

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

Senate Bill 261

BY SENATORS NELSON, PHILLIPS, RUCKER, ROBERTS,

LINDSAY, JEFFRIES, AND GRADY

[Originating in the Committee on Education; reported

on January 26, 2022]

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; removing
6 requirement to delete or otherwise make unretrievable after a certain time period; clarifying
7 that the principal or other designated school administration is not required to view the
8 video recording absent an authorized request or suspicion of an incident except as
9 otherwise provided; removing prohibition against allowing regular, continuous, or continual
10 monitoring of video recording; allowing the school principal, other school administration
11 designee, or in certain instances, a county designee to view a video recording; requiring
12 no less than 15 minutes of the video of each self-contained classroom to be viewed at no
13 less than every 90 days; modifying provisions pertaining to the viewing of a video recording
14 by a law-enforcement officer or the Department of Health and Human Resources;
15 requiring a public school or school district to allow a judge, counsel, or other legal entity
16 to view a video recording in certain instances; requiring certain incidents to be reported
17 pursuant to code section mandating reporting of suspected child abuse and neglect; and
18 providing that cameras in special education classrooms section only applies to cameras
19 installed 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 Except as provided in subdivision (2) of this subsection, a public school shall retain
42 video recorded from a camera placed under this section for at least three months after the date
43 the video was recorded, after which the recording shall be deleted or otherwise made
44 unretrievable subject to the following:

45 (A) If the minimum three-month period overlaps the summer break occurring between the
46 last day of one instructional term and the first day of the next instructional term, the minimum
47 three-month period shall be extended by the number of days occurring between the two
48 instructional terms;

49 (B) For any school-based camera system that is installed or replaced after April 1, 2022,
50 the public school shall retain video recorded from a camera for at least 365 days after the date
51 the video was recorded and no extension of this time period during the summer break is required.

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

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

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

58 ~~30~~ The earlier of the person viewing the recording or 60 days after the person who
59 requested the video was being notified by the public school that the person's request has been
60 ~~granted~~ video is ready to be viewed; 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 (3) In no event may the recording be deleted or otherwise made unretrievable before the
64 time period set forth in subdivision (1) of this subsection elapses.

65 (h) This section does not:

66 (1) Waive any immunity from liability of a public school district or employee of a public
67 school district; ~~or~~

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

70 (3) Require the principal or other designated school administrator to view the video
71 recording absent an authorized request pursuant to this code section or suspicion of an incident
72 except as otherwise provided in subsection (j) of this section.

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

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

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

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

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

80 (j) Except as provided under subsections (k) and (l) of this section, a video recording of a
81 ~~student~~ made under this section is confidential and shall not be released or viewed by anyone

82 except the school principal, other school administration designee, or county designee if the school
83 principal or other school administration designee is unable to view the video pursuant to this
84 subsection. The school principal, other school administration designee, or county designee shall
85 view no less than 15 minutes of the video of each self-contained classroom at the school no less
86 than every 90 days. The state board shall include in its rule authorized by this section
87 requirements for documentation of compliance with the video viewing requirements of this
88 subsection.

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

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

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

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

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

102 ~~(4)~~ (1) A law-enforcement officer or employee of the Department of Health and Human
103 Resources, as part of an investigation into an alleged incident that is documented by the video
104 recording and has been reported to the law-enforcement agency: *Provided, That if a release of*
105 the video recording is requested pursuant to this subdivision, the agency getting a copy of the
106 video recording will maintain strict confidentiality of the video and not further release the video
107 without authorization from the public school district through its superintendent; or

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

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

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

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

125 ~~(‡) (o)~~ It is not a violation of subsection (j) of this section if a contractor or other employee
126 of a public school or school district incidentally views a video recording under this section if the
127 contractor or employee of a public school or school district is performing job duties related to the:

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

129 (2) Retention of video recordings.

130 ~~(¶) (p)~~ This section ~~does not~~ applies solely to cameras installed pursuant to this code
131 section and does not limit the access of a student's parent or legal guardian to a video recording
132 ~~regarding the student~~ viewable under the Family Educational Rights and Privacy Act of 1974, 20
133 U.S.C. §1232g, or any other law.

134 ~~(e)~~ (g) A public school or school district shall:

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

139 (2) Provide procedures to protect the confidentiality of student records contained in a video
140 recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.
141 §1232g, or any other law.

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

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

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

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

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