

**WEST VIRGINIA LEGISLATURE**

**2024 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 5158**

BY DELEGATES TONEY, ELLINGTON, STATLER, AND VANCE

[Passed March 8, 2024; in effect ninety days from  
passage.]

**FILED**

2024 MAR 26 P 2: 34

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

HB 5158



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1 AN ACT to amend and reenact §18-1-1 of the Code of West Virginia, 1931, as amended; to amend  
2 and reenact §18-10N-2 of said code; to amend and reenact §18-20-1 and §18-20-1a of  
3 said code; to repeal §18-20-1b of said code; and to amend and reenact §18-20-1c,  
4 §18-20-1d, §18-20-2, §18-20-3, §18-20-4, §18-20-5, §18-20-6, §18-20-7, §18-20-8,  
5 §18-20-9, §18-20-10, and §18-20-11, all relating to updating statutory provisions regarding  
6 the special education code; defining local educational agency; clarifying that districts and  
7 county boards subsumed under the local educational agency; updating definitions;  
8 updating terminology used in education of exceptional children; clarifying local  
9 educational agencies special educational programs include services outside the school  
10 environment; requiring state board's rules assuring exceptional students receive an  
11 education in accordance with state and federal laws include students in foster care and  
12 correctional facilities; clarifying services required by local educational agency that must be  
13 provided until age of majority; requiring preschool programs, special education and related  
14 services for students with disabilities or developmental delays begin services by student's  
15 3rd birthday; clarifying preschool programs for students with disabilities or developmental  
16 delays are available to such students in mental health facilities, residential institutions, and  
17 private entities who have entered into an agreement with a local educational agency;  
18 repealing outdated code section; clarifying provisions regarding assistance, training and  
19 information to be provided to integrated classroom teachers; allowing any teacher to  
20 request an IEP meeting in certain instance; prohibiting a teacher from being penalized for  
21 advocating for his or her student; allowing the teacher to work with the family or guardian;  
22 providing that the general education teacher is not responsible for daily accommodation  
23 logs; requiring that data to support the decision to place a student into an integrated  
24 classroom be included in the Individualized Education Plan; updating terminology for  
25 individualized education programs; clarifying minimum training for autism mentor and  
26 allowing for partial or full reimbursement of tuition for training as autism mentor; updating

27 terminology regarding reports; requiring local educational agencies to maintain a  
28 continuum of services, including integrated classrooms and out of school environments;  
29 requiring training to integrated education and submission of annual reports; updating  
30 terminology regarding examination and reports by medical or other specialists; updating  
31 language regarding powers and duties of superintendent; updating language regarding  
32 advisory council for the education of exceptional children; updating requirements of  
33 exceptional children monitoring and accountability review teams; updating terminology  
34 regarding interagency plan for exceptional children and advisory council; updating  
35 terminology regarding gifted education caseload review; and updating language regarding  
36 video cameras in self-contained classrooms.

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

## **CHAPTER 18. EDUCATION.**

### **ARTICLE 1. DEFINITIONS; LIMITATIONS OF CHAPTER; GOALS FOR EDUCATION.**

#### **§18-1-1. Definitions.**

1 The following words used in this chapter and in any proceedings pursuant thereto have  
2 the meanings ascribed to them unless the context clearly indicates a different meaning:

3 (a) "School" means the students and teachers assembled in one or more buildings,  
4 organized as a unit;

5 (b) "Local educational agency" means a public board of education or other public authority  
6 legally constituted within the State of West Virginia for either administrative control or direction of,  
7 or to perform a service function for, public elementary or secondary schools in a city, county,  
8 township, school district, or other political subdivision of the State, as authorized by West Virginia  
9 Code, including county school districts, schools and facilities under the supervision of the West  
10 Virginia Board of Education (WVBE), and public charter schools;

11 (c) "District" means county school district and is subsumed under the category of local  
12 educational agency;

13 (d) "State board" means the West Virginia Board of Education;

14 (e) "County board" or "board" means a county board of education and is subsumed under  
15 the category of local educational agency;

16 (f) "State superintendent" means the state superintendent of Schools;

17 (g) "County superintendent" or "superintendent" means a local educational agency  
18 superintendent of schools;

19 (h) "Teacher" means a teacher, supervisor, principal, superintendent, public school  
20 librarian or any other person regularly employed for instructional purposes in a public school in  
21 this state;

22 (i) "Service person" or "service personnel", whether singular or plural, means any  
23 nonteaching school employee who is not included in the meaning of "teacher" as defined in this  
24 section, and who serves the school or schools as a whole, in a nonprofessional capacity, including  
25 such areas as secretarial, custodial, maintenance, transportation, school lunch and aides. Any  
26 reference to "service employee" or "service employees" in this chapter or chapter eighteen-a of  
27 this code means service person or service personnel as defined in this section;

28 (j) "Social worker" means a nonteaching school employee who, at a minimum, possesses  
29 an undergraduate degree in social work from an accredited institution of higher learning and who  
30 provides various professional social work services, activities or methods as defined by the state  
31 board for the benefit of students;

32 (k) "Regular full-time employee" means any person employed by a local educational  
33 agency who has a regular position or job throughout his or her employment term, without regard  
34 to hours or method of pay;

35 (l) "Career clusters" means broad groupings of related occupations;

36 (m) "Work-based learning" means a structured activity that correlates with and is mutually  
37 supportive of the school-based learning of the student and includes specific objectives to be  
38 learned by the student as a result of the activity;

39 (n) "School-age juvenile" means any individual who is entitled to attend or who, if not  
40 placed in a residential facility, would be entitled to attend public schools in accordance with: (1)  
41 Section five, article two of this chapter; (2) sections fifteen and eighteen, article five of this chapter;  
42 or (3) section one, article twenty of this chapter;

43 (o) "Student with a disability" means an exceptional child, other than gifted and exceptional  
44 gifted, pursuant to section one, article twenty of this chapter;

45 (p) "Casual deficit" means a deficit of not more than three percent of the approved levy  
46 estimate or a deficit that is nonrecurring from year to year; and

47 (q) "Athletic director" means a person employed by a local educational agency to work in  
48 a school's athletic program pursuant to section one-a, article two, chapter eighteen-a of this code.

**ARTICLE 10N. INFORMATION TECHNOLOGY ACCESS FOR THE BLIND AND  
VISUALLY IMPAIRED.**

**§18-10N-2. Definitions.**

1 The following words have the meanings indicated:

2 (a) "Access" means the ability to receive, use and manipulate data and operate controls  
3 included in information technology.

4 (b) "Blind or visually impaired individual" means an individual who:

5 Has a visual impairment that, even with correction, adversely affects a child's educational  
6 performance. The term includes both partial sight and blindness.

7 (c) "Information technology" means all electronic information processing hardware and  
8 software, including telecommunications.

9 (d) "Nonvisual" means synthesized speech, Braille and other output methods not requiring  
10 sight.

11 (e) "State agency" means the state or any of its departments, agencies or boards or  
12 commissions.

13 (f) "Telecommunications" means the transmission of information, voice, or data by radio,  
14 video or other electronic or impulse means.

## **ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.**

### **§18-20-1. Establishment of special programs and teaching services for students with exceptionalities.**

1 (a) In accordance with the following provisions, local educational agencies (LEAs),  
2 including all county boards of education, schools and facilities under the supervision of the State  
3 board, and public charter schools acting as their own local educational agency (LEA) throughout  
4 the state shall establish and maintain special education services for all exceptional school-age  
5 students between five and twenty-one years of age, including, but not limited to, services provided  
6 in general education classrooms, co-teaching classrooms, special education resource classes,  
7 self-contained classes, homebound services, and other placements determined appropriate to  
8 meet the unique needs of students with disabilities as determined by Individualized Education  
9 Program (IEP) teams. Special education programs must be provided to students until the end of  
10 the school year in which they reach the age of 21 years or until the student earns a regular high  
11 school diploma, whichever occurs first. Provisions shall be made for educating exceptional  
12 students (including students with disabilities and students identified as gifted or exceptionally  
13 gifted who differ from their non-disabled peers to the extent that they need specially designed  
14 instruction in order to access the curriculum and receive a free appropriate public education. The  
15 term "gifted" means exceptional intellectual abilities and potential for achievement that requires  
16 specially designed instruction and/or services beyond those normally provided in the general  
17 classroom instruction. The term "exceptional gifted" means those students in grades nine through

18 twelve meeting the criteria for gifted with at least one of the additional criteria as identified in State  
19 Board Policy 2419. Exceptional gifted students shall be referred for identification pursuant to state  
20 board policy. Each local education agency (LEA) is mandated to provide gifted education to its  
21 students according to guidelines promulgated by the state board and consistent with the  
22 provisions of this chapter. In addition, county boards of education may establish and maintain  
23 other educational services for exceptional students as the State Superintendent of Schools may  
24 approve.

25 (b) Each local educational agency (LEA) shall establish and maintain special educational  
26 programs which include services outside the school environment for students who are  
27 homebound due to injury or who for any other reason as certified by a licensed physician are  
28 homebound for a period that has lasted or will last more than three weeks. The state board shall  
29 adopt rules to advance and accomplish this program and to assure that all exceptional students  
30 in the state, including students in mental health facilities, residential institutions, foster care,  
31 correctional facilities, and private schools, will receive an education in accordance with the  
32 mandates of state and federal laws.

33 (c) Each local educational agency (LEA) shall adopt a policy that allows a student with  
34 disabilities, whose individualized education program provides for an alternate diploma to  
35 participate in the graduation ceremony with their same-grade classmates if requested in writing  
36 by their parent or legal guardian, or the student who is subject to this request if the student is of  
37 the age of majority. The local educational agency (LEA) shall also permit the student to continue  
38 receiving special education services after the graduation ceremony until the end of the school  
39 year in which the student reaches the age of 21 years. The local educational agency (LEA) may  
40 not terminate, deny, or declare the student ineligible for post-graduation ceremony special  
41 education services due to their participation in the graduation ceremony.

**§18-20-1a. Preschool programs for students with disabilities or developmental delays;  
rules and regulations.**

1 (a) Each local educational agency (LEA) shall develop a coordinated service delivery plan  
2 in accordance with standards for preschool programs for students with disabilities or  
3 developmental delays and begin services where plans are already developed with IEPs in place  
4 by the student's 3<sup>rd</sup> birthday. (b) Each local educational agency (LEA) shall establish and maintain  
5 a special educational program, including, but not limited to, universal Pre-K classes which  
6 integrate students with disabilities, special classes and services provided in out-of-school  
7 environments for all students with disabilities three through five years of age.

8 (c) As used in this section, the term "students with disabilities" means those eligible  
9 individuals who fall in any one of the disability categories as defined in federal or state special  
10 education regulations. Special education and related services for eligible students with a  
11 developmental delay will be provided as of the student's third birthday when eligibility is  
12 determined prior to the third birthday.

13 (d) This programming is available to all such students in the state, including in mental  
14 health facilities, residential institutions, and private entities who have entered into an agreement  
15 for collaborative programming with a local educational agency (LEA).

**§18-20-1b. Preschool programs for handicapped children; rules and regulations.**

1 [Repealed.]

**§18-20-1c. Integrated classrooms serving students with exceptional needs; and  
requirements as to the assistance, training and information to be provided to  
integrated classroom teachers.**

1 (a) The general education classroom teacher is entitled to the following when a student  
2 with exceptional needs is placed into an integrated classroom and the student's individualized  
3 education program (IEP) requires curriculum modifications, including delivery of, instruction or  
4 services and accommodations to be provided by the regular classroom teacher:

5 (1) Training provided pursuant to the rules developed by the State Board of Education, if  
6 requested by the regular classroom teacher to prepare the teacher to meet the exceptional needs

7 of individual students. Whenever possible, the training shall be provided prior to the placement.  
8 Where prior training is not possible, the training shall be commenced no later than ten days  
9 following the placement of the student into the integrated classroom. Unavoidable delays in the  
10 provision of training may not result in the exclusion of a student with exceptional needs from any  
11 class if the training cannot be provided in ten days;

12 (2) A signed copy of the individualized education program for the special education student  
13 prior to the placement of the student into the regular classroom. When possible, the receiving and  
14 referring teachers shall participate in the development of that student's individualized education  
15 program and shall also sign the individualized education program as developed. In all cases the  
16 teacher shall receive a copy of the individualized education program for the student with  
17 exceptional needs prior to or at the time of the placement of the student into the regular classroom.  
18 Any teacher or other member of the IEP team disagreeing with the individualized education  
19 program team's recommendation shall file a written explanation outlining his or her disagreement  
20 or recommendation;

21 (3) Participation by referring teachers in all eligibility committees and participation by  
22 referring and receiving teachers in all individualized education program committees which involve  
23 possible placement of a student with exceptional needs in an integrated classroom;

24 (4) Opportunity to reconvene the committee responsible for the individualized education  
25 program of the student with exceptional needs assigned to the regular classroom teacher. Any  
26 teacher may request an IEP meeting if the data after 45 days shows that a student is not in the  
27 least restrictive environment for academic growth. The meeting shall include all persons involved  
28 in a student's individualized education program and shall be held within twenty-one days of the  
29 time the request is made. If changes are made to a student's IEP, affecting services and/or  
30 placement, the services shall be available immediately upon the change in placement; and

31 (5) A teacher may not be penalized in any way for advocating for his or her student and  
32 the teacher may work with the family or guardian of the student to recommend local advocates,



33 share documentation and information, inform the guardians of his or her due process rights, and  
34 may call for an IEP meeting to review the information gathered from documentation to best  
35 address the student's special education needs; and

36 (6) Assistance from persons trained or certified to address a student's exceptional needs  
37 whenever assistance is part of the student's individualized education program as necessary to  
38 promote accomplishment of the program's goals and objectives: *Provided*, That aides in the area  
39 of special education cannot be reassigned to more than one school without the employee's  
40 consent.

41 (b) Except teachers already required to participate in the development of a student's  
42 individualized education program and sign it as provided in subdivision (2) of this section, all other  
43 teachers in whose class or program a student with exceptional needs is enrolled shall:

44 (1) Participate in the meeting to develop the student's individualized education program,  
45 or read and sign a copy of the student's individualized education program plan acknowledging  
46 that he or she has read and understands it; and

47 (2) Make appropriate accommodations and modifications for the student, if needed or  
48 identified, to help the student succeed in the class or program, and document, at minimum, the  
49 provision of these accommodations and modifications: *Provided*, That the general education  
50 teacher shall not be responsible for daily accommodation logs. The general education teacher  
51 shall only be responsible for acknowledging, at the end of each grading period, that each  
52 accommodation as required by the IEP has been met. All accommodations of the students shall  
53 be discussed before placement and it is the responsibility of the special education instructor to  
54 monitor progress: *Provided further*, That parents and guardians may request daily  
55 accommodation logs.

56 (3) Data to support the decision to place a student into an integrated classroom shall be  
57 included in the Individualized Education Plan.

58 (4) Nothing in this section may be construed as interfering with or limiting access to the  
59 Federal Individuals with Disabilities Education Act, and regulatory Due Process and complaint  
60 procedures available to students, families, and personnel.

(c) This requirement includes, but is not limited to, music education, art, driver education,  
health, foreign language, and other instruction offered.

61 (d) If the teacher provides a series of documentation within a 45-day grading period that  
62 shows that the student is not in their least restrictive environment, to the point that his or her  
63 placement does not ensure the student with exceptionalities makes appropriate progress toward  
64 meeting the student's annual goals, the teacher may begin all available Federal and State process  
65 and complaint procedures. The teacher may not be penalized in any way for advocating for his or  
66 her student and the teacher may work with the family or guardian of the student to recommend  
67 local advocates, share documentation and information, inform the guardians of his or her due  
68 process rights, and may call for an IEP meeting to review the information gathered from  
69 documentation and address the concerns to best adjust the IEP, as necessary, to best address  
70 the student's special education needs.

**§18-20-1d. Adoption of a state model for individualized education program.**

1 The state board shall adopt a basic model for individualized education programs to be  
2 used by all special education teachers throughout the public schools of the state when preparing  
3 individualized education programs for students with exceptional needs.

4 The model achieved through the online IEP platform shall comply with, but may not  
5 exceed, all state laws and federal laws, policies, rules, and regulations relating to providing  
6 education services to students with exceptional needs and shall allow for the individualization of  
7 programming based on the unique needs of each student.

8 No professional educator may be required to prepare or implement an individualized  
9 education program which exceeds the requirements of federal and state laws, policies, rules or  
10 regulations.

**§18-20-2. Providing suitable educational facilities, equipment and services.**

1           (a) Each county board shall provide suitable educational facilities, special equipment and  
2 special services that are necessary to implement the IEP of each student with a disability. Special  
3 services include provisions and procedures for finding and enumerating exceptional students of  
4 each type, diagnosis by appropriate specialists who will certify the student's need and eligibility  
5 for special education and make recommendations for treatment and prosthesis as may  
6 accommodate the disability, such as specially designed instruction by qualified teachers,  
7 transportation, and related services. Qualifications of teachers and therapists shall be in  
8 accordance with standards prescribed or approved by the state board.

9           (b) A county board may provide for educating resident exceptional children by contracting  
10 with other counties or other educational agencies which maintain special education facilities.  
11 Fiscal matters shall follow policies approved by the state board.

12           (c) The county board shall provide a four-clock-hour program of training for any teacher  
13 aide employed to assist teachers in providing services to exceptional children under this article  
14 prior to the assignment. The program shall consist of training in areas specifically related to the  
15 education of exceptional children, pursuant to rules of the state board. The training shall occur  
16 during normal working hours and an opportunity to be trained shall be provided to a service person  
17 prior to filling a vacancy in accordance with the provisions of section eight-b, article four, chapter  
18 eighteen-a of this code.

19           (d) The county board annually shall make available during normal working hours to all  
20 regularly employed teachers' aides twelve hours of training that satisfies the continuing education  
21 requirements for the aides regarding:

22           (1) Providing services to students who have displayed challenging or aggressive behavior  
23 or have demonstrated the potential for challenging or aggressive behavior; and

24           (2) Providing services to children diagnosed with autism spectrum disorder. This training  
25 shall be structured to permit the employee to qualify as an autism mentor after thirty hours of staff

26 development related to providing instructional support to students with autism including  
27 prevention and de-escalation techniques with alternative to restraint. The county board shall:

28 (A) Notify in writing all teachers' aides of the location, date and time when training will be  
29 offered for qualification as an autism mentor; and

30 (B) Consider partial or full reimbursement of tuition for any regularly employed or substitute  
31 teacher's aide who elects to attend this training.

32 (e) For any student whose individualized education plan (IEP) or education plan  
33 established pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C.  
34 §794, requires the services of a sign support specialist or an educational sign language interpreter  
35 I or II:

36 (1) Any educational sign language interpreter I or II assigned to assist that student is a  
37 related service provider member of the education team who participates in IEP meetings and  
38 works with the team to implement the IEP;

39 (2) A sign support specialist may be assigned to a student with an exceptionality other  
40 than deaf or hard of hearing if it is determined that the student needs signs to support his or her  
41 expressive communication; and

42 (3) A sign support specialist may be assigned to a student who is deaf or hard of hearing  
43 in lieu of an interpreter only if an educational sign language interpreter I or II is unavailable, and  
44 the sign support specialist is executing a professional development plan while actively seeking  
45 certification as an educational sign language interpreter I or II. After two years the sign support  
46 specialist may remain in the assignment only if an educational sign language interpreter I or II  
47 remains unavailable, and with an approved waiver by the West Virginia Department of Education.  
48 An employee in this situation is entitled to full payment of the costs of certification acquisition or  
49 renewal pursuant to the certification renewal provisions of section four, article two, chapter  
50 eighteen-a of this code.

51 (f) Every teacher of a student for whom a school or local educational agency (LEA)  
52 prepares a plan of accommodation pursuant to Section 504 of the Rehabilitation Act of 1973, as  
53 amended, 29 U.S.C. §794, shall receive specific instruction from the school regarding the  
54 contents and requirements of the plan and the teacher shall receive a copy of the written plan and  
55 every update thereto and the teacher shall sign an acknowledgment of receipt of each plan and  
56 update.

**§18-20-3. Local educational agency reports.**

1 (a) Each local educational agency (LEA) shall, after having received from the faculty  
2 Senates in its schools, the strategic plans mandated by subsection (13), section five, article five-  
3 a of this chapter, develop a local educational agency (LEA) strategic plan which includes the  
4 integration of students with exceptional needs into the regular classroom to the maximum extent  
5 appropriate and addresses steps to improve proficiency in all subgroups, including the students  
6 with disabilities subgroup, and submit said strategic plan to the State Superintendent of Schools  
7 annually.

8 (b) Each local educational agency (LEA) must maintain a continuum of services for  
9 students with disabilities including, but not limited to, general education full-time, which  
10 encompasses the integrated classroom and services in out of school environments. Relevant  
11 training shall be provided related to integrated education, basic and specialized health care  
12 procedures including the administration of medications, receiving or requesting reimbursement  
13 from state appropriated funds, and submitting annual reports and such other reports as the State  
14 Superintendent of Schools may require.

**§18-20-4. Examination and report by medical or other specialists.**

1 Each student prior to receiving a special education program shall be evaluated by a  
2 qualified professional, including but not limited to, a psychologist, educational specialist (reading  
3 specialist, speech and language clinician, or other specialists as required by the state Board of  
4 Education for specific areas of exceptionality) who shall report to the local educational agency

5 (LEA) superintendent of schools. The specialists' report shall include relevant data and  
6 recommendations for individualized interventions.

7 No educationally exceptional student eligible for a free appropriate public education shall  
8 be excluded from attending public schools.

**§18-20-5. Powers and duties of state superintendent.**

1 (a) The State Superintendent of Schools shall organize, promote, administer and be  
2 responsible for:

3 (1) Providing leadership and support to local educational agencies (LEA) in establishing,  
4 organizing and maintaining a continuum of services for students with exceptionalities.

5 (2) Cooperating with all other public and private agencies engaged in providing medical,  
6 mental health, educational, or respite services for students with exceptionalities, and in helping  
7 coordinate the services of such agencies.

8 (3) (A) Preparing the necessary rules, policies, and formulas for distribution of available  
9 appropriated funds, reporting forms and procedures necessary to define minimum standards in  
10 providing suitable facilities for education of students with exceptionalities and ensuring the  
11 employment, certification and approval of qualified teachers and therapists subject to approval by  
12 the State Board of Education: *Provided*, That no state rule, policy or standard under this article or  
13 any county board rule, policy or standard governing special education may exceed the  
14 requirements of federal law or regulation.

15 (B) A separate appropriation shall be made to the Department of Education to be  
16 disbursed to county boards and public charter schools authorized pursuant to §18-5G-1 *et seq.*  
17 of this code to assist them with serving exceptional students with high cost/high acuity exceptional  
18 needs that exceed the capacity of the local educational agency (LEA) to provide with funds  
19 available. Each local educational agency (LEA) shall apply to the state superintendent to  
20 receive this funding in a manner set forth by the state superintendent that assesses and takes  
21 into account varying acuity levels of the students with exceptionalities. Any remaining funds at the

22 end of a fiscal year from the appropriation shall be carried over to the next fiscal year. When  
23 possible, federal funds shall be disbursed to local educational agencies (LEAs) for this purpose  
24 before any of the state appropriation is disbursed. The state board shall promulgate a rule in  
25 accordance with the provisions of §29A-3B-1 *et seq.* of this code that implements the provisions  
26 of this subdivision relating to disbursing the funds to the local educational agencies (LEAs). The  
27 rule at least shall include a definition for "children with high acuity needs".

28 (4) Receiving from local educational agencies (LEAs), their applications, annual reports  
29 and claims for reimbursement from such moneys as are appropriated by the Legislature, auditing  
30 such claims, and preparing vouchers to reimburse said local educational agencies the amounts  
31 reimbursable to them.

32 (5) Assuring that all students with exceptionalities in the state, including students in mental  
33 health facilities, residential institutions, private schools receiving public funds and correctional  
34 facilities as provided in §18-2-13f of this code receive an education in accordance with state and  
35 federal laws: *Provided*, That the state superintendent shall also assure that adults in correctional  
36 facilities and regional jails receive an education to the extent funds are provided therefor and to  
37 the extent that those adult students are still eligible to receive a free appropriate public education  
38 (FAPE).

39 (6) Performing other duties and assuming other responsibilities in connection with this  
40 program as needed.

41 (b) Nothing contained in this section shall be construed to prevent any local education  
42 agency (LEA) from establishing and maintaining a full continuum of services for students with  
43 exceptionalities out of funds available from local revenue.

**§18-20-6. Advisory council for the education of exceptional children.**

1 In accordance with the Individuals with Disabilities Education Act, there shall be an  
2 advisory council for the education of students with exceptionalities which shall advise and consult

3 with the state Board of Education on matters pertinent thereto. The advisory council shall be  
4 composed of twelve members appointed by the state superintendent of schools, four of which  
5 shall be parents of students with exceptionalities utilizing or eligible for the services of the special  
6 educational programs established hereunder. Other members of the advisory council shall include  
7 at least one individual with a disability, teacher of students with exceptionalities, state education  
8 official, local education official, and an administrator of programs for students with  
9 exceptionalities. No more than two officers and employees of the state may be eligible for  
10 appointment to the advisory council. Members shall be appointed for terms of three years except  
11 for initial terms which may be for one, two or three years. Each year the terms of office of one  
12 third of the advisory council shall expire. The members of the advisory council shall be citizens  
13 and residents of this state, who by reason of their training, education or experience are qualified  
14 to carry out the functions of the advisory council under this article.

15           The advisory council shall elect a chairperson annually.

16           All members shall be eligible for reappointment. A member shall, unless sooner removed,  
17 continue to serve until the member's term expires and the member's successor has been  
18 appointed and has qualified. A vacancy caused by the death, resignation or removal of a member  
19 prior to the expiration of the member's term shall be filled only for the remainder of such term.

20           For the purpose of carrying out its functions under this article, six members of the advisory  
21 council shall constitute a quorum. The advisory council shall meet at least four times each year  
22 and at a time designated by the chairperson. Additional meetings may be held when called by the  
23 chairperson or when requested by six members of the advisory council.

24           The time and place of all meetings and agenda items must be publicly announced and  
25 available to the public upon request at least ten days prior to the meeting, and meetings must be  
26 open to the public. Official minutes must be kept of all council meetings and shall be made  
27 available to the public upon request.



28           Members of the council shall not receive any compensation for their services on the  
29 council, but shall be reimbursed any actual expenses incurred by them in carrying out their duties  
30 from funds appropriated to the Department of Education.

31           The council shall:

32           (a) Consult with the state Board of Education concerning and comment publicly upon any  
33 rules and regulations formulated by such board regarding the education of students with  
34 exceptionalities;

35           (b) Consult with and advise the state board and superintendent and the Legislature  
36 concerning any problems presented to the council including unmet needs within the state in the  
37 education of students with exceptionalities;

38           (c) Hold public meetings at such times and places as the advisory council deems  
39 appropriate;

40           (d) Periodically review and comment publicly upon the state plan for special programs and  
41 make any recommendations it may have concerning changes it may deem proper. Annually, the  
42 advisory council shall submit an annual report of its activities and suggestions to the state Board  
43 of Education and the superintendent, and shall make such report available to the public.

**§18-20-7. Exceptional children program compliance monitoring and accountability review  
teams.**

1           The state board shall establish exceptional children program compliance monitoring and  
2 accountability review teams to conduct cyclical on-site reviews of such programs at least every  
3 four years in each local educational agency (LEA) for the purpose of reviewing identification  
4 procedures, complying with any or all applicable laws and policies, delivering services, verifying  
5 enrollment and attendance reports, recommending changes, providing support for continuous  
6 improvement, and fulfilling such other duties as may be established by the state board.

7           Each monitoring and accountability review team unit shall consist of individuals with  
8 expertise in state and federal laws applicable to the education of students with disabilities, as well  
9 as the identification and delivery of special education services to students with disabilities.

**§18-20-8. Interagency plan for exceptional children; advisory council.**

1           (a) The state departments of human services and education shall enter into a collaborative  
2 agreement for the purpose of developing a statewide plan of coordinating comprehensive,  
3 multidisciplinary interagency programs providing appropriate early intervention services to all  
4 developmentally delayed and at-risk children, ages birth through five years, and their families.

5           This comprehensive, coordinated statewide plan shall include, at a minimum:

6           (1) Specification of the population to be served;

7           (2) The development of regulations and procedural safeguards;

8           (3) The development of procedures for administration, supervision and monitoring;

9           (4) The identification and coordination of all available resources; and

10          (5) The development of formal interagency agreements that define the financial  
11 responsibility of each agency and all additional components necessary to ensure meaningful  
12 cooperation and coordination.

13          (b) To assist in the development of such a plan, an advisory council consisting of twelve  
14 members shall be created. The departments of health, human services and education shall each  
15 appoint four members, and each shall include in such appointments one parent of a child with a  
16 disability under the age of six; one public or private provider of early intervention services for  
17 developmentally delayed and at-risk children; one individual involved in the education training of  
18 personnel who work with preschool special needs; and one other person.

19          The functions of the council shall include the following:

20          (1) Meet at least quarterly;

21          (2) Solicit information and opinions from concerned agencies, groups and individuals; and

22           (3) Advise and assist the departments of health, human services and education in the  
23 development of the statewide plan herein required.

24           Following the submission of the advisory council's first annual report, the joint committee  
25 on education is authorized and empowered to disband the council or alter its functions as it deems  
26 advisable.

27           The members of the council may be reimbursed for actual and necessary expenses  
28 incurred in the performance of their official duties in accordance with state law from appropriations  
29 to the departments of health, human services and education or available federal funds.

**§18-20-9. Gifted education caseload review.**

1           Notwithstanding any other provision of this code to the contrary, the teacher-student ratio  
2 for gifted, honors, and advanced placement education in grades nine through twelve shall be the  
3 same as regular classroom education and not as required for special education of students with  
4 exceptionalities: *Provided*, That this shall not apply to education of exceptional gifted, as defined  
5 in section one, article twenty of this chapter.

**§18-20-10. Dyslexia and dyscalculia defined.**

1           (a) The Legislature finds as follows:

2           (1) Reading difficulties are the most common cause of academic failure and  
3 underachievement;

4           (2) There are many students who demonstrate significant weaknesses with reading,  
5 writing and mathematics that are influenced by specific learning disabilities, including dyslexia,  
6 dyscalculia, and related learning difficulties. Of those who are referred to special education  
7 services in public schools, the majority are referred because of problems with language, reading,  
8 writing, or a combination of each;

9           (3) Teaching reading effectively, especially to students experiencing difficulty, requires  
10 considerable knowledge and skill. Informed and effective classroom instruction, especially in the

11 early grades, can prevent and relieve the severity of language difficulties, and significantly  
12 improve literacy development;

13 (4) For those students with specific learning disabilities, including dyslexia and dyscalculia,  
14 who need specialized instruction, competent intervention can lessen the impact of the disorder  
15 and help the student overcome the most debilitating symptoms;

16 (5) While programs for specific learning disabilities, including dyslexia and dyscalculia,  
17 that certify or support teachers, clinicians or specialists differ in their preparation methodologies,  
18 teaching approaches and organizational purposes, they should ascribe to a common set of  
19 professional standards for the benefit of the students they serve. Compliance with such standards  
20 can assure the public that individuals who serve students with specific learning disabilities in  
21 public schools are prepared to implement scientifically based and clinically proven practices;

22 (6) The International Dyslexia Association (IDA) offers widely-adopted and consistent  
23 standards to guide the preparation, certification, and professional development for teachers of  
24 reading and related literacy skills in classroom, remedial and clinical settings; and

25 (7) The basis of ascribing to common standards to benefit students with specific learning  
26 disabilities, including dyslexia and dyscalculia, requires recognizing common characteristics of  
27 the disabilities. The Legislature finds that the definitions of dyslexia and dyscalculia prescribed by  
28 the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders,  
29 Fifth Edition, Text Revision (DSM-5-TR) are the appropriate measures for recognizing  
30 characteristics of dyslexia and dyscalculia in students.

31 (b) The Legislature recognizes the following regarding dyslexia and dyscalculia:

32 (1) Dyslexia and dyscalculia are conditions that may be considered under the specific  
33 learning disability category, and their definitions are consistent with IDEA and state board policy.  
34 State board policy provides that "specific learning disability" means a disorder in one or more of  
35 the basic psychological processes involved in understanding or in using language, spoken or  
36 written, that may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or

37 to do mathematical calculations, including conditions such as perceptual disabilities, brain injury,  
38 minimal brain dysfunction, dyslexia and developmental aphasia;

39 (2) Dyslexia is an alternative term used to refer to a pattern of learning difficulties  
40 characterized by problems with accurate or fluent word recognition, poor decoding, and poor  
41 spelling abilities. If dyslexia is used to specify this particular pattern of difficulties, it is important  
42 also to specify any additional difficulties that are present, such as difficulties with reading  
43 comprehension or math reasoning; and

44 (3) Dyscalculia is an alternative term used to refer to a pattern of learning difficulties  
45 characterized by problems processing numerical information, learning arithmetic facts, and  
46 performing accurate or fluent calculations. If dyscalculia is used to specify this particular pattern  
47 of mathematic difficulties, it is important also to specify any additional difficulties that are present,  
48 such as difficulties with math reasoning or word reasoning accuracy.

49 (c) The state board shall:

50 (1) Develop a list of appropriate screeners, early assessments, and professional  
51 development that address and ensure that all students receive the necessary and appropriate  
52 screenings, evaluations, and early assessments for specific learning disabilities, including  
53 dyslexia and dyscalculia which contain information related to the following:

54 (A) Appropriate literacy and numeracy screening tools for identifying students who are at  
55 risk for academic difficulty in reading and/or math, including dyslexia and dyscalculia, and who  
56 require tiered intervention;

57 (B) Appropriate diagnostic assessment components that can be used to help identify and  
58 diagnose;

59 (C) Appropriate evidence-based instruction and intervention strategies for students who  
60 are at risk for academic difficulty in reading and/or mathematics, including students who exhibit  
61 possible indicators of risk for dyslexia and/or dyscalculia;

62 (D) Appropriate accommodations for students who exhibit possible indicators of risk for,  
63 or who have been diagnosed with, dyslexia, dyscalculia, and/or other specific learning disabilities;

64 (E) Connecting a multi-tiered system of support framework to specific learning disability  
65 identification; and

66 (F) The use of the terms "dyslexia" and "dyscalculia" in Individualized Education  
67 Programs, and in evaluation reports by professionals qualified to render these diagnoses; and

68 (2) Explore options to assist any local educational agency (LEA) with acquiring approved  
69 literacy and/or numeracy screening tools: *Provided*, That the local educational agency is unable  
70 to acquire its own literacy and/or numeracy screening tools that are consistent with state  
71 educational agency recommendations;

72 (3) Adopt and make publicly available guidelines for including dyslexia diagnostic  
73 evaluation components in comprehensive assessments for special education and related  
74 services. These guidelines shall:

75 (A) Recommend at least one person on each multidisciplinary evaluation team be  
76 knowledgeable about dyslexia and be able to recognize when a dyslexia diagnostic component  
77 should be requested in the evaluation process;

78 (B) Recommend that a diagnosis of dyslexia be given when the data from the  
79 comprehensive evaluation components indicate such a diagnosis is appropriate;

80 (C) Include recommendations for how to document a dyslexia diagnosis in an IEP; and

81 (D) Include that a Section 504 Plan be considered if a student has a dyslexia diagnosis  
82 but does not qualify for special education services;

83 (4) Adopt and make publicly available a list of approved diagnostic assessment  
84 components that can be used to help identify and diagnose dyslexia during comprehensive  
85 multidisciplinary evaluations;

86 (5) Adopt and make publicly available guidelines and a list of resources for dyslexia  
87 intervention practices that are evidence-based, including practices consistent with the Science of

88 Reading and Structured Literacy, that are explicit, direct, sequential, systematic, and  
89 multisensory;

90 (6) Adopt and make publicly available a list of recommended accommodations and  
91 instructional practices to be used with students who exhibit signs of dyslexia or have been  
92 diagnosed with dyslexia. These shall reflect contemporary research and guidelines of the Science  
93 of Reading related to dyslexia. These recommendations shall include, but are not limited to,  
94 structured literacy approaches that are explicit, direct, sequential, systematic, and multisensory;

95 (7) Adopt and make publicly available a list of available professional development  
96 resources that support evidence-based intervention for struggling readers, including the Science  
97 of Reading and Structured Literacy. This list shall be made publicly available and include  
98 resources endorsed or espoused by technical assistance centers, research organizations, and  
99 professional associations that support the Science of Reading and Structured Literacy regarding  
100 dyslexia, including the International Dyslexia Association; and

101 (8) Develop and make publicly available informational materials related to dyslexia for  
102 parents and guardians that include information about the multidisciplinary evaluation process,  
103 updated regularly.

104 (d) The local education agency shall:

105 (1) Develop a system for parents and guardians to annually receive digital and print  
106 informational materials related to dyslexia;

107 (2) Ensure at least one educator at each school is trained to administer, score, and  
108 interpret the data from the literacy screening instrument or instruments, and to recognize signs of  
109 dyslexia;

110 (3) Notify parents of the results of these literacy screeners while emphasizing that not all  
111 students who perform poorly on these screening instruments have dyslexia. Also, not all students  
112 with dyslexia will perform poorly on the screeners;

113           (4) Provide evidence-based reading intervention to students who exhibit academic risk in  
114 future reading performance, including indicators of dyslexia;

115           (5) Conduct comprehensive assessments to determine eligibility for special education  
116 services when a student does not respond or only minimally responds to intervention strategies  
117 and/or when there is a suspected disability of dyslexia. If a determination is made through the  
118 evaluation process that a student needs to be assessed for dyslexia, provide assessment and  
119 diagnosis as necessary per West Virginia Department of Education guidelines;

120           (6) Employ appropriate accommodations and instructional practices recommended by the  
121 West Virginia Department of Education based upon the students' needs. When those needs are  
122 related to dyslexia, these accommodations and instructional techniques or strategies shall also  
123 meet the West Virginia Department of Education-approved guidelines for dyslexia  
124 accommodations and instructional practices;

125           (7) Require all elementary educators, special educators, reading interventionists or  
126 specialists, and other personnel determined appropriate by the local education agency to receive  
127 professional development on the possible signs of dyslexia and the related classroom  
128 accommodations and instructional practices approved by the West Virginia Department of  
129 Education;

130           (8) Administer a literacy screening instrument or instruments to students in grades 3-5  
131 who transfer from a local education agency where literacy screening instruments were not  
132 administered. If the literacy screening instrument indicates a deficit in reading, the school will  
133 provide intervention according to current policy. If a student does not respond or only minimally  
134 responds to intervention, a referral for multidisciplinary evaluation shall be made; and

135           (9) Require all appropriate personnel, as determined by the local education agency, to  
136 annually receive professional development relating to the possible indicators for dyslexia and  
137 dyscalculia, accommodations and modifications in the classroom environment, proper  
138 instructional practices for educating students who exhibit possible indicators of risk for, or who



139 have been, diagnosed with dyslexia, dyscalculia, and/or other specific learning disabilities. Local  
140 education agencies may create more than one module to satisfy the requirements of this  
141 subdivision.

142 (e) The state board shall promulgate a rule pursuant to §29A-3B-1 *et seq.* of this code to  
143 implement this section. In addition to other provisions to implement this section, the rule shall at  
144 least include the following:

145 (1) If a student is reading substantially below grade level according to formal and/or  
146 informal assessments, including benchmark assessments, and has never been evaluated for  
147 special education, a request may be made by a school, parent, or teacher for the administration  
148 of an age- or grade-appropriate West Virginia Department of Education-approved literacy  
149 screening instrument or instruments. These points of data may be used to either start intervention  
150 and progress monitoring per West Virginia Department of Education guidance, or make a referral  
151 for a special education evaluation;

152 (2) Acknowledgement that each local education agency may have one certified Literacy  
153 and Numeracy Specialist in each local educational agency, or another appropriate professional  
154 designated by relevant local educational agency leadership, to be appropriately trained, or be  
155 seeking appropriate training, in intervention, accommodations, and instructional strategies for  
156 students with dyslexia or a related disorder. The trained individual(s) shall serve as an advisor  
157 and trainer for dyslexia and related disorders for the local educational agency. The reading  
158 specialist(s) or other designated professional(s) shall have an understanding of the definition of  
159 dyslexia and a working knowledge of:

160 (A) Techniques to help a student on the continuum of skills with dyslexia;

161 (B) Dyslexia characteristics that may manifest at different ages and levels;

162 (C) The basic foundation of the keys to reading, including multisensory, explicit,  
163 systematic, and structured literacy instruction; and

164 (D) Appropriate interventions, accommodations, and assistive technology supports for  
165 students with dyslexia.

166 (f) Legislative Oversight Commission on Education Accountability (LOCEA):

167 (1) The final draft of the state board's literacy and numeracy rule shall be submitted to the  
168 Legislative Oversight Commission on Education Accountability (LOCEA) by August 1, 2023.

169 (2) The following shall be submitted to the Legislative Oversight Commission on Education  
170 Accountability (LOCEA) annually:

171 (A) Disaggregated data concerning literacy and numeracy patterns statewide;

172 (B) Statewide interventions implemented; and

173 (C) The statewide professional development plan.

174 (3) Progress monitoring regarding K-2 screening and 3-8 formative assessments shall be  
175 presented to the Legislative Oversight Commission on Education Accountability (LOCEA) after  
176 data is collected for the beginning, middle, and end of the school year.

**§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  
10 of 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  
14 for 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  
19 by August 1, 2023, the public school may apply to the state Department of Education for a waiver  
20 to extend that date to August 1, 2024.

21           (3) The principal of the school or other school administrator whom the principal assigns  
22 as a designee shall be the custodian of the video camera and audio recording device, all  
23 recordings generated by the video camera and audio recording device, and access to those  
24 recordings 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  
70 no 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  
108 or 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  
129 to be made under §49-2-803 of this code, that report shall be made by the reviewer pursuant to  
130 that 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,  
132 and the recording reveals a student violating a disciplinary code or rule of the school, which  
133 violation is not related to the alleged incident for which the review is occurring, and which violation  
134 is not 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  
138 a public school or local educational agency (LEA) incidentally reviews a recording under this  
139 section if the contractor or employee of a public school or local educational agency (LEA) is  
140 performing job 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 §1232g, 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  
159 days 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  
167 arise relating to the implementation of the requirements of this section.



The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

*Steve Harris*

Clerk of the House of Delegates

*Julia Linn*

Clerk of the Senate

OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

2024 MAR 26 P 2: 34

FILED

Originated in the House of Delegates.

In effect ninety days from passage.

*Ben Hanger*

Speaker of the House of Delegates

*Cy Bles*

President of the Senate

The within is *approved* this the *26th*  
Day of *March*, 2024.

*James Justice*  
Governor



PRESENTED TO THE GOVERNOR

MAR 21 2024

Time 10:42am