

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

### **Introduced**

## **House Bill 4995**

By Delegates Martin, Kump, Willis, Ferrell, Phillips,  
Shamblin, Hornby, Mallow, Brooks, and Toney

[Introduced January 30, 2026; referred to the  
Committee on Education then the Judiciary]

1 A BILL to amend and reenact §18-20-11 of the Code of West Virginia, 1931, as amended; and to  
2 amend the code by adding a new section, designated §49-1-210, all relating to the creation  
3 of "Oscar's Law;" providing for changes to the special education camera laws; and  
4 providing protections for nonverbal and autistic children.

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

## CHAPTER 18. EDUCATION.

### ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

#### **§18-20-11. Video cameras required in certain special education classrooms; audio recording devices required in restroom of a self-contained classroom.**

1 (a) A local educational agency (LEA) shall ensure placement of video cameras in self-  
2 contained classrooms and audio recording devices in the restrooms of self-contained classrooms  
3 as defined in state board policy.

4 (b) As used in this section:

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

7 (A) An employee of a public school or local educational agency (LEA); or

8 (B) Another student;

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

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

13 (c) (1) A local educational agency (LEA) shall provide a video camera to a public school for  
14 each self-contained classroom that is a part of that school which shall be used in every self-  
15 contained classroom and all connecting and/or support areas, including but not limited to: sensory  
16 rooms, etc.

(2) Prior to August 1, 2023, a local educational agency (LEA) shall provide an audio recording device to a public school to be used in the restroom of each self-contained classroom that is a part of that school. If the public school is not able to receive the audio recording device by August 1, 2023, the public school may apply to the state Department of Education for a waiver to extend that date to August 1, 2024.

(3) The principal of the school or other school administrator whom the principal assigns as a designee shall be the custodian of the video camera and audio recording device, all recordings generated by the video camera and audio recording device, and access to those recordings pursuant to this section.

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

(2) Every public school that receives an audio recording device under this section shall operate and maintain the audio recording device in every restroom that is a part of a self-contained classroom that is part of that school: *Provided*, That each restroom of a self-contained classroom shall have posted on its door a notice that states: "Pursuant to state law, this restroom is equipped with an audio recording device for the protection of the students."

(3) If there is an interruption in the operation of the video camera or audio recording device for any reason, a written explanation should be submitted to the school principal and the local educational agency (LEA) board explaining the reason and length for which there was no recording. The explanation shall be maintained at the local educational agency (LEA) board office for at least one year. Notice shall also be provided to any parent or guardian whole child was present at the time of the loss.

(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/or support areas, including but not limited to: sensory rooms, etc.; 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) An audio recording device shall be placed in the restroom of the self-contained classroom and notice provided pursuant to §18-20-11(d)(2) of this code. If another restroom is used by the student, such as a public restroom, a recording device shall be worn by staff escorting the student to the restroom and that recording should be maintained with the same provisions as those required of the classroom recordings.

(4) A video camera or audio recording device required by this section is not required to be in operation during the time in which students are not present in the self-contained classroom.

(f) Before a public school initially places a video camera in a self-contained classroom or an audio recording device in the restroom of a self-contained classroom pursuant to this section, the local educational agency (LEA) shall provide written notice of the placement, including the full version of this entire camera law code, to:

(1) The parent or legal guardian of a student who is assigned to the self-contained classroom: *Provided*, That the parent or guardian be allowed the opportunity to opt out of the bathroom audio monitoring for their student. An Individual Education Plan or 504 plan shall outline the opt out and an alternative arrangement for the student or parent needs and requested accommodation; and

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

(g)(1) Except as provided in subdivision (2) of this subsection, a public school shall retain video and audio recorded pursuant to this section for at least ~~three months~~ 365 days after the date

of the recording, subject to the following:

(A) If the minimum ~~three-month~~ 365-day 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 camera system or audio device recording device that is installed or replaced after April 1, 2022, the public school shall retain video recorded from a camera or audio device recording for at least ~~365 days~~ two full calendar years after the date the video or audio was recorded and no extension of this time period during the summer break is required.

(2) If a person requests to review 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:

(A) The earlier of the person reviewing the recording or 60 days after the person who requested the video or audio recording was notified by the public school that the video or audio recording is available; 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. If the statute of limitations has not expired, for criminal and/or civil legal proceedings, the initial requestor may file to have the responsibility of the confidentiality, protection order, or seal transferred to a parent or legal guardian who may maintain the video(s) until 60 days after the expiration of the statute of limitations.

(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 local educational agency (LEA) or employee of a public local educational agency (LEA);

(2) Create any liability for a cause of action against a public school or local educational

95 agency (LEA) or employee of a public school or local educational agency (LEA); or

96 (3) Require the principal or other designated school administrator to review the recording  
97 absent an authorized request pursuant to this code section or suspicion of an incident except as  
98 otherwise provided in subsection (j) of this section.

99 (i) A public school or local educational agency (LEA) shall not use video or audio recorded  
100 under this section for:

101 (1) ~~Teacher evaluations; or~~

102 ~~(2) Any~~ any purpose other than the promotion and protection of the health, wellbeing, and  
103 safety of students receiving special education and related services in a self-contained classroom  
104 or restroom of a self-contained classroom.

105 (j) Except as provided under subsections (k) and (l) of this section, a recording made under  
106 this section is confidential and shall not be released or reviewed by anyone except the school  
107 principal, other school administration designee, or local educational agency (LEA) designee if the  
108 school principal or other school administration designee is unable to review the video or audio  
109 recording pursuant to this subsection. The school principal, other school administration designee,  
110 or local educational agency (LEA) designee shall review no less than 15 minutes of the classroom  
111 audio and video and no less than 15 minutes of the restroom audio of each self-contained  
112 classroom and restroom at the school no less than every 90 seven (7) calendar days. The state  
113 board shall include in its rule authorized by this section requirements for documentation of  
114 compliance with the video and audio reviewing requirements of this subsection.

115 (k) Within seven days of receiving a request, a public school or local educational agency  
116 (LEA) shall allow review of a recording by:

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

120 (2) A parent or legal guardian of a student who is involved in an alleged incident that is

documented by the recording and has been reported to the public school or local educational agency (LEA) or who requests to view video outside of an alleged incident in a reasonable manner. If the request does not involve an alleged incident, and the request is denied, an appeals process to the West Virginia State Board of Education shall be provided to the parent or legal guardian making the request; or

(3) An employee of a public school or local educational agency (LEA) as part of an investigation into an alleged incident that is documented by the recording and has been reported to the public school or local educational agency (LEA).

(l) Within seven days of receiving a request, a public school or local educational agency (LEA) shall allow review of a recording by and comply with all subsequent requests for review or release of the recording, in a format that is easily viewable by the requestor, by:

(1) A law-enforcement officer or employee of the Department of Human Services, as part of an investigation into an alleged incident that is documented by the recording and has been reported to the agency: *Provided*, That if a release of the recording is requested pursuant to this subdivision, the agency receiving a copy of the recording shall maintain strict confidentiality of the recording and not further release the recording without authorization from the public local educational agency (LEA) through its superintendent; or

(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. The court order shall be issued by the Attorney General's office and made available through the West Virginia Supreme Court's website as a circuit court document.

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

(n) When a recording is under review as part of the investigation of an alleged incident, and

the 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) It is not a violation of subsection (j) of this section if a contractor or other employee of a public school or local educational agency (LEA) incidentally reviews a recording under this section if the contractor or employee of a public school or local educational agency (LEA) is performing job duties related to the:

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

(2) Retention of video or audio recordings.

(p) This section applies solely to cameras and audio recording devices installed pursuant to this code section and does not limit the access of a student's parent or legal guardian to a recording reviewable under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g, or any other law.

(q) A public school or local educational agency (LEA) shall:

(1) Take necessary precautions to conceal the identity of a student who appears in a video recording but is not involved in the alleged incident documented by the video recording for which the public school allows viewing 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 recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g, or any other law.

(r) (1) Any aggrieved person may appeal to the State Board of Education an action by a public school or local educational agency (LEA) that the person believes to be in violation of this section.

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

175 (s) (1) A public school or local educational agency (LEA) may use funds distributed from  
176 the Safe Schools Fund created in §18-5-48 of this code or any other available funds to meet the  
177 requirements of this section.

178 (2) A public school or local educational agency (LEA) may accept gifts, grants, or  
179 donations to meet the requirements of this section.

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

## CHAPTER 49. CHILD WELFARE.

### ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

#### **§49-1-210. Oscar's Law; protections for nonverbal individuals.**

1 (a) Being nonverbal or unable to communicate effectively shall not limit the protections  
2 afforded by the justice and child welfare systems in West Virginia.

3 (b) If an "Incapacitated Adult" or "Disabled Child" is the alleged victim in any investigation,  
4 the definitions and charges and punishment(s) should be referenced and applied to all CPS  
5 investigations from §61-8F-1 through 61-8F-7 of this code for a "disabled child," and §61-2-29 and  
6 §61-2-29B of this code for an "Incapacitated Adult".

7 (c) Appeal information for all types of investigations shall be provided to all  
8 parents/guardians with the findings.

9 (d) The provisions of this section shall be known and referred to as "Oscar's Law."

NOTE: The purpose of this bill is to provide for the creation of "Oscar's Law." The bill addresses video cameras within special education classrooms. The bill provides protections for nonverbal and autistic 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.