

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 3271

BY DELEGATES MAZZOCCHI, KIMBLE, HOLSTEIN, FAST,
ELLINGTON, LONGANACRE, HORST, WALKER, STATLER,
KEATON AND WARNER

[Passed March 9, 2023; in effect ninety days from passage.]

1 AN ACT to amend and reenact §18-20-11 of the Code of West Virginia, 1931, as amended,
2 relating to increasing monitoring of special education classrooms; adding that an audio
3 recording device be present in the restroom of a self-contained classroom; requiring that
4 notice of audio recording device be placed on bathroom door; requiring county to monitor
5 school audio recordings for at least 15 minutes every 90 days; and setting forth other
6 review parameters for audio recordings.

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; audio recording devices required in restroom of a self-contained classroom.

1 (a) A county board of education shall ensure placement of video cameras in self-contained
2 classrooms and audio recording devices in the restrooms of self-contained classrooms as defined
3 in state board policy.

4 (b) As used in this section:

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

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

8 (B) Another student;

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

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

13 (c) (1) A county board of education shall provide a video camera to a public school for
14 each self-contained classroom that is a part of that school which shall be used in every self-
15 contained classroom.

16 (2) Prior to August 1, 2023, a county board of education shall provide an audio recording
17 device to a public school to be used in the restroom of each self-contained classroom that is a
18 part of that school. If the public school is not able to receive the audio recording device by August
19 1, 2023, the public school may apply to the state Department of Education for a waiver to extend
20 that date to August 1, 2024.

21 (3) The principal of the school or other school administrator whom the principal assigns
22 as a designee shall be the custodian of the video camera and audio recording device, all
23 recordings generated by the video camera and audio recording device, and access to those
24 recordings pursuant to this section.

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

27 (2) Every public school that receives an audio recording device under this section shall
28 operate and maintain the audio recording device in every restroom that is a part of a self-contained
29 classroom that is part of that school: *Provided*, That each restroom of a self-contained classroom
30 shall have posted on its door a notice that states: "Pursuant to state law, this restroom is equipped
31 with an audio recording device for the protection of the students."

32 (3) If there is an interruption in the operation of the video camera or audio recording
33 device for any reason, a written explanation should be submitted to the school principal and the
34 county board explaining the reason and length for which there was no recording. The explanation
35 shall be maintained at the county board office for at least one year.

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

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

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

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

45 (3) An audio recording device shall be placed in the restroom of the self-contained
46 classroom and notice provided pursuant to §18-20-11(d)(2) of this code.

47 (4) A video camera or audio recording device required by this section is not required to be
48 in operation during the time in which students are not present in the self-contained classroom.

49 (f) Before a public school initially places a video camera in a self-contained classroom or
50 an audio recording device in the restroom of a self-contained classroom pursuant to this section,
51 the county board of education shall provide written notice of the placement to:

52 (1) The parent or legal guardian of a student who is assigned to the self-contained
53 classroom: *Provided*, That the parent or guardian be allowed the opportunity to opt out of the
54 bathroom audio monitoring for their student. An Individual Education Plan or 504 plan shall outline
55 the opt out and an alternative arrangement for the student or parent needs and requested
56 accommodation; and

57 (2) The school employee(s) who is assigned to work with one or more students in the self-
58 contained classroom.

59 (g)(1) Except as provided in subdivision (2) of this subsection, a public school shall retain
60 video and audio recorded pursuant to this section for at least three months after the date of the
61 recording, subject to the following:

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

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

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

72 (A) The earlier of the person reviewing the recording or 60 days after the person who
73 requested the video or audio recording was notified by the public school that the video or audio
74 recording is available; and

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

77 (3) In no event may the recording be deleted or otherwise made unretrievable before the
78 time period set forth in subdivision (1) of this subsection elapses.

79 (h) This section does not:

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

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

84 (3) Require the principal or other designated school administrator to review the recording
85 absent an authorized request pursuant to this code section or suspicion of an incident except as
86 otherwise provided in subsection (j) of this section.

87 (i) A public school or school district shall not use video or audio recorded under this section
88 for:

89 (1) Teacher evaluations; or

90 (2) Any purpose other than the promotion and protection of the health, wellbeing, and
91 safety of students receiving special education and related services in a self-contained classroom
92 or restroom of a self-contained classroom.

93 (j) Except as provided under subsections (k) and (l) of this section, a recording made under
94 this section is confidential and shall not be released or reviewed by anyone except the school
95 principal, other school administration designee, or county designee if the school principal or other
96 school administration designee is unable to review the video or audio recording pursuant to this
97 subsection. The school principal, other school administration designee, or county designee shall
98 review no less than 15 minutes of the video and no less than 15 minutes of audio of each self-
99 contained classroom and restroom at the school no less than every 90 days. The state board shall
100 include in its rule authorized by this section requirements for documentation of compliance with
101 the video and audio reviewing requirements of this subsection.

102 (k) Within seven days of receiving a request, a public school or school district shall allow
103 review of a recording by:

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

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

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

111 (l) Within seven days of receiving a request, a public school or school district shall allow
112 review of a recording by and comply with all subsequent requests for review or release of the
113 recording by:

114 (1) A law-enforcement officer or employee of the Department of Health and Human
115 Resources, as part of an investigation into an alleged incident that is documented by the recording

116 and has been reported to the agency: *Provided*, That if a release of the recording is requested
117 pursuant to this subdivision, the agency receiving a copy of the recording shall maintain strict
118 confidentiality of the recording and not further release the recording without authorization from
119 the public school district through its superintendent; or

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

124 (m) If an incident is discovered while initially reviewing a recording that requires a report
125 to be made under §49-2-803 of this code, that report shall be made by the reviewer pursuant to
126 that section within 24 hours of viewing the incident.

127 (n) When a recording is under review as part of the investigation of an alleged incident,
128 and the recording reveals a student violating a disciplinary code or rule of the school, which
129 violation is not related to the alleged incident for which the review is occurring, and which violation
130 is not already the subject of a disciplinary action against the student, the student is not subject to
131 disciplinary action by the school for such unrelated violation unless it reveals a separate incident
132 as described in §18-20-11(b)(1) of this code.

133 (o) It is not a violation of subsection (j) of this section if a contractor or other employee of
134 a public school or school district incidentally reviews a recording under this section if the contractor
135 or employee of a public school or school district is performing job duties related to the:

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

137 (2) Retention of video or audio recordings.

138 (p) This section applies solely to cameras and audio recording devices installed pursuant
139 to this code section and does not limit the access of a student's parent or legal guardian to a
140 recording reviewable under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.
141 §1232g, or any other law.

142 (q) A public school or school district shall:

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

147 (2) Provide procedures to protect the confidentiality of student records contained in a
148 recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.
149 §1232g, or any other law.

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

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

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

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

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

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2023.

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Governor