

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 614

BY SENATORS RUCKER, CLINE, ROBERTS, AND MAYNARD

[Introduced January 24, 2020; referred
to the Committee on Education]

1 A BILL to amend and reenact §18-5-48 of the Code of West Virginia, 1931, as amended; and to
 2 amend and reenact §18-20-11 of said code, all relating to requiring the West Virginia
 3 Department of Education to first allocate the funding appropriated for the Safe Schools
 4 Fund based on the remaining need for video cameras in each district until all districts
 5 have fully complied with the special education video camera requirements; and removing
 6 appropriation of funds by the Legislature as a prerequisite to the requirement for video
 7 cameras in self-contained classrooms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-48. Safety and security measures for school facilities; Safe Schools Fund created.

1 (a) Each county board of education and multicounty vocational center shall annually
 2 assess the safety and security of each of the school facilities within its boundaries. Safety and
 3 security measures of each facility shall be upgraded when necessary to ensure, to the best of
 4 the county board's ability, the safety of the students within each facility. Each county board of
 5 education shall report annually the safety and security measures it has put in place, including
 6 upgrades thereto, to the State Department of Education. Annually, the State Department of
 7 Education shall compile the information from the county boards of education, and report the
 8 information to the Legislative Oversight Commission on Education Accountability.

9 (b) As used in this section, "safety and security measures" means action taken by a
 10 county board of education or multicounty vocational center that improves the security of a
 11 school facility and the safety of the students within such facility, including, but not limited to,
 12 hiring a school resource officer, installing weapon detection systems, upgrading facility doors or
 13 windows, etc.

14 (c) There is hereby created in the State Treasury a special revenue fund to be known as
 15 the Safe Schools Fund. The fund shall consist of all moneys received from legislative
 16 appropriations and other sources to further the purpose of this section: *Provided*, That annually,

17 the West Virginia Department of Education shall request an appropriation based on the requests
 18 of the county boards of education. Subject to legislative appropriation, the funds appropriated
 19 annually to the School Safety Fund shall be distributed to the county boards of education and
 20 multicounty vocational centers, with the funding amount per school determined by dividing the
 21 total annual appropriation by the total number of public schools throughout the state. All moneys
 22 distributed from this fund shall be used to support the purpose and intent of this section and all
 23 moneys must be spent to support the school for which the funding was derived: *Provided,*
 24 *however,* That moneys distributed from this fund also may be used for the purposes of §18-20-
 25 11 of this code, relating to video cameras in certain special education classrooms: *Provided*
 26 *further,* That beginning with any distributions for the 2020-21 year and continuing until such time
 27 that all districts have fully complied with the special education video camera requirements, the
 28 West Virginia Department of Education shall first allocate the funding appropriated for the Safe
 29 Schools Fund based on the remaining need for video cameras in each district. After all districts
 30 have been provided sufficient funds to meet the special education video camera requirements,
 31 the funding distribution shall return to the previously specified method based on the number of
 32 public schools. Any moneys remaining in the fund at the close of the fiscal year shall be carried
 33 forward for use in the next fiscal year. Fund balances shall be invested with the state's
 34 Consolidated Investment Fund and any and all interest shall be used solely for the purposes
 35 that moneys deposited in the fund may be used pursuant to this article.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-11. Video cameras required in certain special education classrooms.

1 (a) ~~Upon appropriation of funds by the Legislature, a~~ A county board of education shall
 2 ensure placement of video cameras in self-contained classrooms as defined in state board
 3 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) 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. The principal of the school shall be the custodian of the video camera, all recordings
16 generated by the video 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
20 written explanation should be submitted to the school principal and the county board explaining
21 the reason and length for which there was no recording. The explanation shall be maintained at
22 the 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
30 except for incidental monitoring of a minor portion of a restroom or other area where a student
31 changes 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
33 operation 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
40 self-contained classroom.

41 (g)(1) A public school shall retain video recorded from a camera placed under this
42 section for at least three months after the date the video was recorded, after which the recording
43 shall be deleted or otherwise made un-retrievable.

44 (2) If a person requests to view a recording under subsection (k) of this section, the
45 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 30 days after being notified by the public school that the person's
50 request has been granted; and

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

53 (h) This section does not:

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

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

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

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

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

62 (A) Teacher evaluations; or

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

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

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

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

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

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

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

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

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

90 (m) It is not a violation of subsection (j) of this section if a contractor or other employee
91 of a public school or school district incidentally views a video recording under this section if the
92 contractor or employee of a public school or school district is performing job duties related to
93 the:

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

95 (2) Retention of video recordings.

96 (n) This section does not limit the access of a student's parent or legal guardian to a
97 video recording regarding the student under the Family Educational Rights and Privacy Act of
98 1974, 20 U.S.C. §1232g, or any other law.

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

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

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

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

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

110 days of receiving the appeal.

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

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

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

NOTE: The purpose of this bill is to change the method of allocating funding from the Safe Schools Fund until all districts have been provided sufficient funds to meet certain special education video camera requirements; and remove appropriation of funds by the Legislature as a prerequisite to the requirement for video cameras in self-contained 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.