

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3276

By Delegate Young

[Introduced February 03, 2023; 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 video cameras in every classroom in which there is a nonverbal student.

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 applicable classrooms as defined in state board policy.

3 (b) As used in this section:

4 (1) "Applicable classroom" means any self-contained classroom or any other classroom in
5 which a nonverbal student receives instruction.

6 ~~(1)(2)~~ (2) "Incident" means a raised suspicion by a teacher, aide, parent, or guardian of a child,
7 of bullying, abuse, or neglect of a child or of harm to an employee of a public school by:

8 (A) An employee of a public school or school district; or

9 (B) Another student;

10 (3) "Nonverbal student" means any student in a public school who is unable to verbally
11 communicate with school personnel.

12 ~~(2)~~ (4) "Self-contained classroom" means a classroom at a public school in which a
13 majority of the students in regular attendance are provided special education instruction and as
14 further defined in state board policy; and

15 ~~(3)~~ (5) "Special education" means the same as defined in §18-20-1 *et seq.* of this code.

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

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~~ applicable classroom that is part of that
23 school.

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

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

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

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

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

40 (3) A video camera placed in a ~~self-contained~~ an applicable classroom is not required to be
41 in operation during the time in which students are not present in the ~~self-contained~~ applicable
42 classroom.

43 (f) Before a public school initially places a video camera in a ~~self-contained~~ an applicable
44 classroom pursuant to this section, the public school shall provide written notice of the placement
45 to:

46 (1) The parent or legal guardian of a student who is assigned to a ~~self-contained~~ an
47 applicable classroom;

48 (2) The county board; and

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

51 (g)(1) ~~Except as provided in subdivision (2) of this subsection, a~~ A public school shall retain
52 video recorded from a camera placed under this section for at least three months after the date the
53 video was recorded, ~~subject to the following: after which the recording shall be deleted or~~
54 otherwise made unretrievable.

55 (A) ~~If the minimum three-month period overlaps the summer break occurring between the~~
56 ~~last day of one instructional term and the first day of the next instructional term, the minimum~~
57 ~~three-month period shall be extended by the number of days occurring between the two~~
58 ~~instructional terms;~~

59 (B) ~~For any school-based camera system that is installed or replaced after April 1, 2022,~~
60 ~~the public school shall retain video recorded from a camera for at least 365 days after the date the~~
61 ~~video was recorded and no extension of this time period during the summer break is required~~

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

64 (A) ~~The earlier of the person viewing the recording or 60 days after the person who~~
65 ~~requested the video was notified by the public school that the video is ready to be viewed; and~~

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

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

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

73 (B) Any investigation and any administrative or legal proceedings that result from the

74 recording have been completed, including, without limitation, the exhaustion of all appeals.

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

77 (h) This section does not:

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

80 (2) Create any liability for a cause of action against a public school or school district or
81 employee of a public school or school district; ~~or~~

82 (3) Require the principal or other designated school administrator to view the video
83 recording absent an authorized request pursuant to this code section or suspicion of an incident
84 except as otherwise provided in subsection (j) of this section.

85 (i) A public school or school district shall ~~not use video recorded under this section for:~~

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

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

89 ~~(1)(A) Teacher evaluations; or~~

90 ~~(2)(B) Any purpose other than the promotion of the health, wellbeing, and safety of~~
91 ~~students receiving special education and related services in a self-contained an applicable~~
92 ~~classroom.~~

93 (j) Except as provided under subsections (k) and (l) of this section, a video recording of a
94 student made under this section is confidential and shall not be released or viewed ~~by anyone~~
95 ~~except the school principal, other school administration designee, or county designee if the school~~
96 ~~principal or other school administration designee is unable to view the video pursuant to this~~
97 ~~subsection. The school principal, other school administration designee, or county designee shall~~
98 ~~view no less than 15 minutes of the video of each self-contained classroom at the school no less~~
99 ~~than every 90 days. The state board shall include in its rule authorized by this section~~

100 ~~requirements for documentation of compliance with the video viewing requirements of this~~
101 ~~subsection~~

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

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

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

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

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

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

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

120 ~~(1) A law-enforcement officer or employee of the Department of Health and Human~~
121 ~~Resources, as part of an investigation into an alleged incident that is documented by the video~~
122 ~~recording and has been reported to the agency: *Provided*, That if a release of the video recording~~
123 ~~is requested pursuant to this subdivision, the agency receiving a copy of the video recording shall~~
124 ~~maintain strict confidentiality of the video and not further release the video without authorization~~
125 ~~from the public school district through its superintendent; or~~

126 ~~(2) A judge, counsel, or other legal entity that is charged with deciding or representing~~
127 ~~either the school board, students, or employees in any matters related to legal issues arising from~~
128 ~~an incident. Provided, That the video may only be released pursuant to an appropriate protective~~
129 ~~order or under seal.~~

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

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

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

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

143 (2) Retention of video recordings.

144 ~~(p)(n)~~ This section does not limit the access of a student's parent or legal guardian to a
145 video recording regarding the student under the Family Educational Rights and Privacy Act of
146 1974, 20 U.S.C. §1232g, or any other law.

147 ~~(q)(o)~~ A public school or school district shall:

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

152 (2) Provide procedures to protect the confidentiality of student records contained in a video
153 recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.
154 §1232g, or any other law.

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

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

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

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

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

NOTE: The purpose of this bill is to require video cameras in classrooms in which a nonverbal student receives instruction.

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