in accordance with the conditions set forth in the rule.

The bill removes the pilot program designation from the Video Cameras in Public School Classrooms Pilot Program and expands its requirements to all school districts in the state. The bill requires the SBE to adopt rules to implement the program to provide for consistent implementation on a statewide basis.

The bill has an indeterminate, but significant, fiscal impact to school districts. See Fiscal Comments, *infra*.

The bill has an effective date of July 1, 2024.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Exceptional Student Education Instruction

Present Situation

Background

Exceptional Student Education (ESE) is specially designed instruction and related services that are provided to students with disabilities and students who are identified as gifted.¹ Student enrollment in ESE programs is one factor considered in determining the funding a school district receives.²

The federal Individuals with Disabilities Education Act (IDEA) requires school districts to make a free appropriate public education (FAPE) available to students with disabilities ages three through 21.³ A school district, at its discretion, may provide services to eligible infants and toddlers with disabilities below three years of age.⁴ A FAPE must include special education and related services⁵ that are provided by the public school system at no cost to the parent, which meet the standards of the state and which are in conformity with the student's individual educational plan (IEP).⁶

The IDEA does not address gifted students; however, state law and State Board of Education (SBE) rule require school districts to provide a FAPE to gifted students as well.⁷ State law specifies that districts must provide special instruction and services to gifted students, but does not mandate or describe the specific types of instruction and services required.⁸

Instructional Services

Special programs for exceptional students include instruction and related services to adapt curriculum, methodology, materials, equipment, or environment to meet individual learning needs.⁹ Exceptional students must receive instruction in one or more of the following settings:¹⁰

- Regular class.
- Special class.
- Special day school.
- Residential school.
- Special class in a hospital or facility operated by a noneducational agency.
- Individual instruction in a hospital or home.

Additionally, districts may provide supplementary instructional personnel to public or nonpublic preschool or day care programs for the instruction of pre-kindergarten exceptional students.¹¹

¹ Section 1003.57(1)(b), F.S.; r. 6A-6.03411(1)(m) and (n), F.A.C.

² See s. 1011.62(1)(c), F.S.

³ 20 U.S.C. s. 1400(d)(1)(A); 34 C.F.R. s. 300.101; r. 6A-6.03028(1) and 6A-6.03411(1)(p), F.A.C.

⁴ Rules 6A-6.0331 and 6A-6.03026, F.A.C.

⁵ "Related services" means "transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech-language pathology and audiology services, interpreting services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, early identification and assessment of disabilities in children, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services for diagnostic or evaluation purposes." Related services" also include school health services and school nurse services, social work services in schools, and parent counseling and training. 34 C.F.R. s. 300.34 (a).

⁶ 34 C.F.R. s. 300.17; r. 6A-6.03411(1)(p), F.A.C.

⁷ See ss. 1003.01(3)(a) and 1011.62(1)(e)c.2., F.S.; r. 6A-6.0331(1) and 6A-6.03411(1)(m), F.A.C.

⁸ See s. 1003.57(1), F.S.

⁹ Rule 6A-6.0311, F.A.C.

¹⁰ Rule 6A06.0311, F.A.C.

¹¹ 34 C.F.R. s. 300.115; r. 6A-6.0311(h), F.A.C.

Public and private instructional personnel¹² must collaborate to promote educational progress and assist exceptional students in acquiring essential skills, including, but not limited to, readiness for pursuit of higher education goals or employment. Where applicable, public and private instructional personnel must use collaborative programming and the coordination of services and plans between the two is encouraged to avoid duplication or conflicting services or plans.¹³ Private instructional personnel hired by parents to collaborate with public instructional personnel must be permitted to observe the student in the educational setting, collaborate with instructional personnel in the educational setting, and provide services in the educational setting according to the following requirements:

- The student's public instructional personnel and principal consent to the time and place.
- The private instructional personnel satisfy specific background screening requirements.¹⁴

States are required to monitor school districts in order to measure their performance in providing a FAPE in the least restrictive environment (LRE).¹⁵ To follow the LRE requirement, states must educate students with disabilities with their nondisabled peers to the maximum extent appropriate. Special classes, special schooling, or other removal of the student from the regular education environment should only occur if the nature and severity of his or her disability is such that an appropriate education in regular classes cannot be achieved satisfactorily.¹⁶ The LRE must be considered during the development of the student's IEP.¹⁷

Each district school board is required to provide an appropriate program of special instruction, facilities, and services for ESE students as prescribed as acceptable under SBE rule. Each district must provide the necessary professional services for diagnosis and evaluation of ESE students. Additionally, at least once every three years, the district school board must submit to the Department of Education (DOE), its proposed procedures for the provision of special instruction and services for ESE students.¹⁸

Special education services for students with disabilities in grades K-12 include specially designed instruction and related services that are necessary to enable the student to benefit from education. Such services may include: transportation; diagnostic and evaluation services; social services; physical and occupational therapy; speech and language pathology; job placement; orientation and mobility training; brailists; typists; readers for the blind; interpreters and auditory amplification; rehabilitation counseling; transition services; mental health services; guidance and career counseling; specified materials; assistive technology devices; and other specialized equipment.¹⁹

Effect of Proposed Changes

The bill requires each district school board to include the staffing and scheduling procedures for ESE centers, special day schools, or separate classes in the ESE policies and procedures document submitted to the DOE. The ESE policies and procedures document must include the following:

- Procedures to notify parents of teacher assignments within the first 10 school days of the school year or upon student's entry to the school.
- Procedures to notify parents of any changes in teacher assignments prior to the change in teacher assignment if not due to a temporary or incidental teacher absence.
- Procedures to notify parents of any permanent changes in physical classroom assignment prior to the change in classroom assignment.
- Procedures to maintain records of the student to staff ratio data quarterly for ESE centers, special day schools, or separate classes including the funding levels generated for each

¹² Private instructional personnel are defined as: individuals certified as behavior analysts; licensed applied behavior analysts; registered behavior technicians; speech-language pathologists; occupational therapists; physical therapists; psychologists; or clinical social workers. See Section 1003.572(1), F.S.

¹³ Section 1003.572(2), F.S.

¹⁴ Section 1003.572(3), F.S.

¹⁵ 34 C.F.R. s. 300.600 (e)(1).

¹⁶ 34 C.F.R. s. 300.114(a)(2)(i)-(ii); s. 1003.57(1)(e); r. 6A-6.03028(3)(i), F.A.C.

¹⁷ *L.G. et.al. v. School Bd. Of Palm Beach County, Fla.*, 512 F. Supp.2d 1240, 1247-1249 (S.D. Fla. 2007).

¹⁸ Section 1003.57(1)(b)1., F.S.

¹⁹ Section 1003.01(9)(b), F.S.; r. 6A-6.03411(1)(dd), F.A.C.

student's services in these settings. The records must be available to the DOE upon request or as part of monitoring processes.

The bill requires the SBE to adopt rules to implement these requirements. The rule must provide, at a minimum, that for students in ESE centers, special day schools, or separate classes, a student's schedule may only be changed, and a student class may only be dissolved or combined with other such classes, in accordance with the conditions set forth in the rule.

Video Cameras in Public Schools

Present Situation

Schools are increasingly using security cameras as a tool to monitor and improve student safety.²⁰ The DOE's *Florida Safe School Design Guidelines* recommends the use of video camera surveillance systems to monitor areas including entry points and the building's perimeter.²¹ Florida school districts also use video camera monitoring systems in school buses.²²

Texas was the first of three states to enact legislation allowing video camera recordings in special education classrooms.²³ Laws in Texas, Louisiana, and West Virginia mandate video cameras while Georgia's law is permissive.²⁴ In Texas, advocates and parents of students with disabilities are generally supportive of the law,²⁵ but school districts are challenged by the cost of cameras and how best to communicate with parents about the availability of video monitoring.²⁶ As of March 2020, Dallas Independent School District had equipped 56 of its 479 special education classrooms with video cameras and received 11 requests to review recordings.²⁷

There does not appear to be a consensus on the use of video cameras in special education classrooms. Advocates of requiring video cameras in special education classrooms suggest this will protect students who cannot speak out about their experiences in the classroom, decreasing student abuse by teachers.²⁸ However, others raise concerns that installing video cameras in special education classrooms may drive the student abuse "underground."²⁹ Another analysis of the issue noted that while cameras may influence teacher and staff behavior they may also interfere with the schools duty to provide the least restrictive environment to students with disabilities as they undermine the principal that special education is a service, not a place.³⁰

²⁰ U.S. Department of Education, *Balancing Student Privacy and School Safety, A Guide to the Family Educational Rights Privacy Act for Elementary and Secondary Schools* (October 2007), available at <https://www.srk12.org/wp-content/uploads/2018/08/ferpa-for-school-officials.pdf>.

²¹ See Florida Department of Education, *Florida Safe School Design Guidelines: Strategies to Enhance Security and Reduce Vandalism* (2003), at 30, available at <http://www.fldoe.org/core/fileparse.php/7738/urlt/2003SafeSchoolDesign.pdf>.

²² Florida Department of Education, *Florida School Bus Specifications* (2020), at III-10, available at <http://www.fldoe.org/core/fileparse.php/7585/urlt/2020FLSchoolBusSpec.pdf>.

²³ National Conference of State Legislatures, Education Legislation Bill Tracking Database, <https://www.ncsl.org/research/education/education-bill-tracking-database.aspx> (follow "NCSL Education Legislation" hyperlink, then search topic "All Topics," search states "All States," search keyword "camera," search status "Enacted," and search year "All").

²⁴ *Id.*

²⁵ Steffi Lee, *Parents want clarity on law requiring cameras in special ed classrooms*, KXAN, Sept. 24, 2018, <https://www.kxan.com/news/parents-want-clarity-on-law-requiring-cameras-in-special-ed-classrooms/> (last visited Jan. 27, 2024).

²⁶ Eva-Marie Ayala, *Should every special-education classroom be recorded? Dallas ISD trustees are debating cameras*, The Dallas Morning News, Nov. 11, 2019, <https://www.dallasnews.com/news/education/2019/11/11/should-every-special-education-classroom-be-recorded-dallas-schools-trustees-are-debating-cameras/> (last visited Jan. 27, 2024).

²⁷ Eva-Marie Ayala, *Will Dallas be the first big-city district to require video cameras in all special education classrooms?*, The Dallas Morning News, March 4, 2020, <https://www.dallasnews.com/news/education/2020/03/04/dallas-will-put-cameras-in-all-special-education-classrooms-but-some-worry-about-privacy/> (last visited Jan. 27, 2024).

²⁸ Sara C. Heintzelman and Justin M. Bathon, *Caught on Camera: Special Education Classrooms and Video Surveillance*, 12 INT'L J. OF EDUC. POLICY AND LEADERSHIP (2017), available at <https://files.eric.ed.gov/fulltext/EJ1166871.pdf>.

²⁹ TASH, *Will Cameras in Classrooms Make Schools Safer?* (Jan. 2015), available at <https://tash.org/wp-content/uploads/2015/01/Cameras-in-School-Final.pdf>.

³⁰ Maureen Van Stone, et al., *Bringing Legislation on Cameras in Classrooms into Focus*, available at https://cdn.vmax.com/www.copaa.org/resource/dynamic/blogs/20210809_125939_11544.pdf.

Education Records

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official government business.³¹ This right applies to the official business of any public body, officer, or employee of the state, including public school records.³² However, Florida law incorporates the Family Educational Rights and Privacy Act³³ (FERPA) and expressly exempts education records of individual students from public records requirements.³⁴ Thus, education records may not be released without written parental consent.³⁵ In *WFTV, Inc. v. School Board of Seminole County*, the 5th District Court of Appeal applied this exemption to a school bus surveillance videotape, determining that the record was confidential and exempt from a public records request, even with personally identifying information redacted.³⁶

Video Cameras in Public School Classrooms Pilot Program

In 2021, the Legislature created the 3-year Video Cameras in Public School Classrooms Pilot Program in Broward County public schools beginning with the 2021-2022 school year.³⁷ The pilot program required the Broward County School District to provide a video camera to any public school with a self-contained classroom for the remainder of the school year upon the written request of a parent of a student in the classroom.³⁸

Before the video camera is placed in the classroom, the school must provide written notification to:

- the parent of each student assigned to the self-contained classroom,
- each student who is assigned to the self-contained classroom,
- the school district, and
- each employee assigned to work with any of the students in the self-contained classroom.³⁹

The video camera must be operational within 30 days of receipt of the parent's request and must be capable of recording, through both video and audio, all areas of the self-contained classroom and any room attached to that classroom.⁴⁰ The video camera may not record a restroom or an area where a student may change his or her clothes; however, entrances, exits, and hallways to those areas must be recorded.⁴¹ The video camera may be shut off when students are not present in the classroom.⁴²

The law limits the use of video recordings to ensuring the health, safety, and well-being of students receiving special education services.⁴³ A school may not allow regular, continuous, or continual monitoring of the video recording.⁴⁴ The school must retain the video footage for at least 3 months after the date the video was recorded or until the conclusion of any investigation or any legal proceedings that result from the recording, including exhaustion of all appeals.⁴⁵

³¹ Fla. Const. art. I, s. 24(a).

³² *Id.*

³³ 20 U.S.C. s. 1232g(a)(4). Education records means those records, files, documents, and other materials which contain information directly related to a student and are maintained by an educational agency or institution or by a person acting for such agency or institution.

³⁴ See Section 1002.221(1), F.S.

³⁵ Section 1002.221(2)(a), F.S.

³⁶ *WFTV, Inc. v. Sch. Bd. of Seminole*, 874 So. 2d 48, 58 (Fla. 5th DCA 2004).

³⁷ Section 2, ch. 2021-140, L.O.F. codified at s. 1003.574, F.S.

³⁸ Section 1003.574(2)(a), F.S. The law defines "self-contained classroom" as a classroom at a public school in which a majority of the students in regular attendance are provided special education services and are assigned to one or more such classrooms for at least 50 percent of the instructional day. Section 1003.574(1)(c), F.S. The pilot program does not include self-contained classrooms in which the only students receiving special education services are those who have been deemed gifted. Section 1003.574(12)(d), F.S.

³⁹ Section 1003.574(5), F.S.

⁴⁰ Section 1003.574(2)(b) and (4)(a), F.S.

⁴¹ Section 1003.574(4)(b), F.S.

⁴² Section 1003.574(4)(c), F.S.

⁴³ Section 1003.574(7)(b), F.S.

⁴⁴ Section 1003.574(7)(a), F.S.

⁴⁵ Section 1003.574(6), F.S.

The school must conceal the identities of all students who are not involved with an incident that gives rise to a request for viewing.⁴⁶ The school must protect the confidentiality of all student records contained within the footage.⁴⁷ As an education record, the recording would not be subject to public records laws.⁴⁸

Only the following individuals are authorized to view a video recording from a self-contained classroom to:

- a school or school district employee who is involved in the alleged incident;
- a parent of a student who is involved in an alleged incident;
- a school or school district employee as part of an investigation into an alleged incident;
- a law enforcement officer as part of an investigation into an alleged incident that has been reported to the law enforcement agency; and
- the Department of Children and Families (DCF) as part of a child abuse or neglect investigation.⁴⁹

The school must make the recording available for viewing within 7 days after receiving a request and a person who requests to view a recording must do so within 30 days of receiving notice that his or her request for viewing has been granted.⁵⁰ Incidental viewing by a school employee or contractor does not constitute a violation the confidentiality requirements so long as such viewing occurred during:

- the installation, operation, or maintenance of video equipment; or
- the retention of video recordings.⁵¹

If any person viewing the recording suspects that child abuse has occurred, the bill requires any viewer to report the suspected child abuse to the DCF.⁵²

Any individual may appeal to the SBE an action by a school or school district which the individual alleges violates this section, and the state board must grant a hearing within 45 days of receiving an appeal.⁵³ The video cameras in a self-contained classroom and recordings associated with them may not:

- limit the access of the parent of a student, under the FERPA⁵⁴ or any other law, to a video recording regarding his or her student;
- waive any immunity from liability of a school district or an employee of a school district; or
- create any liability for a cause of action against a school or school district or an employee of a school or school district carrying out the duties and responsibilities under the pilot program.⁵⁵

Unless a parent withdraws his or request in writing, the video camera must be operational for the remainder of the current school year. If the student whose parent made the request is no longer in attendance at the school, the school may discontinue video camera monitoring but must notify parents of the other students in the classroom at least five days prior to discontinuing monitoring. At the end of the school year, the school must notify parents of students in the classroom that video camera monitoring will not continue during the next school year unless a parent requests monitoring in writing.⁵⁶

⁴⁶ Section 1003.574(8)(b)1., F.S. The law defines “incident” to mean an event, circumstance, act, or omission that results in the abuse or neglect of a student by an employee of a public school, school district, or another student. Section 1003.574(1)(a), F.S.

⁴⁷ Section 1003.574(8)(b)2., F.S.

⁴⁸ Sections 1002.22 and 1002.221, F.S.

⁴⁹ Section 1003.574(9)(a), F.S.

⁵⁰ Section 1003.574(9)(a)-(b), F.S.

⁵¹ Section 1003.574(11), F.S.

⁵² Section 1003.574(9)(c), F.S.

⁵³ Section 1003.574(10), F.S.

⁵⁴ 20 U.S.C. s. 1232g.; *see also* ss. 1002.22 and 1002.221, F.S.

⁵⁵ Section 1003.574(12), F.S.

⁵⁶ Section 1003.574(3), F.S.

As of July 2023, Broward County Public Schools reported having installed 203 video cameras at a cost of \$666,208.⁵⁷ From November 2022 through April 2023 there were 11 requests to view footage which were in various stages of completion at the time of the report.⁵⁸ The Education Practices Commission used video footage from the pilot program in one investigation in 2022.⁵⁹ Broward County Public Schools noted concerns with unfunded workload on staff to view and redact footage, logistical barriers to access cameras, and privacy concerns of staff.⁶⁰

Effect of Proposed Changes

The bill removes the pilot program designation from the Video Cameras in Public School Classrooms Pilot Program and expands its requirements to all school districts in the state. The bill requires the SBE to adopt rules to implement the program to provide for consistent implementation on a statewide basis.

B. SECTION DIRECTORY:

Section 1: Amends s. 1003.57, F.S.; requiring district school boards to include specified procedures in the exceptional student education policies and procedures; providing that changes to the schedules and assigned classrooms of specified exceptional students may only be made in accordance with specified State Board of Education rules; requiring the state board to adopt rules to administer specified provisions.

Section 2: Amends s. 1003.574, F.S.; deleting references to the Video Cameras in Public School Classrooms Pilot Program; deleting an obsolete definition of the term "school district"; requiring, rather than authorizing, the state board to adopt rules for specified provisions.

Section 3: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See Fiscal Comments.

⁵⁷ Email, Florida Department of Education, (Jan. 26, 2024), with attachment, on file with the Choice & Innovation Subcommittee. The school district estimates that by the end of the pilot program it will have installed 300 cameras at a cost of \$723,700. *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

D. FISCAL COMMENTS:

The bill has an indeterminate but significant fiscal impact to school districts. The requirements for a school district to install and maintain video cameras upon parental request, maintain recordings for specified periods, and review and redact video in response to requests to view footage represent a significant, but indeterminate, cost to districts based on the number of requests for video cameras a given school district receives.

The bill would have an indeterminate positive fiscal impact on the private sector as school districts purchase the required video equipment.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires the SBE to adopt rules to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.