

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4556

FISCAL
NOTE

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[Introduced February 07, 2022; Referred to the
Committee on Education then Finance]

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 video and audio
4 recordings be maintained for 26 weeks; requiring county to monitor school video and audio
5 recordings for at least 60 minutes each month; requiring incidents or issues discovered in
6 recordings be reported to school principal or administrator.

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~~ self-contained 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 restroom of a self-contained classroom 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) 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. A county board of education shall provide an audio recording device to a public school
16 to be used in the restroom of each self-contained classroom that is a part of that school. The

17 principal of the school shall be the custodian of the video camera and audio recording device, all
18 recordings generated by the video camera and audio recording device, and access to those
19 recordings pursuant to this section.

20 (d)(1) Every public school that receives a video camera and an audio recording device
21 under this section shall operate and maintain the video camera in every self-contained classroom
22 and shall operate an audio recording device in every restroom of a self-contained classroom that
23 is part of that school.

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

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

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

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

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

37 (3) An audio recording device shall be placed in the restroom of the self-contained
38 classroom.

39 ~~(3)~~ (4) A video camera placed in a self-contained classroom and an audio recording device
40 placed in the restroom of a self-contained classroom is not required to be in operation during the
41 time in which students are not present in the self-contained classroom.

42 (f) Before a public school initially places a video camera in a self-contained classroom, or

43 an audio recording device in the restroom of a self-contained classroom, pursuant to this section,
44 the public school shall provide written notice of the placement to:

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

47 (2) The county board; and

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

50 (g)(1) A public school shall retain video and audio recorded from ~~a camera~~ a device placed
51 under this section for at minimum, at least three months 26 weeks after the date the video and
52 audio was recorded. ~~after which the recording shall be deleted or otherwise made unretrievable~~
53 The 26 weeks of recordings required to be maintained shall exclude any week during which
54 students were not present in the classroom.

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

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

59 (ii) A person who requests to ~~view~~ review a recording shall make himself or herself
60 available for ~~viewing~~ to review the recording within 30 days after being notified by the public school
61 ~~that the person's request has been granted~~ the school is prepared to review the recording with
62 the person; and

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

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.

70 (i) A public school district shall:

71 (1) Review the video and audio recordings and continuously monitor recordings
72 unprompted by any request or complaint; and

73 (2) The recording shall be reviewed by an county school board employee who does not
74 work in the school where the recordings were made and:

75 (A) The audio and video recordings from each self-contained classroom shall each be
76 monitored for, at minimum, a total of 60 minutes per month; and

77 (B) The 60 minute total shall consist of 15 minutes of recordings on four separate school
78 days during which students are present; and

79 (C) The employee reviewing the recordings shall document the date and time of each
80 recording and note any incidents or concerns. If the employee notes any incidents or concerns,
81 he or she shall immediately report those concerns to the school principal or administrators.

82 (j) A public school or school district shall not:

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

85 ~~(2) (1) Use video or audio recorded under this section for:~~

86 (A) Teacher evaluations; or

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

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

91 ~~(k)(l)~~ Within seven days of receiving a request, a public school or school district shall allow
92 ~~viewing of a videe~~ the review of a recording by:

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

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

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

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

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

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

112 ~~(m)~~(n) It is not a violation of subsection (j) of this section if a contractor or other employee
113 of a public school or school district incidentally views a video recording under this section if the
114 contractor or employee of a public school or school district is performing job duties related to the:

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

116 (2) Retention of video recordings.

117 ~~(n)~~(o) This section does not limit the access of a student's parent or legal guardian to a
118 ~~video~~ recording regarding the student under the Family Educational Rights and Privacy Act of
119 1974, 20 U.S.C. §1232g, or any other law.

120 ~~(o)~~(p) A public school or school district shall:

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

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

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

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

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

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

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

NOTE: The purpose of this bill is to increase monitoring of special education classrooms; to add that an audio recording device be present in the restroom of a self-contained classroom; to require video and audio recordings be maintained for 26 weeks; to require county to monitor school video and audio recordings for at least 60 minutes each month; and to require incidents or issues discovered in recordings be reported to school principal or administrator.

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