



January 28, 2022

I am writing on behalf of Disability Rights of West Virginia, the designated Protection and Advocacy Agency for persons with disabilities in West Virginia. My purpose in writing is to provide information regarding affirmative steps the State of West Virginia has taken regarding the placement and usage of video equipment in certain special education classrooms.

In the fall of 2018, the mother of a special needs student enrolled at Berkeley Heights Elementary School in Martinsburg, West Virginia became concerned after discovering unexplained bruises on her daughter's arm. Suspecting possible abuse, she placed a small recording device in her daughter's hair. The recordings subsequently revealed systematic abuse by a teacher and two teachers aids. The teacher and both aids eventually resigned from their positions, were criminally charged with misdemeanor offenses, and also faced severe civil penalties.

There was, however, a positive consequence from these horrible acts. Widespread publicity of the Berkeley Heights Elementary incidents brought the issue into the public forum. During the 2019 Regular Session of the West Virginia Legislature, Senate Bill 632 was introduced for legislative action. The bill was co-sponsored by nearly one-third of the state senators.

S.B. 632 provided for the placement of video cameras in self-contained classrooms which, as per the language of the bill, meant classrooms in public schools where a majority of the students were provided special education instruction. The bill contained a number of provisions relating to the placement of the cameras; designated the principal as the custodian of the cameras and recordings; included a requirement that a written explanation be provided to the principal and the county board of education for any interruptions in records; established written notice requirements for parents, school boards and educators of the placement of such cameras; and established guidelines for retention and viewing of recordings from the classrooms.

S.B. 632 passed the West Virginia Senate by a vote of 30 - 4, and the House of Delegates by a margin of 91 - 2 (7 not voting). The bill was signed into law by Governor Jim Justice on March 22, 2019, with an effective date of July 1, 2019. The bill is codified in West Virginia Code, § 18-20-11 (2019).

Removing Barriers to Opportunity and Equality

The Protection & Advocacy System for the State of WV
Disability Rights of West Virginia • 1207 Quarrier Street, Suite 400 • Charleston, WV 25301
800.950.5250 • 304.346.0847 • contact@drofwv.org

The enactment of this legislation has already shown to be effective. Recently, there have been highly publicized cases in West Virginia demonstrating the effectiveness of video equipment in bringing to light incidents of child abuse which, but for the use of the equipment, may have gone completely undiscovered.

In May of 2021 a criminal investigation was initiated at Horace Mann Middle School in Charleston, West Virginia after a teacher and two classroom aides were observed on camera physically and emotionally abusing several special education students. The alleged abusers face pending criminal charges, and the parents of the student victims have filed civil lawsuits against the alleged offenders and the Kanawha County Board of Education.

Similarly, in November of 2021 a special needs teacher at Holz Elementary School in Charleston was indicted for twenty-three (23) misdemeanor counts of battery and a single count of verbal abuse of a noncommunicative child. The indictment followed a months-long investigation that began in September of 2021 and was based primarily on incidents that were caught on the cameras in the special education classroom. As with the Horace Mann incidents, the former teacher and the Board of Education are the subjects of civil lawsuits.

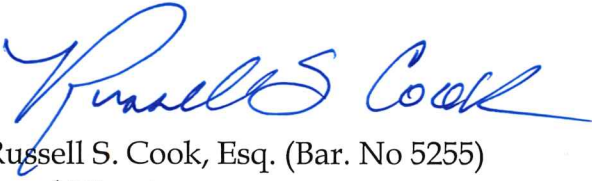
The importance of the presence of video equipment in these cases cannot be understated. Many of these children in these classrooms are nonverbal and are therefore unable to report instances of verbal abuse, as well as physical abuse which may not leave physical marks or signs. For example, video from the Holz Elementary allegedly shows the teacher slamming a child head against a school desk. Without the video record, and without the child's disclosure of the incident, this abuse would go undiscovered.

The State of West Virginia has learned a valuable lesson as to the value of such video equipment. West Virginia continues to understand the importance of video equipment for the protection of children with special needs. On January 20, 2022, the Senate Education Committee advanced Senate Bill 261, which, among other provisions, amends the current video camera bill to extend the amount of time that the video is required to be retained.

West Virginia's adoption of legislation requiring the placement of video cameras in special education classroom was brought about through appalling circumstances. The enactment of the W. Va. Code § 18-20-11 has, however, proven to be a powerful tool for the detection of alleged abuse and/or neglect of special education students, and the prosecution of the offenders.

Please feel free to contact me at (304) 391-5052 or by email at rcook@drowfvv.org if you have any questions about this matter.

Sincerely,

A handwritten signature in blue ink that reads "Russell S. Cook". The signature is fluid and cursive, with the first name "Russell" and last name "Cook" clearly legible.

Russell S. Cook, Esq. (Bar. No 5255)
Legal Director
Disability Rights West Virginia
1207 Quarrier Street, Suite 400
Charleston, West Virginia 25301