

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Enrolled

Committee Substitute

for

Senate Bill 614

SENATORS RUCKER, CLINE, ROBERTS, AND MAYNARD,

original sponsors

[Passed March 6, 2020; in effect from passage]

1 AN ACT to amend and reenact §18-5-48 of the Code of West Virginia, 1931, as amended; and to
2 amend and reenact §18-20-11 of said code, all relating to giving county boards of
3 education, during a specified time period, flexibility to spend the safe schools allocation at
4 any school within the district requiring cameras in special education classrooms; requiring
5 the West Virginia Department of Education, during a specified time period, to first allocate
6 the funding appropriated for the Safe Schools Fund based on the remaining need for video
7 cameras in each district; removing appropriation of funds by the Legislature as a
8 prerequisite to the requirement for video cameras in self-contained classrooms; and
9 clarifying that any available funds may be used to comply with the camera requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-48. Safety and security measures for school facilities; Safe Schools Fund created.

1 (a) Each county board of education and multicounty 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 multicounty 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.

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 multicounty 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 moneys
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*,
23 *however*, That moneys distributed from this fund also may be used for the purposes of §18-20-11
24 of this code, relating to video cameras in certain special education classrooms: *Provided further*,
25 That for any distributions for the 2019-2020 year and continuing until such time that all districts
26 have fully complied with the special education video camera requirements, county boards shall
27 have the flexibility to spend the safe schools allocation at any school within the district requiring
28 cameras in special education classrooms. The West Virginia Department of Education shall first
29 allocate the funding appropriated for the Safe Schools Fund for the 2020-2021 year based on the
30 remaining need for video cameras in each district. After all districts have been provided sufficient
31 funds to meet the special education video camera requirements, the funding distribution shall
32 return to the previously specified method based on the number of public schools. Any moneys
33 remaining in the fund at the close of the fiscal year shall be carried forward for use in the next
34 fiscal year. Fund balances shall be invested with the state's Consolidated Investment Fund and
35 any and all interest shall be used solely for the purposes that moneys deposited in the fund may
36 be used pursuant to this article.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-11. Video cameras required in certain special education classrooms.

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

3 (b) As used in this section:

4 (1) "Incident" means a raised suspicion by a teacher, aide, parent, or guardian of a child,
5 of bullying, abuse, or neglect of a child or of harm to an employee of a public school by:

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

7 (B) Another student;

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (2) The county board; and

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

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

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

45 (A)(i) Except as provided in §18-20-11(g)(2)(A)(ii) of this code, the person views the
46 recording;

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

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

52 (h) This section does not:

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

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

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

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

59 or

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

61 (A) Teacher evaluations; or

62 (B) Any purpose other than the promotion of the health, wellbeing, and safety of students
63 receiving special education and related services in a self-contained classroom.

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

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

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

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

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

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

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

81 (l) When a video is under review as part of the investigation of an alleged incident, and
82 the video reveals a student violating a disciplinary code or rule of the school, which violation is
83 not related to the alleged incident for which the review is occurring, and which violation is not
84 already the subject of a disciplinary action against the student, the student is not subject to
85 disciplinary action by the school for such unrelated violation unless it reveals a separate incident
86 as described in §18-20-11(b)(1) of this code.

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

- 90 (1) Installation, operation, or maintenance of video equipment; or
- 91 (2) Retention of video recordings.

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

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

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

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

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

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

107 (q)(1) A public school or school district may use funds distributed from the Safe Schools
108 Fund created in §18-5-48 of this code or any other available funds to meet the requirements of
109 this section.

110 (2) A public school or school district may accept gifts, grants, or donations to meet the
111 requirements of this section.

112 (r) The state board may promulgate a rule in accordance with §29A-3B-1 *et 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.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2020.

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Governor