

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Committee Substitute

for

House Bill 3271

By Delegates Mazzocchi, Kimble, Holstein, Fast,
Ellington, Longanacre, Horst, Walker, Statler, Keaton
and Warner

[Originating in the Committee on the Judiciary;

Reported on February 22, 2023]

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

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

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

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

30 (2) (3) If there is an interruption in the operation of the video camera or audio recording
31 device for any reason, a written explanation should be submitted to the school principal and the
32 county board explaining the reason and length for which there was no recording. The explanation
33 shall be maintained at the county board office for at least one year.

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

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

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

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

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

45 ~~(3)~~ (4) A video camera placed in a self-contained classroom or audio recording device
46 required by this section is not required to be in operation during the time in which students are not
47 present in the self-contained classroom.

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

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

56 ~~(2) The county board;~~ and

57 ~~(3)~~(2) The school employee(s) who is assigned to work with one or more students in the
58 self-contained classroom.

59 (g)(1) Except as provided in subdivision (2) of this subsection, a public school shall retain
60 video and audio recorded ~~from a camera placed under~~ pursuant to this section for at least three
61 months after the date ~~the video was recorded~~ of the 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 no

69 extension of this time period during the summer break is required.

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

72 (A) The earlier of the person ~~viewing~~ reviewing the recording or 60 days after the person
73 who requested the video or audio recording was notified by the public school that the video is
74 ~~ready to be viewed~~ or audio 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 ~~view~~ review the ~~video~~
85 recording absent an authorized request pursuant to this code section or suspicion of an incident
86 except as 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 ~~videe~~ recording made
94 under this section is confidential and shall not be released or ~~viewed~~ reviewed by anyone except

95 the school principal, other school administration designee, or county designee if the school
96 principal or other school administration designee is unable to ~~view~~ review the video or audio
97 recording pursuant to this subsection. The school principal, other school administration designee,
98 or county designee shall ~~view~~ review no less than 15 minutes of the video and no less than 15
99 minutes of audio of each self-contained classroom and restroom at the school no less than every
100 90 days. The state board shall include in its rule authorized by this section requirements for
101 documentation of compliance with the video ~~viewing~~ and audio reviewing requirements of this
102 subsection.

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

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

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

109 or

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

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

116 (1) A law-enforcement officer or employee of the Department of Health and Human
117 Resources, as part of an investigation into an alleged incident that is documented by the ~~video~~
118 recording and has been reported to the agency: *Provided*, That if a release of the ~~video~~ recording
119 is requested pursuant to this subdivision, the agency receiving a copy of the ~~video~~ recording shall
120 maintain strict confidentiality of the ~~video~~ recording and not further release the ~~video~~ recording

121 without authorization from the public school district through its superintendent; or

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

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

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

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

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

140 (2) Retention of video or audio recordings.

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

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

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

147 recording but is not involved in the alleged incident documented by the video recording for which
148 the public school allows viewing under subsection (j) of this section, including, without limitation,
149 blurring the face of the uninvolved student; and

150 (2) Provide procedures to protect the confidentiality of student records contained in a video
151 recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.
152 §1232g, or any other law.

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

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

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

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

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