

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Introduced**

**House Bill 4711**

BY DELEGATE YOUNG

[Introduced February 15, 2022; Referred to the  
Committee on Education then Finance]

1 A BILL to amend and reenact §18-20-11 of the Code of West Virginia, 1931, as amended, relating  
2 to providing video cameras in every classroom in which there is a nonverbal student.

*Be it enacted by the Legislature of West Virginia:*

**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 applicable classrooms as defined in state board policy.

3 (b) As used in this section:

4 (1) "Applicable classroom" means any self-contained classroom or any other classroom in  
5 which a nonverbal student receives instruction.

6 ~~(1)(2)~~ (2) "Incident" means a raised suspicion by a teacher, aide, parent, or guardian of a  
7 child, of bullying, abuse, or neglect of a child or of harm to an employee of a public school by:

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

9 (B) Another student;

10 (3) "Nonverbal student" means any student in a public school who is unable to verbally  
11 communicate with school personnel.

12 ~~(2)~~ (4) "Self-contained classroom" means a classroom at a public school in which a  
13 majority of the students in regular attendance are provided special education instruction and as  
14 further defined in state board policy; and

15 ~~(3)~~ (5) "Special education" means the same as defined in §18-20-1 *et seq.* of this code.

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

21 (d)(1) Every public school that receives a video camera under this section shall operate

22 and maintain the video camera in every ~~self-contained~~ applicable classroom that is part of that  
23 school.

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

28 (e)(1) A video camera placed in a ~~self-contained~~ an applicable classroom shall be capable  
29 of:

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

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

35 (2) A video camera placed in a ~~self-contained~~ an applicable classroom shall not monitor a  
36 restroom or any other area in the ~~self-contained~~ applicable classroom where a student changes  
37 his or her clothes except for incidental monitoring of a minor portion of a restroom or other area  
38 where a student changes his or her clothes because of the layout of the ~~self-contained~~ applicable  
39 classroom.

40 (3) A video camera placed in a ~~self-contained~~ an applicable classroom is not required to  
41 be in operation during the time in which students are not present in the ~~self-contained~~ applicable  
42 classroom.

43 (f) Before a public school initially places a video camera in a ~~self-contained~~ an applicable  
44 classroom pursuant to this section, the public school shall provide written notice of the placement  
45 to:

46 (1) The parent or legal guardian of a student who is assigned to a ~~self-contained~~ an  
47 applicable classroom;

48 (2) The county board; and

49 (3) The school employee(s) who is assigned to work with one or more students in ~~the a~~  
50 ~~self-contained~~ an applicable classroom.

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

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

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

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

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

63 (h) This section does not:

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

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

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

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

70 or

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

72 (A) Teacher evaluations; or

73 (B) Any purpose other than the promotion of the health, wellbeing, and safety of students

74 receiving special education and related services in ~~a self-contained~~ an applicable classroom.

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

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

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

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

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

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

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

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

98 (m) It is not a violation of subsection (j) of this section if a contractor or other employee of  
99 a public school or school district incidentally views a video recording under this section if the

100 contractor or employee of a public school or school district is performing job duties related to the:

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

102 (2) Retention of video recordings.

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

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

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

111 (2) Provide procedures to protect the confidentiality of student records contained in a video  
112 recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.  
113 §1232g, or any other law.

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

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

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

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

123 (r) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this  
124 code to clarify the requirements of this section and address any unforeseen issues that might  
125 arise relating to the implementation of the requirements of this section.

NOTE: The purpose of this bill is to require video cameras in classrooms in which a nonverbal student receives instruction.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.