

HOUSE No. 3758

The Commonwealth of Massachusetts

PRESENTED BY:

Natalie M. Higgins, (BY REQUEST)

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act requiring the monitoring and documentation of school discipline.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Emily LaMarca</i>		<i>1/18/2019</i>

HOUSE No. 3758

By Ms. Higgins of Leominster (by request), a petition (accompanied by bill, House, No. 3758) of Emily LaMarca relative to monitoring and documentation of school discipline. Education.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act requiring the monitoring and documentation of school discipline.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 71B of the General Laws is hereby amended by adding the
2 following section:-

3 Section 17. (a) For purposes of this section, the following terms shall have the following
4 meanings, unless the context clearly requires otherwise:

5 "Charter School", commonwealth charter schools and Horace Mann charter schools
6 unless specifically stated otherwise.

7 "School business day" means a day that campus or school district administrative offices
8 are open.

9 "Staff member" means a teacher, related service provider, paraprofessional, counselor, or
10 educational aide assigned to work in a self-contained classroom or other special education
11 setting.

12 "Time-out" means a behavior management technique in which the student is separated
13 from other students for a limited period in a setting: (i) that is not locked; and (ii) from which the
14 exit is not physically blocked by furniture, a closed door held shut from the outside, or another
15 inanimate object.

16 (b) (1) Any school district or charter school in which a student who receives special
17 education services in a self-contained classroom or other special education setting is enrolled,
18 shall, upon a written request pursuant to paragraph (2), place, operate and maintain 1 or more
19 video cameras in each self-contained classroom or other special education setting in which a
20 majority of the students in regular attendance are: (A) provided special education and related
21 services; or (B) assigned to a self-contained classroom or other special education setting for at
22 least 50 per cent of the instructional day.

23 (2) For purposes of this subsection:

24 (A) a parent of a child who receives special education services in 1 or more self-
25 contained classrooms or other special education settings may request in writing that video
26 monitoring be provided to the school or campus at which the child receives those services;

27 (B) a board of trustees or school committee may request in writing that equipment be
28 provided to 1 or more specified schools at which 1 or more children receive special education
29 services in self-contained classrooms or other special education settings;

30 (C) the principal or assistant principal of a school at which 1 or more children receive
31 special education services in self-contained classrooms or other special education settings may
32 request in writing that equipment be provided to the principal's or assistant principal's school;
33 and

34 (D) a staff member assigned to work with 1 or more children receiving special education
35 services in self-contained classrooms or other special education settings may request in writing
36 that equipment be provided to the school at which the staff member works.

37 (c) Each school district or charter school shall designate an administrator at the primary
38 administrative office of the district or school with responsibility for coordinating the provision of
39 equipment to schools in compliance with this section.

40 (d) A written request pursuant to paragraph (2) of subsection (b) shall be submitted and
41 acted on as follows:

42 (1) a parent, staff member, or assistant principal shall submit a request to the principal or
43 the principal's designee of the school addressed in the request, and the principal or designee shall
44 provide a copy of the request to the administrator designated under subsection (c);

45 (2) a principal shall submit a request by the principal to the administrator designated
46 under subsection (c); and

47 (3) a board of trustees or school committee shall submit a request to the administrator
48 designated under subsection (c) and the administrator shall provide a copy of the request to the
49 principal or the principal's designee of the school addressed in the request.

50 The district or school shall provide a response to a request made pursuant to paragraph
51 (2) of subsection (b) that authorizes the request or states the reason for denying the request not
52 later than the seventh school business day after receipt of the request by the person to whom it
53 shall be submitted under this subsection.

54 (c) A school that places a video camera in a classroom or other special education setting
55 in accordance with subsection (b) shall operate and maintain the video camera in the classroom
56 or setting, as long as the classroom or setting continues to satisfy the requirements under
57 subsection (b), for the remainder of the school year in which the school received the written
58 request, unless the requestor withdraws the request in writing. If for any reason a school
59 discontinues operation of a video camera during a school year, not later than the fifth school day
60 before the date the operation of the video camera will be discontinued, the school shall notify the
61 parents of each student in regular attendance in the classroom or setting that operation of the
62 video camera will not continue unless requested by a person eligible to make a request under
63 subsection (b). Not later than the tenth school day before the end of each school year, the school
64 shall notify the parents of each student in regular attendance in the classroom or setting that
65 operation of the video camera will not continue during the following school year unless a person
66 eligible to make a request for the next school year under subsection (b) submits a new request.

67 (d) Video cameras operated pursuant to this section shall be capable of: (1) covering all
68 areas of the classroom or other special education setting, including a room attached to the
69 classroom or setting used for time-out, except that the inside of a bathroom or any area in the
70 classroom or setting in which a student's clothes are changed shall not be visually monitored;
71 and (2) recording audio from all areas of the classroom or setting, including a room attached to
72 the classroom or setting used for time-out.

73 (e) Before a school activates a video camera in a classroom or other special education
74 setting pursuant to this section, the school shall provide written notice of the placement and use
75 of such video monitoring to all school staff and to the parents of each student attending class or
76 engaging in school activities in the classroom or setting to be monitored.

77 (f) A district or charter school shall retain video recorded from a camera operated
78 pursuant to this section for at least 6 months from the date the video was recorded. If a person
79 pursuant to subsection (j) requests to view a video recording from a video camera placed
80 pursuant to this section, a school district or charter school shall retain the recording from the date
81 of receipt of the request until the person has viewed the recording and a determination has been
82 made as to whether the recording documents an alleged incident. If the recording documents an
83 alleged incident, the district or school shall retain the recording until the alleged incident has
84 been resolved, including the exhaustion of all appeals.

85 (g) A school district or charter school may solicit or accept gifts, grants and donations
86 from any person for use in placing video cameras in classrooms or other special education
87 settings under this section.

88 (h) This section shall not:

89 (1) waive any immunity from liability of a school district or charter school, or of district
90 or school officers or employees; or

91 (2) create any liability for a cause of action against a school district or charter school or
92 against district or school officers or employees.

93 (i) A school district or charter school shall not:

94 (1) permit regular or continual monitoring of video recorded under this section; or

95 (2) use video recorded under this section for teacher evaluation or for any other purpose
96 other than the promotion of safety of students receiving special education services in a self-
97 contained classroom or other special education setting.

98 (j) A video recording of a student made pursuant to this section is confidential and may
99 not be released or viewed except as provided in this section. A school district or charter school
100 shall release a recording for viewing by:

101 (1) an employee who is involved in an alleged incident that is documented by the
102 recording and has been reported to the district or school, on request of the employee;

103 (2) a parent or guardian of a student who is involved in an alleged incident that is
104 documented by the recording and has been reported to the district or school, on request of the
105 parent;

106 (3) appropriate personnel from the department of children and families or the department
107 of elementary and secondary education as part of an investigation;

108 (4) a peace officer, school nurse, district administrator trained in de-escalation and
109 restraint techniques as provided by commissioner rule, or a human resources staff member
110 designated by the board of trustees, school committee or governing body of the school district or
111 the charter school in response to a complaint or an investigation of district or school personnel
112 or a complaint of abuse committed by a student; or

113 (5) appropriate department or office of educator licensure personnel or agents as part of
114 an investigation.

115 A contractor or employee performing job duties relating to the installation, operation, or
116 maintenance of video equipment or the retention of video recordings who incidentally views a
117 video recording shall not be considered in violation of this subsection.

118 (k) If a person under clauses (4) or (5) of subsection (j) who views the video recording
119 believes that the recording documents a possible violation of section 37G of chapter 71 or the
120 regulations promulgated thereunder, the person shall notify the department of elementary and
121 secondary education. If any person under clauses (3), (4) or (5) of subsection (j) who views the
122 recording believes that the recording documents a possible violation of district or school policy,
123 the person may allow access to the recording to appropriate legal and human resources
124 personnel. A recording believed to document a possible violation of district or school policy
125 relating to the neglect or abuse of a student may be used as part of a disciplinary action against
126 district or school personnel and shall be released at the request of the student's parent or guardian
127 in a legal proceeding. This subsection does not limit the access of a student's parent or guardian
128 to a record regarding the student under the Family Educational Rights and Privacy Act of 1974,
129 20 U.S.C. section 1232g, or any other law.

130 (l) The commissioner of elementary and secondary education shall adopt rules to
131 implement and administer this section, including rules regarding the special education settings to
132 which this section applies.

133 (m) A school district or charter school policy relating to the placement, operation, or
134 maintenance of video cameras pursuant to this section shall:

135 (1) include information on how a person may appeal an action by the district or school
136 that the person believes to be in violation of this section or a policy adopted in accordance with
137 this section;

138 (2) except as provided by clause (4), require that a school begin operation of a video
139 camera in compliance with this section not later than the 45th school business day, or the first

140 school day after the 45th school business day if that day is not a school day, after the request is
141 authorized unless the department grants an extension of time;

142 (3) permit the parent of a student whose placement for the following school year will be
143 in a classroom or other special education setting in which a video camera may be placed under
144 this section to make a request for the video camera by the later of:

145 (A) the date on which the current school year ends; or

146 (B) the 10th school business day after the date the parent is notified of the placement;

147 and

148 (5) if a request is made by a parent in compliance with clause (4), unless the department
149 grants an extension of time, require that a school begin operation of a video camera in
150 compliance with this section not later than the later of:

151 (A) the 10th school day of the fall semester; or

152 (B) the 45th school business day, or the first school day after the 45th school business
153 day if that day is not a school day, after the date the request is made.

154 (n) A school district, charter school, parent, staff member, or administrator may request
155 an expedited review by the department of the district or charter school's:

156 (1) denial of a request made under this section;

157 (2) request for an extension of time to begin operation of a video camera pursuant to
158 subsection (m); or

159 (3) determination to not release a video recording to a person described by subsection (j).

160 (o) If a school district, charter school, parent, staff member, or administrator requests an
161 expedited review under subsection (n), the department shall notify all other interested parties of
162 the request.

163 If an expedited review has been requested under subsection (n), the department shall
164 issue a preliminary judgment as to whether the district or charter school is likely to prevail on the
165 issue under a full review by the department. If the department determines that the district or
166 charter school is not likely to prevail, the district or charter school shall fully comply with this
167 section notwithstanding an appeal of the department's decision. The department shall notify the
168 requestor and the district or charter school, if the district or charter school is not the requestor, of
169 the department's determination.

170 (p) The commissioner:

171 (1) shall adopt rules and regulations relating to the expedited review process under
172 subsections (n) and (o), including standards for making a determination under subsection (o); and

173 (2) may adopt rules and regulations relating to an expedited review process under
174 subsections (n) and (o) for an open-enrollment charter school.

175 (q) The department shall collect data relating to requests made under this section and
176 actions taken by a school district or charter school in response to a request, including the number
177 of requests made, authorized, and denied.

178 (r) A video recording under this section shall be considered a record under section 13E
179 of chapter 268.

180 (s) This section applies to the placement, operation, and maintenance of a video camera
181 in a self-contained classroom or other special education setting during the regular school year
182 and extended school year services.

183 (t) A video camera placed pursuant to this section is not required to be in operation for
184 the time during which students are not present in the classroom or other special education setting.

185 SECTION 2. Chapter 71 of the General Laws is hereby amended by inserting after
186 section 37G the following section:-

187 Section 37G ½. For purposes of this section, "Time-out" shall mean a behavior
188 management technique in which the student is separated from other students for a limited period
189 in a setting: (i) that is not locked; and (ii) from which the exit is not physically blocked by
190 furniture, a closed door held shut from the outside, or another inanimate object.

191 Each school district and charter school shall require appropriate school staff persons to
192 keep a daily tracking log for each student that is placed in a time-out space. The log shall include
193 the student's name, the reason for separating the student from the classroom, the time spent in
194 each individual time-out, and the staff that was present. Said logs shall be made available to
195 students, parents or guardians and special education directors upon written request. The school
196 district or charter school shall notify a parent or guardian any time a student receives a time-out.

197 SECTION 3. There shall hereby be established a task force on safety in schools,
198 hereinafter referred to as the task force. The task force shall consist of 7 members, who shall be
199 appointed by the governor, as follows: 1 of whom shall be a representative from the
200 Massachusetts Teachers Association; 1 of whom shall be a medical professional who specializes
201 in trauma in children; 1 of whom shall be a board certified behavior analyst; 1 of whom shall be

202 an attorney with experience in special education law; 1 of whom shall be a representative from a
203 disability advocacy group in the commonwealth; 1 of whom shall have personal experience with
204 restraint and seclusion in school, including but not limited to a parent or teacher; and 1 of whom
205 shall be a representative of Massachusetts Association of 766 Approved Private Schools. The
206 task force shall study the use and effect of restraint and seclusion in schools. The task force shall
207 submit a report, along with any recommendations for legislation to address the issues identified
208 in the study, to the clerks of the house of representatives and the senate, and the house and senate
209 chairs of the joint committee on children, families and persons with disabilities and the joint
210 committee on education not later than 1 year after the effective date of this act.