

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 632

FISCAL
NOTE

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JEFFRIES

[Introduced February 15, 2019; Referred
to the Committee on Education; and then to the Committee
on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §18-20-11, relating to requiring video cameras in certain public special
 3 education classrooms upon request.

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 upon request.

1 (a) As used in this section:

2 (1) "Incident" means an event, circumstance, act or omission that creates an abused or
 3 neglected child as these terms as defined in §49-1-201 of this code by:

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

5 (B) Another student;

6 (2)(A) "Related services" means transportation and developmental, corrective, and other
 7 supportive services required to assist a child with a disability to benefit from special education.

8 and includes:

9 (i) Speech-language pathology and audiology services;

10 (ii) Interpreting services;

11 (iii) Psychological services;

12 (iv) Physical and occupational therapy;

13 (v) Recreation, including therapeutic recreation;

14 (vi) Early identification and assessment of a child's disability;

15 (vii) Counseling services, including rehabilitation counseling;

16 (viii) Orientation and mobility services;

17 (ix) Medical services for diagnostic or evaluation purposes;

18 (x) School health services;

19 (xi) School nurse services;

20 (xii) Social work services in schools; and

- 21 (xiii) Parent counseling and training.
- 22 (B)(i) "Related services" does not include:
- 23 (I) A medical device that is surgically implanted;
- 24 (II) The optimization of the functioning, such as mapping, of a medical device that is
- 25 surgically implanted;
- 26 (III) The maintenance of a medical device that is surgically implanted; or
- 27 (IV) The replacement of a medical device that is surgically implanted.
- 28 (ii) Subdivision (a)(2)(B)(i) of this section does not:
- 29 (I) Limit the right of a child with a medical device that is surgically implanted to receive
- 30 related services under subdivision (a)(2)(A) of this section that are determined by the child's
- 31 individualized education program team to be necessary for the child to receive a free and
- 32 appropriate public education;
- 33 (II) Limit the responsibility of a public agency to appropriately monitor and maintain
- 34 medical devices that are needed to maintain the health and safety of the child, including breathing,
- 35 nutrition, or operation of other bodily functions, while the child is transported to and from school
- 36 or is at school; or
- 37 (III) Prevent the routine checking of an external component of a medical device that is
- 38 surgically implanted to make sure it is functioning properly, as required in 34 CFR § 300.113(b),
- 39 as it existed on January 1, 2019;
- 40 (3) "Self-contained classroom" means a classroom at a public school in which a majority
- 41 of the students in regular attendance are provided special education and related services; and
- 42 (4) "Special education" means the same as defined in §18-20-1 et seq. of this code
- 43 (b)(1) Upon receipt of a written request by a person under subdivision (b)(2) of this section,
- 44 a public school or school district shall provide a video camera to a public school that shall be used
- 45 in the self-contained classroom for which the written request was made.
- 46 (2) A request under subdivision (b)(1) of this section may be made by a:

47 (A) Parent or legal guardian of a student who is assigned to the self-contained classroom
48 for which the parent or legal guardian requests a video camera;

49 (B) School employee who is assigned to work with one or more students in the self-
50 contained classroom for which the school employee requests a video camera;

51 (C) Superintendent, principal, or assistant principal of the public school or school district;

52 or

53 (D) Member of the board of education of the public school district.

54 (3) A request made under subdivision (b)(1) of this section shall be made to the principal
55 of the public school.

56 (c)(1)(A) A public school that receives a video camera under subsection (b) of this section
57 shall operate and maintain the video camera in the self-contained classroom for which the video
58 camera was requested for the remainder of the school year for which the public school received
59 the request, unless the person who requested the video camera withdraws the request in writing.

60 (B) A public school shall not continue to operate and maintain the video camera in the self-
61 contained classroom for the following school year unless a person makes a new request under
62 subsection (b) for a video camera to be operated and maintained in the following school year.

63 (2) If a public school intends to discontinue the operation and maintenance of a video
64 camera under this section for any reason, no later than five days before the operation and
65 maintenance of the video camera will be discontinued unless a new request for the school year
66 is made under subsection (b) of this section.

67 (3) No later than 10 days before the end of a school year, the public school shall notify
68 every person eligible to make a request under subsection (b) of this section that the operation
69 and maintenance of the video camera will be discontinued for the following school year unless a
70 new request for the following school year is made under subsection (b) of this section.

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

72 (A) Monitoring all areas of the self-contained classroom, including, without limitation, a

73 room attached to the self-contained classroom and used for time-outs or other purposes; and

74 (B) Recording audio from all areas of the self-contained classroom, including, without
75 limitation, a room attached to the self-contained classroom and used for a time-out or other
76 purpose.

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

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

83 (e) Before a public school places a video camera in a self-contained classroom, the public
84 school shall provide written notice of the placement to:

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

87 (2) A student who is assigned to the self-contained classroom;

88 (3) Members of the board of directors of the public school or school district; and

89 (4) A school employee who is assigned to work with one or more students in the self-
90 contained classroom.

91 (f)(1) A public school shall retain video recorded from a camera placed under this section
92 for at least three months after the date the video was recorded.

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

95 (A)(i) Except as provided in subdivision (f)(2)(A)(ii) of this section, the person views the
96 recording.

97 (ii) A person who requests to view a recording shall make himself or herself available for
98 viewing the recording within 30 days after being notified by the public school that the person's

99 request has been granted; and

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

102 (g) This section does not:

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

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

107 (h) A public school or school district shall not:

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

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

111 (A) Teacher evaluations; or

112 (B) Any purpose other than the promotion of the health, well-being, and safety of students
113 receiving special education and related services in a self-contained classroom.

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

116 (j) Within seven days of receiving a request, a public school or school district shall allow
117 viewing of a video recording by:

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

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

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

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

127 (k) It is not a violation of subsection (i) of this section if a contractor or other employee of
128 a public school or school district incidentally views a video recording under this section if the
129 contractor or employee of a public school or school district is performing job duties related to the:

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

131 (2) Retention of video recordings.

132 (l)(1) A public school or school district that receives a request under subsection (b) of this
133 section shall begin operation and maintenance of a video camera under this section:

134 (A) If the request is made during the summer break, no later than the 10th school day of
135 the fall semester; or

136 (B) If the request is made at any time other than the summer break, no later than 45 school
137 days after receiving the request.

138 (2) The State Board of Education may grant a public school or school district an extension
139 of time under subdivision (l)(1):

140 (A) In unusual and limited circumstances, as determined by State Board of Education; and

141 (B) Upon request of the public school or school district.

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

145 (n) A public school or school district shall:

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

150 (2) Provide procedures to protect the confidentiality of student records contained in a video

151 recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §
152 1232g, or any other law.

153 (o)(1) A person who is eligible to make a request for a video camera under subsection (b)
154 of this section may appeal to the State Board of Education an action by a public school or school
155 district that the person believes to be in violation of this section.

156 (2) The state board shall grant a hearing on an appeal under subdivision (o)(1) of this
157 section within 45 days of receiving the appeal.

158 (p) The Department of Education shall collect data relating to requests for a video camera
159 made under this section and actions taken by a public school or school district in response to a
160 request, including, without limitation, the number of requests:

161 (1) Made;

162 (2) Authorized; and

163 (3) Denied.

164 (q) A public school or school district may accept gifts, grants, or donations to fulfill a
165 request made under subsection (b) of this section.

NOTE: The purpose of this bill is to require video cameras in certain special needs classrooms where requested by a student's parent or legal guardian, teacher or school official.

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