

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5005

By Delegates Ellington, Statler, Toney, and Hornby

[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, relating
2 to providing liability protections for actions against a county board of education, public
3 charter school, or against an employee using a clear and convincing evidence standard.

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; 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.

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

20 extend that date to August 1, 2024.

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

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

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

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

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

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

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

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

46 (3) An audio recording device shall be placed in the restroom of the self-contained
47 classroom and notice provided pursuant to §18-20-11(d)(2) of this code.

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

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

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

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

60 (g)(1) Except as provided in subdivision (2) of this subsection, a public school shall retain
61 video and audio recorded pursuant to this section for at least three months after the date of the
62 recording, subject to the following:

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

67 (B) For any school-based camera system or audio device recording device that is installed
68 or replaced after April 1, 2022, the public school shall retain video recorded from a camera or
69 audio device recording for at least 365 days after the date the video or audio was recorded and no
70 extension of this time period during the summer break is required.

71 (2) If a person requests to review a recording under subsection (k) or subsection (l) of this

72 section, the public school shall retain the recording from the date of the request until:

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

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

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

80 (h) This section does not:

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

83 (2) Create any liability for a cause of action against a public school or local educational
84 agency (LEA) or employee of a public school or local educational agency (LEA); or

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

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

90 (1) Teacher evaluations; or

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

94 (j) Except as provided under subsections (k) and (l) of this section, a recording made under
95 this section is confidential and shall not be released or reviewed by anyone except the school
96 principal, other school administration designee, or local educational agency (LEA) designee if the
97 school principal or other school administration designee is unable to review the video or audio

98 recording pursuant to this subsection. The school principal, other school administration designee,
99 or local educational agency (LEA) designee shall review no less than 15 minutes of the video and
100 no less than 15 minutes of audio of each self-contained classroom and restroom at the school no
101 less than every 90 calendar days. The state board shall include in its rule authorized by this
102 section requirements for documentation of compliance with the video and audio reviewing
103 requirements of this subsection.

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

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

109 (2) A parent or legal guardian of a student who is involved in an alleged incident that is
110 documented by the recording and has been reported to the public school or local educational
111 agency (LEA); or

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

115 (l) Within seven days of receiving a request, a public school or local educational agency
116 (LEA) shall allow review of a recording by and comply with all subsequent requests for review or
117 release of the recording by:

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

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

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

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

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

141 (1) Installation, operation, or maintenance of video or audio equipment; or
142 (2) Retention of video or audio recordings.

143 (p) This section applies solely to cameras and audio recording devices installed pursuant
144 to this code section and does not limit the access of a student's parent or legal guardian to a
145 recording reviewable under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C.
146 §1232q, or any other law.

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

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

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

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

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

168 (u) No action may be maintained against a county board of education, public charter
169 school, or any employee thereof for damages exceeding \$250,000 for violations of this section
170 unless it is proven by clear and convincing evidence that the board or school was deliberately
171 indifferent to known or reported abuse, as defined by law. Compliance with all mandatory reporting
172 requirements and investigatory actions under this section shall create a rebuttable presumption of
173 good faith on the part of the district.

NOTE: The purpose of this bill is to provide liability protections for actions against a county

board of education, public charter school, or against an employee using a clear and convincing evidence standard.

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