

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 4995

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

[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.

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

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

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

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

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

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

40 (A) Monitoring all areas of the self-contained classroom, including, without limitation, a
41 room attached to the self-contained classroom and used for other purposes and/or support areas,
42 including but not limited to: sensory rooms, etc.; and

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

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

49 (3) An audio recording device shall be placed in the restroom of the self-contained
50 classroom and notice provided pursuant to §18-20-11(d)(2) of this code. If another restroom is
51 used by the student, such as a public restroom, a recording device shall be worn by staff escorting
52 the student to the restroom and that recording should be maintained with the same provisions as
53 those required of the classroom recordings.

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

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

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

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

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

69 of the recording, subject to the following:

70 (A) If the minimum ~~three-month~~ 365-day period overlaps the summer break occurring
71 between the last day of one instructional term and the first day of the next instructional term, the
72 minimum three-month period shall be extended by the number of days occurring between the two
73 instructional terms;

74 (B) For any school-based camera system or audio device recording device that is installed
75 or replaced after April 1, 2022, the public school shall retain video recorded from a camera or
76 audio device recording for at least ~~365 days~~ two full calendar years after the date the video or
77 audio was recorded and no extension of this time period during the summer break is required.

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

80 (A) The earlier of the person reviewing the recording or 60 days after the person who
81 requested the video or audio recording was notified by the public school that the video or audio
82 recording is available; and

83 (B) Any investigation and any administrative or legal proceedings that result from the
84 recording have been completed, including, without limitation, the exhaustion of all appeals. If the
85 statute of limitations has not expired, for criminal and/or civil legal proceedings, the initial requestor
86 may file to have the responsibility of the confidentiality, protection order, or seal transferred to a
87 parent or legal guardian who may maintain the video(s) until 60 days after the expiration of the
88 statute of limitations.

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

91 (h) This section does not:

92 (1) Waive any immunity from liability of a public local educational agency (LEA) or
93 employee of a public local educational agency (LEA);

94 (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

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

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

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

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

138 (2) A judge, counsel, or other legal entity that is charged with deciding or representing
139 either the school board, students, or employees in any matters related to legal issues arising from
140 an incident: *Provided*, That the recording may only be released pursuant to an appropriate
141 protective order or under seal. The court order shall be issued by the Attorney General's office and
142 made available through the West Virginia Supreme Court's website as a circuit court document.

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

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

147 the recording reveals a student violating a disciplinary code or rule of the school, which violation is
148 not related to the alleged incident for which the review is occurring, and which violation is not
149 already the subject of a disciplinary action against the student, the student is not subject to
150 disciplinary action by the school for such unrelated violation unless it reveals a separate incident
151 as described in §18-20-11(b)(1) of this code.

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

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

157 (2) Retention of video or audio recordings.

158 (p) This section applies solely to cameras and audio recording devices installed pursuant
159 to this code section and does not limit the access of a student's parent or legal guardian to a
160 recording reviewable under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.
161 §1232g, or any other law.

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

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

167 (2) Provide procedures to protect the confidentiality of student records contained in a
168 recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.
169 §1232g, or any other law.

170 (r) (1) Any aggrieved person may appeal to the State Board of Education an action by a
171 public school or local educational agency (LEA) that the person believes to be in violation of this
172 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.