

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **House Bill 4648**

BY DELEGATES SKAFF, STEELE, HORNBUCKLE, CROUSE,

HANNA, SUMMERS, CAPITO, BRIDGES, TONEY, AND

THOMPSON

[Introduced February 11, 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 providing protections for exceptional children in public schools; requiring designation of  
3 a county monitoring supervisor for recordings of certain school facilities; defining terms;  
4 designating persons responsible to be custodian of recordings; requiring audio recordings  
5 of certain locations; modifying conditions and requirements associated with preserving  
6 and releasing recordings; and requiring signing of disclosure form by certain school  
7 employees.

*Be it enacted by the Legislature of West Virginia:*

## **ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

### **§18-20-11. Video cameras and audio recording devices required in certain special education classrooms facilities.**

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 (4) "Recording device" means any video camera and audio recorder installed in a self-  
13 contained classroom, including, without limitation, a room attached to the self-contained  
14 classroom and used for other purposes, and a restroom not attached to the classroom that is  
15 used as the primary restroom for the students of the self-contained classroom.

16 (5) "Recordings" means both video and audio recorded by a recording device.

17 (6) "Monitoring Supervisor" means a person designated by a county board of education to  
18 have on demand access to all video and audio recordings by all recording devices covered under  
19 this section and conducts monitoring activities as provided for in subsection (o) of this section.

20 (c) A county board of education shall provide a video camera and audio recorder to a  
21 public school for each self-contained classroom that is a part of that school which shall be used  
22 in every self-contained classroom.

23 (1) The principal of the school shall be the custodian of the ~~video camera~~ recording device,  
24 all recordings generated by the ~~video camera~~ recording device, and access to those recordings  
25 pursuant to this section.

26 (A) The principal shall designate in advance one or more additional administrators  
27 employed at the school or at the county school board, to fulfill the duties of the custodian when  
28 the principal is absent for whatever reason from the school property.

29 (B) The principal shall have on demand access to all recordings and may designate one  
30 or more additional school administrators employed at the school to also have on demand access  
31 to recordings without restricting the principal's own access.

32 (2) The county school board shall also designate a monitoring supervisor as provided in  
33 subsection (o) who shall:

34 (A) Have on demand access to all recordings in each school without limitation.

35 (B) Be employed at a location separate from any school where a recording device covered  
36 under this section is located.

37 (d)(1) Every public school that receives a ~~video camera~~ recording device under this section  
38 shall operate and maintain the ~~video camera~~ recording device in every self-contained classroom  
39 that is part of that school.

40 (2) If there is an interruption in the operation of the ~~video camera~~ recording device for any  
41 reason, a written explanation should be submitted to the school principal and the county board

42 explaining the reason and length for which there was no recording. The explanation shall be  
43 maintained at the county board office for at least one year.

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

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

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

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

53 (3) A video camera placed in a self-contained classroom is not required to be in operation  
54 during the time in which students are not present in the self-contained classroom.

55 (4) An audio recorder placed in a self-contained classroom shall be capable of:

56 (A) Monitoring all restrooms attached to the self-contained classroom as well as restrooms  
57 not attached to the self-contained classroom used primarily by students in the self-contained  
58 classroom.

59 (B) Monitoring all areas in the self-contained classroom where a student changes his or  
60 her clothes, including, without limitation, a room attached to the self-contained classroom and  
61 used for other purposes, unless the area is already monitored by a video camera, capable of also  
62 recording audio pursuant to (e)(1) of this section.

63 (5) An audio recorder placed in a self-contained classroom is not required to be in  
64 operation during the time in which students are not present in the self-contained classroom.

65 ~~(f)~~ (1) Before a public school initially places a video camera in a self-contained classroom  
66 pursuant to this section, the public school shall provide written notice of the placement to:

67 ~~(4)~~ (A) The parent or legal guardian of a student who is assigned to the self-contained

68 classroom;

69 ~~(2)~~ (B) The county board; and

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

72 (2) A county board of education shall require every school employee assigned to work  
73 with one or more students in the self-contained classroom to sign a disclosure and retain that  
74 disclosure in the employee's personnel file that the school employee understands:

75 (A) Recording devices are present in the self-contained classroom, rooms attached to the  
76 self-contained classroom and used for other purposes, all restrooms attached to the self-  
77 contained classroom and all restrooms not attached to the self-contained classroom, which are  
78 used primarily by students in the self-contained classroom.

79 (B) These recording devices may be monitored continually, regularly and without cause.

80 (C) These recording devices are present for the purpose of detecting and preventing  
81 students from being physically, sexually and verbally abused by school personnel.

82 (D) Recordings collected from these recording devices may potentially be used as  
83 evidence against the school employee in a criminal or civil proceeding.

84 (E) The school employee may potentially be charged with criminal charges if they are  
85 observed physically, sexually or verbally abusing a child.

86 (F) Within 24 hours, the school employee is required to report knowledge or suspicion of  
87 physical, sexual or verbal abuse of a child by other school personnel or another student  
88 immediately to the DHHR and school administrators, and that failure to do so may result in criminal  
89 charges against the employee for failing to report.

90 (g)(1) A ~~Except as provided in paragraph (2) of this subsection,~~ public school shall retain  
91 ~~videe~~ recording recorded from a ~~camera~~ recording device placed under this section for at least  
92 three months after the date the ~~videe~~ recording was recorded ~~after which the recording shall be~~  
93 ~~deleted or otherwise made unretrievable~~ subject to the following:

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

98 (B) For any school-based recording device that is installed or replaced after July 1, 2022,  
99 the public school shall retain recordings from a recording device for at least 90 days after the date  
100 the recording was recorded and no extension of this time period during the summer break is  
101 required.

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

104 (A)(i) Except as provided in ~~§18-20-11(g)(2)(A)(ii) of this code~~, subparagraph (ii) of this  
105 subsection, 60 days after the person views the recording;

106 (ii) A person who requests to view a recording shall make himself or herself available for  
107 viewing the recording within 30 days after being notified by the public school that the person's  
108 request has been granted; and

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

111 (C) The time period set forth in subdivision (1) of this subsection.

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

114 (h) This section does not:

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

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

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

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

121 or

122 ~~(2) Use use video or audio recorded under this section for:~~

123 (A) Teacher evaluations; or

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

126 (j) Except as provided under subsections (k) and (l) of this section, a ~~videe~~ recording of a  
127 ~~student~~ made under this section is confidential and shall not be released or ~~viewed~~ reviewed or  
128 monitored by anyone except the school principal, vice or assistant principal, or other county  
129 school board employee designated to monitor or review recordings.

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

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

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

136 (3) An employee of a public school or school district as part of an investigation into an  
137 alleged incident that is documented by the ~~videe~~ recording and has been reported to the public  
138 school or school district;

139 (l) Within seven days of receiving a request, a public school or school district shall allow  
140 review of recordings by and comply with all subsequent requests for review or release of the  
141 recordings by:

142 ~~(4)~~ (1) A law-enforcement officer or employee of the Department of Health and Human  
143 Resources as part of an investigation into an alleged incident that is documented by the ~~videe~~  
144 recording and has been reported to the ~~law-enforcement~~ agency: ~~or~~ Provided, That if a release  
145 of the recording is requested pursuant to this subdivision, the agency getting a copy of the

146 recording will maintain strict confidentiality of the recording and not further release the recording  
147 without authorization from the public school district through its superintendent; or

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

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

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

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

165 (o) A county board of education shall be required to designate a monitoring supervisor,  
166 who shall be responsible for:

167 (1) Reviewing a minimum of 60 minutes of recordings, recorded during each month that  
168 at least one child attended school, for each classroom covered under this section, according to  
169 the following parameters:

170 (A) The minimum of 60 minutes of recordings required to be monitored must be divided  
171 into no less than 4 nonconsecutive intervals of time lasting at least 10 minutes.



- 172 (B) Students must be present for the entirety of the 60 minutes monitored.
- 173 (C) The minimum required monitoring must be completed by the seventh day of the month  
174 following the end of the month that the recordings took place.
- 175 (D) Reasonable effort shall be made to conduct review of recordings in a way that allows  
176 the monitoring supervisor to:
- 177 (i) Observe conduct of all school personnel regularly assigned to the classroom.
- 178 (ii) Observe conduct of school personnel when they are each individually alone with  
179 children.
- 180 (iii) Observe conduct of school personnel in restrooms and other rooms attached to the  
181 classrooms where children may change their clothes.
- 182 (iv) Assess the school personnel monitored sufficiently to allow the monitoring supervisor  
183 to reach a conclusion as to whether the conduct monitored is appropriate.
- 184 (2) Providing the principal of the school and the county board of education, by the seventh  
185 day of the month following the end of the month that the recordings took place, a monitoring  
186 review report that includes the following:
- 187 (A) Specific days and time intervals that were monitored.
- 188 (B) Any behavior that the monitoring supervisor considers inappropriate or unusual and  
189 details of why they consider the behavior to be inappropriate or unusual.
- 190 (C) Any suspicions the monitoring supervisor has of abuse, neglect, or failure to report  
191 abuse or neglect and details of why they consider the behavior to be suspicious.
- 192 (D) Whether the monitoring supervisor has any reason to suspect that the classroom is  
193 not being recorded properly according to subsection (e).
- 194 (E) In no event shall the monitoring supervisor disclose any details regarding any school  
195 personnel's job performance unless it directly relates to unusual or suspicious behavior or conduct  
196 that suggests physical, sexual, or verbal abuse is occurring or could be occurring, neglect that  
197 could lead to the occurrence of such abuse, or failure to report such abuse or neglect by the

198 school personnel being monitored.

199 (3) In the event that the monitoring supervisor observes any unusual or suspicious  
200 behavior or conduct by school personnel, or has reason to believe the classroom is not being  
201 recorded properly according to subsection (e), the monitoring supervisor will immediately, or as  
202 soon as reasonably possible, notify the principal of the school and the appropriate administrator(s)  
203 at the county board of education.

204 ~~(m)~~ (p) It is not a violation of subsection (j) of this section if a contractor or other employee  
205 of a public school or school district incidentally views or listens to a ~~videe~~ recording under this  
206 section if the contractor or employee of a public school or school district is performing job duties  
207 related to the:

208 (1) Installation, operation, or maintenance of ~~video equipment~~ a recording device; or

209 (2) Retention of ~~videe~~ recordings.

210 ~~(n)~~ (q) This section applies solely to recording devices installed pursuant to this section  
211 and does not limit the access of a student's parent or legal guardian to a ~~videe~~ recording regarding  
212 the student under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g, or  
213 any other law.

214 ~~(o)~~ (r) A public school or school district shall:

215 (1) Take necessary precautions to conceal the identity of a student who ~~appears in a videe~~  
216 is recorded by a recording device but is not involved in the alleged incident documented by the  
217 ~~videe~~ recording for which the public school allows ~~viewing~~ review under subsection (j) of this  
218 section, including, without limitation, blurring the face of the uninvolved student; and

219 (2) Provide procedures to protect the confidentiality of student records contained in a ~~videe~~  
220 recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.  
221 §1232g, or any other law.

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

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

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

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

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

NOTE: The purpose of this bill is to establish protections for exceptional children placed in special education classrooms; requiring each county school board to designate monitoring supervisor to review recordings of designated locations where exceptional children frequent in public schools; establishing audio recording requirements for restrooms; and establishing other requirements to help assure that these locations are properly monitored and records are preserved to document incidents involving these children.

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