

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4427

BY DELEGATES SKAFF, STEELE, YOUNG, PACK, BARACH,

CAPITO AND PUSHKIN

[Introduced January 31, 2022; Referred to
the Committee on the Judiciary then Finance.]

1 A BILL to amend and reenact §18-20-11 of the Code of West Virginia, 1931, as amended, relating
 2 to review of recorded videos of special education classrooms; requiring a county
 3 designated monitoring supervisor; requiring periodic monitoring session reviews;
 4 expanding time frame for retention of video recordings; and establishing requirements
 5 associated with video reviews.

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.

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) "Monitoring Supervisor" means a person designated by a county board of education to
 9 have on demand access to all video camera recordings and conduct monitoring activities as
 10 provided for in subsection (m) of this section;

11 ~~(2)~~ (3) "Self-contained classroom" means a classroom at a public school in which a
 12 majority of the students in regular attendance are provided special education instruction and as
 13 further defined in state board policy; and

14 ~~(3)~~ (4) "Special education" means the same as defined in §18-20-1 *et seq.* of this code.

15 (c) A county board of education shall provide a video camera to a public school for each
 16 self-contained classroom that is a part of that school which shall be used in every self-contained
 17 classroom. The principal of the school shall be the custodian of the video camera, all recordings
 18 generated by the video camera, and access to those recordings pursuant to this section. A

19 monitoring supervisor as provided in subsection (m) of this section shall be granted access to all
20 recordings in each school without limitation.

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

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

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

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

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

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

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

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

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

42 (2) The county board; and

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

45 (g)(1) A public school shall retain video recorded from a camera placed under this section
46 for at least ~~three months~~ one year after the date the video was recorded, after which the recording
47 shall be deleted or otherwise made unretrievable.

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

50 (i) ~~Except as provided in §18-20-11(g)(2)(A)(ii) of this code~~ (A) The person views the
51 recording; and 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 (ii) (B) A person who requests to view a recording shall make himself or herself available
54 for viewing the recording within 30 days after being notified by the public school that the person's
55 request has been granted. ~~and~~

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

58 (h) This section does not:

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

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

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

64 (1) Allow regular, continuous, or continual monitoring of video recorded except as provided
65 under this section; or

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

67 (A) Teacher evaluations; or

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

70 (j) Except as provided under subsections (k), ~~and~~ (l), or (m) of this section, a video

71 recording of a student made under this section is confidential and shall not be released or viewed.

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

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

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

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

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

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

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

93 (m) (1) A monitoring supervisor shall at a minimum, review their assigned cameras at least
94 three times per school year, in the following intervals:

95 (A) Initial yearly monitoring between 30 and 75 days after the start of the fall school year;

96 (B) A second monitoring within ninety (90) days of the initial monitoring; and

97 (C) A third monitoring within ninety (90) days of the second monitoring, prior to the end of
98 the school year.

99 (2) Each Monitoring Supervisor may fast forward recordings as appropriate but will
100 conduct sufficient content review necessary to assess the conduct of all persons recorded within
101 the monitoring period. Each monitoring supervisor shall provide the principal of the school and
102 the county board of education a monitoring review report within 7 days of review, and provide the
103 time spent conducting the review, identification of any conduct that is unusual, inconsistent with
104 normal teaching practices, discrepancies in the recording, and any acts or omissions that seem
105 unusual or raise concerns of the monitoring supervisor. Any incident that is identified as an
106 incident that requires a report pursuant to §49-2-803 of this code, shall be made within 24 hours
107 of discovery.

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

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

112 (2) Retention of video recordings.

113 ~~(n)~~ (o) This section does not limit the access of a student's parent or legal guardian to a
114 video recording regarding the student under the Family Educational Rights and Privacy Act of
115 1974, 20 U.S.C. §1232g, or any other law.

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

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

121 (2) Provide procedures to protect the confidentiality of student records contained in a video
122 recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.

123 §1232g, or any other law.

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

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

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

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

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

NOTE: The purpose of this bill is to establish a review process for periodic monitoring video cameras in special education classrooms by authorizing each county school board to designate a monitoring supervisor to do periodic reviews of retained videos.

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