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2022 regular session

Introduced

**FISCAL NOTE**

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]

A BILL to amend and reenact §18-20-11 of the Code of West Virginia, 1931, as amended, relating to providing protections for exceptional children in public schools; requiring designation of a county monitoring supervisor for recordings of certain school facilities; defining terms; designating persons responsible to be custodian of recordings; requiring audio recordings of certain locations; modifying conditions and requirements associated with preserving and releasing recordings; and requiring signing of disclosure form by certain school 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.

(a) A county board of education shall ensure placement of video cameras in self-contained classrooms as defined in state board policy.

(b) As used in this section:

(1) “Incident” means a raised suspicion by a teacher, aide, parent, or guardian of a child, of bullying, abuse, or neglect of a child or of harm to an employee of a public school by:

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

(B) Another student;

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

(3) “Special education” means the same as defined in §18-20-1 *et seq.* of this code.

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

(5) “Recordings” means both video and audio recorded by a recording device.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) This section does not:

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

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

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

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

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

(A) Teacher evaluations; or

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

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

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

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

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

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

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

~~(4)~~ (1) A law-enforcement officer or employee of the Department of Health and Human Resources as part of an investigation into an alleged incident that is documented by the ~~video~~ recording and has been reported to the ~~law-enforcement~~ agency: ~~or~~ *Provided,* That if a release of the recording is requested pursuant to this subdivision, the agency getting a copy of the recording will maintain strict confidentiality of the recording and not further release the recording without authorization from the public school district through its superintendent; or

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

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

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

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

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

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

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

(B) Students must be present for the entirety of the 60 minutes monitored.

(C) The minimum required monitoring must be completed by the seventh day of the month following the end of the month that the recordings took place.

(D) Reasonable effort shall be made to conduct review of recordings in a way that allows the monitoring supervisor to:

(i) Observe conduct of all school personnel regularly assigned to the classroom.

(ii) Observe conduct of school personnel when they are each individually alone with children.

(iii) Observe conduct of school personnel in restrooms and other rooms attached to the classrooms where children may change their clothes.

(iv) Assess the school personnel monitored sufficiently to allow the monitoring supervisor to reach a conclusion as to whether the conduct monitored is appropriate.

(2) Providing the principal of the school and the county board of education, by the seventh day of the month following the end of the month that the recordings took place, a monitoring review report that includes the following:

(A) Specific days and time intervals that were monitored.

(B) Any behavior that the monitoring supervisor considers inappropriate or unusual and details of why they consider the behavior to be inappropriate or unusual.

(C) Any suspicions the monitoring supervisor has of abuse, neglect, or failure to report abuse or neglect and details of why they consider the behavior to be suspicious.

(D) Whether the monitoring supervisor has any reason to suspect that the classroom is not being recorded properly according to subsection (e).

(E) In no event shall the monitoring supervisor disclose any details regarding any school personnel’s job performance unless it directly relates to unusual or suspicious behavior or conduct that suggests physical, sexual, or verbal abuse is occurring or could be occurring, neglect that could lead to the occurrence of such abuse, or failure to report such abuse or neglect by the school personnel being monitored.

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

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

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

(2) Retention of ~~video~~ recordings.

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

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

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

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

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

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

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

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

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