

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Committee Substitute

for

Senate Bill 632

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[Originating in the Committee on Education; Reported
on February 22, 2019]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §18-5-48; to amend said code by adding thereto a new section, designated
3 §18-20-11; to amend and reenact §18A-2-8 of said code; and to amend and reenact §18A-
4 3-6 of said code, all relating to improving student safety; requiring safety and security
5 measures of each school facility be upgraded when necessary to ensure, to the best of
6 the county board's ability, the safety of students; creating a Safe Schools Fund; requiring
7 video cameras in certain public special education classrooms; setting forth time
8 requirements for retaining the video; setting forth requirements for video access; adding
9 to justifications for which a school employee can be suspended or dismissed; requiring
10 the State Superintendent to maintain a database of all individuals suspended or dismissed
11 for certain reasons; and adding to justifications for which a teacher's certificate can be
12 revoked and for which a certificate can be automatically revoked.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-48. Safety and security measures for school facilities.

1 (a) Each county board of education and multi-county vocational center shall annually
2 assess the safety and security of each of the school facilities within its boundaries. Safety and
3 security measures of each facility shall be upgraded when necessary to ensure, to the best of the
4 county board's ability, the safety of the students within each facility. Each county board of
5 education shall report annually the safety and security measures it has put in place, including
6 upgrades thereto, to the state department of education. Annually, the state department of
7 education shall compile the information from the county boards of education, and report the
8 information to the legislative oversight commission on education accountability.

9 (b) As used in this section, "safety and security measures" means action taken by a county

10 board of education or multi-county vocational center that improves the security of a school facility
11 and the safety of the students within such facility, including but not limited to, hiring a school
12 resource officer, installing weapon detection systems, upgrading facility doors or windows, etc.

13 (c) There is hereby created in the State Treasury a special revenue fund to be known as
14 the "Safe Schools Fund." The fund shall consist of all moneys received from legislative
15 appropriations and other sources to further the purpose of this section: *Provided*, That annually,
16 the West Virginia Department of Education shall request an appropriation based on the requests
17 of the county boards of education. Subject to legislative appropriation, the funds appropriated
18 annually to the School Safety Fund shall be distributed to the county boards of education and
19 multi-county vocational centers, with the funding amount per school determined by dividing the
20 total annual appropriation by the total number of public schools throughout the state. All monies
21 distributed from this fund shall be used to support the purpose and intent of this section and all
22 moneys must be spent to support the school for which the funding was derived: *Provided*, That
23 moneys distributed from this fund also may be used for the purposes of §18-20-11 of this code,
24 relating to video cameras in certain special education classrooms. Any moneys remaining in the
25 fund at the close of the fiscal year shall be carried forward for use in the next fiscal year. Fund
26 balances shall be invested with the state's consolidated investment fund and any and all interest
27 shall be used solely for the purposes that moneys deposited in the fund may be used pursuant to
28 this article.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

1 **§18-20-11. Video cameras only required in certain special education classrooms upon**
2 **request.**

3 (a) A county board of education shall ensure placement of video cameras in self-contained
4 classrooms as defined in state board policy.

5 (b) As used in this section:

6 (1) "Incident" means an event, circumstance, act or omission that creates an abused or
7 neglected child as these terms as defined in §49-1-201 of this code by:

8 (A) An employee of a public school or school district; or

9 (B) Another student;

10 (2) "Self-contained classroom" means a classroom at a public school in which a majority
11 of the students in regular attendance are provided special education instruction and as further
12 defined in state board policy; and

13 (3) "Special education" means the same as defined in §18-20-1 et seq. of this code.

14 (c) A county board of education shall provide a video camera to a public school for each
15 self-contained classroom that is a part of that school which shall be used in every self-contained
16 classroom. The principal of the school shall be the custodian of the video camera, all recordings
17 generated by the video camera, and access to those recordings pursuant to this section.

18 (d)(1) Every public school that receives a video camera under this section shall operate
19 and maintain the video camera in every self-contained classroom that is part of that school.

20 (2) If there is an interruption in the operation of the video camera for any reason, a written
21 explanation should be submitted to the school principal and the county board explaining the
22 reason and length for which there was no recording. The explanation shall be maintained at the
23 county board office for at least one year.

24 (e)(1) A video camera placed in a self-contained classroom shall be capable of:

25 (A) Monitoring all areas of the self-contained classroom, including, without limitation, a
26 room attached to the self-contained classroom and used for other purposes; and

27 (B) Recording audio from all areas of the self-contained classroom, including, without
28 limitation, a room attached to the self-contained classroom and used for other purposes.

29 (2) A video camera placed in a self-contained classroom shall not monitor a restroom or
30 any other area in the self-contained classroom where a student changes his or her clothes except

31 for incidental monitoring of a minor portion of a restroom or other area where a student changes
32 his or her clothes because of the layout of the self-contained classroom.

33 (3) A video camera placed in a self-contained classroom is not required to be in operation
34 during the time in which students are not present in the self-contained classroom.

35 (f) Before a public school initially places a video camera in a self-contained classroom
36 pursuant to this section, the public school shall provide written notice of the placement to:

37 (1) The parent or legal guardian of a student who is assigned to the self-contained
38 classroom;

39 (2) The county board; and

40 (3) The school employee(s) who is assigned to work with one or more students in the self-
41 contained classroom.

42 (g)(1) A public school shall retain video recorded from a camera placed under this section
43 for at least three months after the date the video was recorded after which the recording shall be
44 deleted or otherwise made unretrievable.

45 (2) If a person requests to view a recording under subsection (k) of this section, the public
46 school shall retain the recording from the date of the request until:

47 (A)(i) Except as provided in subdivision (g)(2)(A)(ii) of this section, the person views the
48 recording.

49 (ii) A person who requests to view a recording shall make himself or herself available for
50 viewing the recording within 30 days after being notified by the public school that the person's
51 request has been granted; and

52 (B) Any investigation and any administrative or legal proceedings that result from the
53 recording have been completed, including, without limitation, the exhaustion of all appeals.

54 (h) This section does not:

55 (1) Waive any immunity from liability of a public school district or employee of a public
56 school district; or

57 (2) Create any liability for a cause of action against a public school or school district or
58 employee of a public school or school district.

59 (i) A public school or school district shall not:

60 (1) Allow regular, continuous, or continual monitoring of video recorded under this section;

61 or

62 (2) Use video recorded under this section for:

63 (A) Teacher evaluations; or

64 (B) Any purpose other than the promotion of the health, well-being, and safety of students
65 receiving special education and related services in a self-contained classroom.

66 (j) Except as provided under subsections (k) and (l) of this section, a video recording of a
67 student made under this section is confidential and shall not be released or viewed.

68 (k) Within seven days of receiving a request, a public school or school district shall allow
69 viewing of a video recording by:

70 (1) A public school or school district employee who is involved in an alleged incident that
71 is documented by the video recording and has been reported to the public school or school district;

72 (2) A parent or legal guardian of a student who is involved in an alleged incident that is
73 documented by the video recording and has been reported to the public school or school district;

74 (3) An employee of a public school or school district as part of an investigation into an
75 alleged incident that is documented by the video recording and has been reported to the public
76 school or school district;

77 (4) A law-enforcement officer as part of an investigation into an alleged incident that is
78 documented by the video recording and has been reported to the law-enforcement agency; or

79 (5) The Department of Health and Human Resources as part of a child abuse and neglect
80 investigation: *Provided*, That any access provided to the Department of Health and Human
81 resources pursuant to this subdivision shall comply with the Family Educational Rights and
82 Privacy Act of 1974, 20 U.S.C. § 1232g.

83 (l) When a video is under review as part of the investigation of an alleged incident, and
84 the video reveals a student violating a disciplinary code or rule of the school, which violation is
85 not related to the alleged incident for which the review is occurring, and which violation is not
86 already the subject of a disciplinary action against the student, the student is not subject to
87 disciplinary action by the school for such unrelated violation.

88 (m) It is not a violation of subsection (j) of this section if a contractor or other employee of
89 a public school or school district incidentally views a video recording under this section if the
90 contractor or employee of a public school or school district is performing job duties related to the:

91 (1) Installation, operation, or maintenance of video equipment; or

92 (2) Retention of video recordings.

93 (n) This section does not limit the access of a student's parent or legal guardian to a video
94 recording regarding the student under the Family Educational Rights and Privacy Act of 1974, 20
95 U.S.C. § 1232g, or any other law.

96 (o) A public school or school district shall:

97 (1) Take necessary precautions to conceal the identity of a student who appears in a video
98 recording but is not involved in the alleged incident documented by the video recording for which
99 the public school allows viewing under subsection (j) of this section, including, without limitation,
100 blurring the face of the uninvolved student; and

101 (2) Provide procedures to protect the confidentiality of student records contained in a video
102 recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §
103 1232g, or any other law.

104 (p)(1) Any aggrieved person may appeal to the State Board of Education an action by a
105 public school or school district that the person believes to be in violation of this section.

106 (2) The state board shall grant a hearing on an appeal under this subsection within 45
107 days of receiving the appeal.

108 (g)(1) A public school or school district may use funds distributed from the “Safe Schools
109 Fund” created in §18-5-48 of this code to fulfill a request made under this section.

110 (2) A public school or school district may accept gifts, grants, or donations to fulfill a
111 request made under this section.

112 (r) The state board may promulgate a rule in accordance with 29A-3B-1 se seq. of this
113 code to clarify the requirements of this section and address any unforeseen issues that might
114 arise relating to the implementation of the requirements of this section.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-8. Suspension and dismissal of school personnel by board; appeal.

1 (a) Notwithstanding any other provisions of law, a board may suspend or dismiss any
2 person in its employment at any time for: Immorality, incompetency, cruelty, insubordination,
3 intemperance, willful neglect of duty, unsatisfactory performance, a finding of abuse by the
4 Department of Health and Human Resources in accordance with §49-1-1 et seq. of this code, the
5 conviction of a misdemeanor or a guilty plea or a plea of nolo contendere to a misdemeanor
6 charge that has a rational nexus between the conduct and performance of the employee’s job,
7 the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

8 (b) A charge of unsatisfactory performance shall not be made except as the result of an
9 employee performance evaluation pursuant to section twelve of this article. The charges shall be
10 stated in writing served upon the employee within two days of presentation of the charges to the
11 board.

12 (c) The affected employee shall be given an opportunity, within five days of receiving the
13 written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions
14 of §6C-2-1 et seq. of this code, except that dismissal for a finding of abuse or the conviction of a
15 felony or guilty plea or plea of nolo contendere to a felony charge is not by itself a grounds for a
16 grievance proceeding. An employee charged with the commission of a felony, a misdemeanor

17 with a rational nexus between the conduct and performance of the employee's job, or child abuse
18 may be reassigned to duties which do not involve direct interaction with pupils pending final
19 disposition of the charges.

20 (d) A county board of education has the duty and authority to provide a safe and secure
21 environment in which students may learn and prosper; therefore, it may take necessary steps to
22 suspend or dismiss any person in its employment at any time should the health, safety, and
23 welfare of students be jeopardized or the learning environment of other students has been
24 impacted.

25 (e) It shall be the duty of any county superintendent to report any employee suspended or
26 dismissed in accordance with this section, including the rationale for the suspension or dismissal,
27 to the state superintendent. The state superintendent shall maintain a database of all individuals
28 suspended or dismissed for jeopardizing the health, safety, and welfare of students, or for
29 impacting the learning environment of other students. The database shall also include the
30 rationale for the suspension or dismissal. The database shall be confidential and shall only be
31 accessible to county human resource directors, county superintendents, and the state
32 superintendent.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-6. Grounds for revocation of certificates; recalling certificates for correction.

1 (a) The state superintendent may, after ten days' notice and upon proper evidence,
2 revoke the certificates of any teacher for any of the following causes: Intemperance;
3 untruthfulness; cruelty; immorality; a finding of abuse by the Department of Health and Human
4 Resources in accordance with §49-1-1 et seq of this code; the conviction of a felony or a guilty
5 plea or a plea of no contest to a felony charge; the conviction, guilty plea or plea of no contest to
6 any charge involving sexual misconduct with a minor or a student; or for using fraudulent,

7 unapproved or insufficient credit to obtain the certificates: *Provided*, That the certificates of a
8 teacher may not be revoked for any matter for which the teacher was disciplined, less than
9 dismissal, by the county board that employs the teacher, nor for which the teacher is meeting or
10 has met an improvement plan determined by the county board, unless it can be proven by clear
11 and convincing evidence that the teacher has committed one of the offenses listed in this
12 subsection and his or her actions render him or her unfit to teach: *Provided, however*, That in
13 order for any conduct of a teacher involving intemperance; cruelty; immorality; or using fraudulent,
14 unapproved or insufficient credit to obtain the certificates to constitute grounds for the revocation
15 of the certificates of the teacher, there must be a rational nexus between the conduct of the
16 teacher and the performance of his or her job. The state superintendent may designate the West
17 Virginia commission for professional teaching standards or members thereof to conduct hearings
18 on revocations or certificate denials and make recommendations for action by the state
19 superintendent: *Provided further*, That a teacher convicted under §61-8D-5 or a finding of abuse
20 by the Department of Health and Human Resources under §49-1-1 et seq. of this code shall have
21 his or her certificate or license automatically revoked.

22 (b) It shall be the duty of any county superintendent who knows of any acts on the part of
23 any teacher for which a certificate may be revoked in accordance with this section to report the
24 same, together with all the facts and evidence, to the state superintendent for such action as in
25 the state superintendent's judgment may be proper.

26 (c) If a certificate has been granted through an error, oversight, or misinformation, the
27 state superintendent has authority to recall the certificate and make such corrections as will
28 conform to the requirements of law and the state board.