

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **House Bill 5495**

By Delegates Stephens, G. Ward, Bell, Ferrell, Pritt,

Crouse, Drennan, and Dittman

[Introduced February 13, 2026; referred to the

Committee on Education]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,  
 2 designated §18-2L-1, §18-2L-2, §18-2L-3, §18-2L-4, §18-2L-5, §18-2L-6, and §18-2L-7,  
 3 all relating to creating certain requirements and accountability procedures regarding a  
 4 student's use of software in a public school; defining terms; requiring the State Board of  
 5 Education to create a statewide digital privacy agreement; ensuring that all software used  
 6 in a public school is executed under the statewide digital privacy agreement and  
 7 academically effective; creating a master list for software used in public schools; creating a  
 8 list of approved software; providing for the ability to independently verify software as  
 9 academically effective; enforcing compliance with the requirements of this section through  
 10 periodic audits; creating a process for a parent to submit a complaint; creating rules to  
 11 implement the requirements of this section; requiring a County Board of Education and the  
 12 State Board of Education to execute the statewide digital privacy agreement for all  
 13 software contracts; verifying certain software is academically effective; requiring a County  
 14 Board of Education to notify parents of all software a public school uses during the school  
 15 year; requiring the state board to consult with the Office of the Attorney General; requiring  
 16 a vendor to execute the statewide digital privacy agreement for all software contracts with  
 17 a contracting entity; and demonstrating that the vendor's software is academically  
 18 effective.

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

**ARTICLE 2L. SOFTWARE USAGE IN PUBLIC SCHOOLS.**

**§18-2L-1. Definitions.**

1 (a) As used in this section:

2 (1) "Academically effective" means software that:

3 (A) Is designed to support student learning, skill development, or academic performance in  
 4 the intended subject area, as supported by:

5 (i) Peer-reviewed research on similar educational interventions;

- 6 (ii) Evidence of positive outcomes in comparable educational settings;
- 7 (iii) Sound pedagogical principles recognized in the field of education; or
- 8 (iv) Independent evaluation demonstrating educational value;
- 9 (B) Aligns with the public education core standards, where applicable to the software's
- 10 educational purpose;

11 (C) Demonstrates instructional value through:

- 12 (i) Supporting differentiated instruction;
- 13 (ii) Providing formative assessment and feedback;
- 14 (iii) Engaging students in active learning;
- 15 (iv) Supplementing teacher instruction; or
- 16 (v) Other recognized effective educational practices;

17 (D) Does not employ design features that primarily:

- 18 (i) Distract from learning objectives;
- 19 (ii) Prioritize entertainment over educational content; or
- 20 (iii) Undermine teacher instructional authority; and

21 (E) Has potential to produce positive academic outcomes when used appropriately in a  
22 classroom setting as part of a comprehensive instructional program.

23 (2)(A) "Addictive design feature" means a feature or component of a digital or online  
24 product that encourages or increases a student's frequency, time spent, or engagement with the  
25 product.

26 (B) "Addictive design feature" includes the following features:

- 27 (i) Infinite scroll or autoplay that continues beyond the educational task or lesson;
- 28 (ii) Points, badges, or other gamification rewards tied primarily to time spent on the product  
29 rather than learning achievement or academic progress;
- 30 (iii) Persistent notifications prompting re-engagement when the product is not actively in  
31 use, unless directly related to assigned schoolwork or teacher communication;

32 (iv) Personalized recommendation systems designed to maximize time-on-platform rather  
33 than learning outcomes; or

34 (v) Engagement metrics, streaks, or social comparison features designed to create fear of  
35 missing out or compulsive checking behavior.

36 (C) "Addictive design feature" does not include:

37 (i) Progress indicators or achievement recognition tied to demonstrated learning;

38 (ii) Recommendations of next lessons or learning activities based on curriculum  
39 progression or mastery of prerequisites;

40 (iii) Notifications about upcoming assignments, deadlines, or teacher feedback; or

41 (iv) Features that encourage productive academic engagement rather than passive  
42 consumption.

43 (3)"Clickstream data" means data a County Board of Education or third-party provider  
44 collects from a student's use of an online service, application, or device that records the student's  
45 navigation or sequence of actions.

46 (4) "Contracting entity" means the following entities if that entity contracts with a vendor for  
47 software:

48 (A) A County Board of Education;

49 (B) The State Board; or

50 (C) Any other entity receiving state funds.

51 (5) "Digital privacy agreement" means a contract between a contracting entity and a digital  
52 provider that:

53 (A) Ensures compliance with the West Virginia Department of Education policy on Data  
54 Privacy and Security; and

55 (B) Governs access, use, protection, retention, and disclosure of student data.

56 (6)(A) "Educational purpose" means a purpose directly related to:

57 (i) Student instruction;

- 58 (ii) Assessment of a student; or
- 59 (iii) School operations necessary for instruction of a student.
- 60 (B) "Educational purpose" does not include:
- 61 (i) Marketing;
- 62 (ii) Advertising;
- 63 (iii) Behavioral profiling; or
- 64 (iv) Any other commercial purpose.
- 65 (7) "Independently verified" means software that an impartial third party, with no financial or
- 66 contractual relationship with the vendor and with demonstrated expertise appropriate to the type of
- 67 software, checks for:
- 68 (A) Safety;
- 69 (B) Effectiveness; and
- 70 (C) Compliance with the requirements of this section.
- 71 (8) "Instructional software" means software that is safe, legal, and effective because the
- 72 software is:
- 73 (A) Part of a digital privacy agreement; and
- 74 (b) Verified for academic effectiveness in accordance with the requirements of this section.
- 75 (9) "School-issued device" means any electronic hardware device a County Board of
- 76 Education provides to a student for educational use.
- 77 (10)(A) "Software" means any application, web-based service, plug-in, or other code-
- 78 based product, regardless of whether the application is free or for purchase, that:
- 79 (i) Runs on or is accessible from a school-issued device or from a student-owned device
- 80 that the student uses for the student's education; and
- 81 (ii) A County Board of Education assigns, requires, recommends, installs, or otherwise
- 82 makes available for student use in connection with classroom instruction.
- 83 (B) "Software" includes software an individual uses in connection with school-related

84 purposes for:

85 (i) Instruction;

86 (ii) Assessment;

87 (iii) Communication;

88 (iv) Collaboration;

89 (v) Enrichment; or

90 (vi) Recreation.

91 (C) "Software" does not include physical, electronic hardware.

92 (11) "Statewide digital privacy agreement" means the digital privacy agreement the state  
93 board creates.

94 (12) "Student data" includes a student's:

95 (A) Personally identifiable information;

96 (B) Metadata, device identifiers, and clickstream data;

97 (C) Behavioral, engagement, or usage data; and

98 (D) Information a software collects, generates, or infers in the course of student use.

99 (13) "Sub-processor" means a third-party vendor or service that a primary data process or  
100 engages to process personal data on the processor's behalf.

101 (14) "Vendor" means an entity that provides software, digital tools, digital services, or  
102 related technology to a contracting entity for student use, whether free or paid.

103 (15) "Voice-print" means a digital representation of an individual's voice that a person  
104 creates, derives, or uses to identify or authenticate the individual.

**§18-2L-2. Statewide digital privacy agreement.**

1 (a) The State Board shall create a statewide digital privacy agreement that:

2 (1) Governs student use of software and digital services in public schools;

3 (2) Complies with the requirements of the West Virginia Department of Education policy on

4 Data Privacy and Security, including:

- 5           (A) Data minimization;
- 6           (B) Prohibitions on targeted advertising;
- 7           (C) Limits on secondary data use;
- 8           (D) Security safeguards;
- 9           (E) Breach notifications;
- 10          (F) Data retention and deletion requirements; and
- 11          (G) Directory information protections;
- 12          (3) Complies with the sensitive materials requirements;
- 13          (4) Unless a County Board of Education obtains parental consent, that software may not
- 14 display, recommend, algorithmically generate, or provide access to any instructional or
- 15 supplemental content that constitutes content relating to reproduction, contraception, sexual
- 16 activity, or sexually transmitted diseases in the context of a health course;
- 17          (5) Prohibits addictive design features;
- 18          (6) Prohibits a vendor from collecting, storing, or analyzing:
- 19           (A) Biometric identifiers, except for:
- 20           (i) Voice recognition for speech-to-text accessibility features;
- 21           (ii) Facial recognition for identity verification with parental consent; or
- 22           (iii) Other biometric data explicitly required for educational accessibility;
- 23           (B) Behavioral or emotional signals for purposes of:
- 24           (i) Psychological profiling;
- 25           (ii) Emotional manipulation;
- 26           (iii) Commercial marketing or advertising; or
- 27           (iv) Any purpose other than improving educational outcomes;
- 28          (C) Voice-prints or keystroke dynamics for a purpose other than:
- 29           (i) Speech-enabled learning applications;
- 30           (ii) Accessibility accommodations;

- 31 (iii) Typing instruction or assessment; or
- 32 (iv) Preventing academic dishonesty; and
- 33 (d) Precise geolocation, except for:
- 34 (i) School bus tracking applications;
- 35 (ii) Emergency safety features; or
- 36 (iii) Field trip management with parental consent;
- 37 (7) Provides that any data collected:
- 38 (A) Is disclosed in the statewide digital privacy agreement;
- 39 (B) Is the minimum amount necessary for the educational purpose;
- 40 (C) Is not used for commercial purposes; and
- 41 (D) Is subject to strict security safeguards;
- 42 (8) Unless the software used in the classroom is integral to the subject matter of the
- 43 course, prohibits software from:
- 44 (A) Using student data to train machine-learning models for commercial purposes
- 45 unrelated to improving educational outcomes for students;
- 46 (B) Employing artificial intelligence systems that analyze a student's emotions, behavior, or
- 47 attention for purposes other than:
- 48 (i) Providing personalized academic instruction, tutoring, or assessment;
- 49 (ii) Identifying a student who may need additional academic support;
- 50 (iii) Adapting educational content to a student's demonstrated learning needs; or
- 51 (iv) Measuring academic progress and learning outcomes;
- 52 (C) Generating or recommending content intended to influence a student's personal,
- 53 political, or religious beliefs; or
- 54 (D) Using persuasive design techniques, behavioral nudges, or psychological
- 55 manipulation to maximize time-on-platform rather than learning outcomes;
- 56 (9) Requires a vendor to:

- 57 (A) Use encryption for data in transit and at rest;
- 58 (B) Store and process all student data within the United States;
- 59 (C) Disclose all sub-processors and obtain approval before use;
- 60 (D) Prohibit background data collection when software is minimized or inactive; and
- 61 (E) Disclose to the contracting entity all data elements collected, third-party recipients  
62 embedded libraries and analytics tools, device-level permissions, and artificial intelligence  
63 components and functions;
- 64 (10) Prohibits software from accessing a device's camera and microphone unless:
  - 65 (A) Necessary for an educational function; and
  - 66 (B) Disclosed in the digital privacy agreement;
- 67 (11) Prohibits a vendor from conditioning access, features, pricing, or support on a:
  - 68 (A) Usage quota; or
  - 69 (B) Screen-time expectation; and
- 70 (12) Includes a termination-for-cause provision that:
  - 71 (A) Requires the vendor to cure any violation of the digital privacy agreement within a  
72 timeline the state board establishes;
  - 73 (B) Authorizes the contracting entity to terminate the contract if the vendor fails to cure the  
74 violation of the digital privacy agreement required;
  - 75 (C) Provides that the termination may occur without penalty, early-termination fee, or  
76 additional obligation to the contracting entity;
  - 77 (D) Requires the vendor to acknowledge that termination under this section does not  
78 constitute a breach by the contracting entity; and
  - 79 (E) When a vendor fails to cure, authorizes the State Board to direct the contracting entity  
80 to terminate the contract or terminate the contracting entity's participation in the contract on the  
81 contracting entity's behalf.

**§18-2L-3. Vendor duties.**

1 (a)(1) Before the vendor allows an individual to install, assign, recommend, or otherwise  
2 make the software available for student use, the vendor shall:

3 (A) Execute the statewide digital privacy agreement; and

4 (B) Procure an independent verification of the software to demonstrate that the vendor's  
5 software is academically effective.

6 (2) A vendor may make software available for use to a contracting entity on a provisional  
7 basis for up to 24 months from the initial deployment of the software if:

8 (A) The vendor submits a verification plan to the State Board within 90 days of initial use,  
9 including:

10 (i) A proposed methodology for demonstrating academic effectiveness;

11 (ii) A timeline for completion of independent verification; and

12 (iii) Interim measures to assess educational value; and

13 (iv) The vendor demonstrates to the state board that the software:

14 (I) Aligns with state core education standards;

15 (II) Has research-supported pedagogical design; or

16 (III) Has been successfully used in other comparable educational settings.

17 (3) During the provisional period, the contracting entity and vendor shall collect data  
18 necessary for academic effectiveness verification.

19 (b) A vendor shall:

20 (1) Include the following in the process of obtaining the independent verification:

21 (A) A description of the evaluator's research or evaluation methods;

22 (B) Identification of the student populations, grade levels, or instructional contexts under  
23 evaluation;

24 (C) Evidence that the vendor did not produce, fund, or influence the results;

25 (D) Disclosure of any limitations in the evidence or methodology; and

26 (E) A determination of whether the software provides educational value sufficient to justify

27 classroom use;

28 (2) Provide the State Board access to all records, documents, and data necessary to  
29 complete the audits described in this section; and

30 (3) Execute the statewide digital privacy agreement before providing software or digital  
31 services to a contracting entity.

32 (c) A vendor may appeal a finding of noncompliance through the administrative process  
33 the State Board establishes.

34 (d) A vendor may not alter, supplement, replace, or modify the statewide digital privacy  
35 agreement.

36 (e) A vendor-proposed privacy agreement, end-user license agreement, click-through  
37 terms, terms of service, or substitute contract is void and unenforceable with respect to student  
38 data or student use.

39 (f) A vendor may not request or require a parent or contracting entity:

40 (1) Waive any right under this part;

41 (2) Agree to arbitration that limits this part; or

42 (3) Accept liability limitations inconsistent with this part.

**§18-2L-4.**

**Duties.**

1 (a) A contracting entity shall:

2 (1) Execute the statewide digital privacy agreement for any software the contracting entity  
3 adopts;

4 (2) Unless the entity is contracting for a software that the State Board has previously  
5 approved and listed on the list described in this section, obtain documentation of a vendor's  
6 independent verification, described in this section, demonstrating that the software is  
7 academically effective before the contracting entity makes the software available for an individual  
8 to:

9 (A) Install;

- 10           (B) Assign;
- 11           (C) Recommend; or
- 12           (D) Make available for student use;
- 13           (3) Submit to the State Board for listing:
- 14           (A) The executed statewide digital privacy agreement; and
- 15           (B) If necessary, the verification documentation described in this section; and
- 16           (C) Provide the State Board access to all records, documents, and data necessary to
- 17 complete the audits described in this section.

18           (b) A contracting entity may not alter, supplement, replace, or modify the statewide digital  
 19 privacy agreement.

20           (c) A contracting entity may appeal a finding of noncompliance the State Board  
 21 issues through the administrative process the state board establishes.

22           (d)(1) A contracting entity shall ensure that a digital privacy agreement between a vendor  
 23 and a contracting entity executed before July 1, 2026, complies with the requirements of this  
 24 section before July 1, 2029.

25           (2) Between July 1, 2026, and July 1, 2029, a contracting entity may continue to use an  
 26 existing digital privacy agreement if the contracting entity actively works toward compliance with  
 27 the statewide digital privacy agreement.

**§18-2L-5. State board and local education agencies compliance and duties.**

1           (a)(1) The State Board shall:

2           (A) Ensure that software is not available for use in student instruction without an  
 3 independent evaluator verifying the software for academic effectiveness;

4           (B) Maintain a public list of independent evaluators that meet the standards described in  
 5 this section;

6           (C) Create and maintain a statewide master list of software that students use in public  
 7 schools;

8 (D) Place software on the master list described in this section when a contracting entity:  
9 (i) Executes a statewide digital privacy agreement; and  
10 (ii) Obtains verification that the software is academically effective; and  
11 (iii) Create and maintain a list of all software the state board approves for student use  
12 under this section.

13 (2) A software's exclusion from the master list does not prevent a contracting entity from  
14 using the software if the software meets the requirements of this section.

15 (3) A software's inclusion on the master list described in this section does not constitute  
16 state board approval or endorsement.

17 (b)(1) The State Board shall:

18 (A) Monitor and enforce compliance with this section through periodic audits of:

19 (i) Contracting entities; and

20 (ii) Vendors;

21 (B) Beginning July 1, 2029, audit each County Board of Education, at least once every  
22 three years, to confirm that, for every software product students use that is not on the State Board  
23 approved list described in this section, the County Board of Education has:

24 (i) Executed the statewide digital privacy agreement; and

25 (ii) Obtained the verification documentation;

26 (C) In performing the audits required under this section, review vendor compliance with:

27 (i) The requirements of this part; and

28 (ii) West Virginia Department of Education policy on Data Privacy and Security; and

29 (iii) Issue a written compliance report, following each audit required under this section,  
30 identifying:

31 (I) Findings of compliance and noncompliance;

32 (II) Required corrective actions; and

33 (III) Applicable timelines for remediation.

34 (c) The State Board may publish audit findings under this section to:

35 (1) Promote transparency; and

36 (2) Make the public aware of compliant and noncompliant practices.

37 (d) If the State Board finds a County Board of Education to be out of compliance with the  
38 requirements of this section, the County Board of Education shall:

39 (1) Discontinue use of the noncompliant software;

40 (2) Remedy the source of the noncompliance; and

41 (3) implement a corrective-action plan to prevent future violations.

42 (d)The State Board shall provide:

43 (1) Technical guidance and transition support to contracting entities and vendors regarding  
44 the transition to the statewide digital privacy agreement and academic effectiveness  
45 requirements; and

46 (2) Implementation timelines and instructions necessary for contracting entities to achieve  
47 compliance.

48 (e)The state board may prioritize technical guidance and transition support for:

49 (1) Vendors executing digital privacy agreements with multiple contracting entities;

50 (2) Statewide or consortium contracts; or

51 (3) Software with known privacy, safety, or effectiveness concerns.

52 (f) A County Board of Education may not use software other than instructional software in a  
53 public school for instruction of a student.

54 (g) Before a County Board of Education enters into a digital privacy agreement with a  
55 vendor, the County Board of Education shall ensure that the digital privacy agreement meets each  
56 of the requirements of the statewide digital privacy agreement the State Board creates under this  
57 section.

58 (h) A County Board of Education shall:

59 (1) Provide a parent, annually, with a list of all instructional software products:

- 60 (A) For which the vendor has executed a statewide digital privacy agreement;
- 61 (B) For which a vendor has completed the independent verification of academic  
62 effectiveness required this section; and
- 63 (C) That a County Board of Education may assign, require, recommend, or otherwise  
64 made available for student use during the upcoming school year;
- 65 (2) Ensure that the list described in this section includes, at minimum:
- 66 (A) The product name and vendor;
- 67 (B) The software's primary instructional purpose;
- 68 (C) A link to the software's statewide digital privacy agreement; and
- 69 (D) A link to the academic effectiveness verification a vendor is required to produce under  
70 this section;
- 71 (3) Publish the list described in this section on a County Board of Education 's public  
72 website;
- 73 (4) Update the list described in this section within 10 business days of any addition or  
74 removal of a software product;
- 75 (5) For any instructional software added during the course of the school year:
- 76 (A) Provide written notice to parents within 10 school days of the products approval;
- 77 (B) Include links to the product's statewide digital privacy agreement and academic-  
78 effectiveness verification summary; and
- 79 (C) Provide this notice before assigning the software or making it available for student use;
- 80 (6) Provide parents with written notice of any significant software update or change in data-  
81 collection or data-sharing practices that:
- 82 (A) May affect compliance with the statewide digital privacy agreement; or
- 83 (B) May trigger new consent requirements under state or federal law; and
- 84 (C) Maintain a publicly accessible archive of instructional software that students previously  
85 used, including:

- 86 (i) The software name and vendor; and
- 87 (ii) The dates during which the product was in active use.
- 88 (9) In accordance with the West Virginia Administrative Rulemaking Act, the State Board
- 89 shall make rules to implement the requirements of this part, including rules to:
- 90 (A) Create a statewide digital privacy agreement;
- 91 (B) Create an administrative process for a parent to submit a complaint in accordance with
- 92 this section;
- 93 (C) Create a process for vendors and contracting entities to appeal a finding of
- 94 noncompliance;
- 95 (D) Create a process for ensuring all software is academically effective;
- 96 (E) Create standards and a process for approving and listing the software described in this
- 97 section;
- 98 (F) Create and maintain the master list described in this section;
- 99 (G) Conduct the audits required under this section; and
- 100 (H) Create a process for receiving and responding to complaints a parent submits under
- 101 this section.

**§18-2L-6. Complaints and enforcement.**

- 1 (a)(1) A parent may submit a written complaint to the state board alleging:
- 2 (A) A contracting entity using software without executing a statewide digital privacy
- 3 agreement;
- 4 (B) A contracting entity using software without being verified as academically effective; or
- 5 (C) A vendor's violation of the statewide digital privacy agreement.
- 6 (2) Upon receiving a complaint described in this section, the State Board shall consult with
- 7 the Office of the Attorney General to:
- 8 (A) Review the complaint;
- 9 (B) Determine if a violation has occurred;

- 10            (C) Notify the parent of the determination; and
- 11            (D) Take appropriate enforcement action under this part if noncompliance is found.
- 12            (b) A court shall award the Office of the Attorney General reasonable attorney fees, court
- 13 costs, and investigative expenses incurred in an action under this part.

**§18-2L-7. Effective** **Date.**

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1            This section shall be effective on July 1, 2026.

NOTE: The purpose of this bill is to create certain requirements and accountability procedures regarding a student's use of software in a public school.

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