

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 261

BY SENATORS NELSON, PHILLIPS, RUCKER, ROBERTS,

LINDSAY, JEFFRIES, AND GRADY

[Introduced January 13, 2022; referred

to the Committee on Education]

1 A BILL to amend and reenact §18-20-11 of the Code of West Virginia, 1931, as amended, relating
 2 to requiring video cameras in certain special education classrooms; allowing school
 3 principal to designate another school administrator to be the custodian of the video
 4 camera, all recordings of the camera, and access to those recordings; modifying
 5 provisions pertaining to the amount of time a video is required to be retained; clarifying
 6 that the principal or other designated school administration is not required to view the
 7 video recording absent an authorized request or suspicion of an incident; removing
 8 prohibition against allowing regular, continuous, or continual monitoring of video
 9 recording; allowing the school principal or other school administration designee to view a
 10 video recording; modifying provisions pertaining to the viewing of a video recording by a
 11 law-enforcement officer or the Department of Health and Human Resources; requiring a
 12 public school or school district to allow a judge, counsel, or other legal entity to view a
 13 video recording in certain instances; requiring certain incidents to be reported pursuant to
 14 code section mandating reporting of suspected child abuse and neglect; and providing
 15 that cameras in special education classrooms section only applies to cameras installed
 16 pursuant to that section.

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 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 or other school administrator whom the principal assigns
15 as a designee shall be the custodian of the video camera, all recordings generated by the video
16 camera, and access to those recordings pursuant to this section.

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

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

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

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

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

28 (2) A video camera placed in a self-contained classroom shall not monitor a restroom or
29 any other area in the self-contained classroom where a student changes his or her clothes except
30 for incidental monitoring of a minor portion of a restroom or other area where a student changes
31 his or her clothes because of the layout of the self-contained classroom.

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

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

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

38 (2) The county board; and

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

41 (g)(1) A public school shall retain video recorded from a camera placed under this section
42 for at least three months after the date the video was recorded, after which the recording shall be
43 deleted or otherwise made unretrievable except as provided in subdivision (2) of this subsection.

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

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

48 ~~(ii) A person who requests to view a recording shall make himself or herself available for~~
49 ~~viewing the recording within~~

50 ~~30~~ The earlier of the person viewing the recording or 60 days after the person who
51 requested the video was being notified by the public school that ~~the person's~~ their request has
52 been granted and is ready to be viewed; and

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

55 (3) In no event may the recording be deleted or otherwise made unretrievable before three
56 months after the video was recorded.

57 (h) This section does not:

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

60 (2) Create any liability for a cause of action against a public school or school district or
61 employee of a public school or school district; or

62 (3) Require the principal or other designated school administrator to view the video
63 recording absent an authorized request pursuant to this code section or suspicion of an incident.

64 (i) A public school or school district shall not

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

66 ~~or~~

67 ~~(2) Use use video recorded under this section for:~~

68 ~~(A) (1) Teacher evaluations; or~~

69 ~~(B) (2) Any purpose other than the promotion and protection of the health, wellbeing, and~~
70 ~~safety of students receiving special education and related services in a self-contained classroom.~~

71 (j) Except as provided under subsections (k) and (l) of this section, a video recording ~~of a~~
72 ~~student~~ made under this section is confidential and shall not be released or viewed by anyone
73 except the school principal or other school administration designee.

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

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

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

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

84 (l) Within seven days of receiving a request, a public school or school district shall allow
85 viewing of a video recording by and comply with all subsequent requests for viewing or release of

86 the video recording by:

87 ~~(4)~~ (1) A law-enforcement officer or employee of the Department of Health and Human
88 Resources, as part of an investigation into an alleged incident that is documented by the video
89 recording and has been reported to the law-enforcement agency: *Provided, That if a release of*
90 the video recording is requested pursuant to this subdivision, the agency getting a copy of the
91 video recording will maintain strict confidentiality of the video and not further release the video
92 without authorization from the public school district through its superintendent; or

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

97 (2) A judge, counsel, or other legal entity that is charged with deciding or representing
98 either the school board, students, or employees in any matters related to legal issues arising from
99 an incident: *Provided, That the video may only be released pursuant to an appropriate protective*
100 order or under seal.

101 (m) If an incident is discovered while initially viewing camera footage that requires a report
102 to be made under §49-2-803 of this code, that report shall be made by the viewer pursuant to that
103 section within 24-hours of viewing the incident.

104 ~~(j)~~ (n) When a video is under review as part of the investigation of an alleged incident, and
105 the video reveals a student violating a disciplinary code or rule of the school, which violation is
106 not related to the alleged incident for which the review is occurring, and which violation is not
107 already the subject of a disciplinary action against the student, the student is not subject to
108 disciplinary action by the school for such unrelated violation unless it reveals a separate incident
109 as described in §18-20-11(b)(1) of this code.

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

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

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

114 (2) Retention of video recordings.

115 ~~(h)~~ (p) This section ~~does not~~ applies solely to cameras installed pursuant to this code

116 section and does not limit the access of a student's parent or legal guardian to a video recording

117 ~~regarding the student~~ viewable under the Family Educational Rights and Privacy Act of 1974, 20

118 U.S.C. §1232g, or any other law.

119 ~~(e)~~ (q) A public school or school district shall:

120 (1) Take necessary precautions to conceal the identity of a student who appears in a video

121 recording but is not involved in the alleged incident documented by the video recording for which

122 the public school allows viewing under subsection (j) of this section, including, without limitation,

123 blurring the face of the uninvolved student; and

124 (2) Provide procedures to protect the confidentiality of student records contained in a video

125 recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.

126 §1232g, or any other law.

127 ~~(f)~~ (r) (1) Any aggrieved person may appeal to the State Board of Education an action by

128 a public school or school district that the person believes to be in violation of this section.

129 (2) The state board shall grant a hearing on an appeal under this subsection within 45

130 days of receiving the appeal.

131 ~~(g)~~ (s) (1) A public school or school district may use funds distributed from the Safe

132 Schools Fund created in §18-5-48 of this code or any other available funds to meet the

133 requirements of this section.

134 (2) A public school or school district may accept gifts, grants, or donations to meet the

135 requirements of this section.

136 ~~(h)~~ (t) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this

137 code to clarify the requirements of this section and address any unforeseen issues that might

138 arise relating to the implementation of the requirements of this section.

NOTE: The purpose of this bill is to clarify procedures for cameras in special education classrooms.

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