



Kenton County School District | It's about ALL kids.

Issue Paper

DATE:

11/11/2021

AGENDA ITEM (ACTION ITEM):

Consider/Approve the agreement and renewed purchase for the online platform Xello for scholars to create successful futures through exploration and planning for their Individual Learning Plan (ILP)

APPLICABLE BOARD POLICY:

01.1- Legal Status of the Board; 04.31 Authority to Encumber and Expand Funds

HISTORY/BACKGROUND:

The Kentucky Department of Education no longer provides an online platform for middle and high school scholars to create their ILP. Kenton County Schools researched and selected the online platform Xello. The middle and high school will continue with Xello for Jan. – Dec. 2022.

FISCAL/BUDGETARY IMPACT:

The annual cost for the middle and high schools is \$3.75 per scholar. The request is for the school board to fund half of the per scholar cost. $3295 \text{ M.S.} + 4483 \text{ H.S.} = 7778 \text{ Scholars} \times \$3.75 = \$29,167.50 \text{ Total. Cost for M.S./H.S. } \$14,622.64 \text{ and cost for School Board } \$14,544.86$

RECOMMENDATION:

Approval to accept the agreement and renewed purchase for the online platform Xello for scholars to create successful futures through exploration and planning for their Individual Learning Plan (ILP).

CONTACT PERSON:

Francis O'Hara, Director of Districtwide Programs and Transition Education

Principal/Administrator

District Administrator

Superintendent

Use this form to submit your request to the Superintendent for items to be added to the Board Meeting Agenda.

Principal –complete, print, sign and send to your Director. Director –if approved, sign and put in the Superintendent's mailbox.

Xello Terms of Service

Welcome to Xello

Xello is provided by Xello Inc., located at 1867 Yonge Street, Suite 700, Toronto, Ontario, M5S 1Y5, Canada.

Xello is an online program that helps student users ("Students") create a successful future through self-knowledge, exploration, and planning.

With Xello, Students discover the unique pathway that's right for them using an investigative, discovery-based learning process that opens their minds to exciting possibilities. As Students gain self-knowledge through assessments and reflection, they save careers, schools, programs, and experiences to form a vibrant, visual roadmap that's easy to update and share.

Xello also provides educators, including teachers, counselors and administrators ("Educators") with access to tools that enable them to monitor the progress of their students, and to communicate with students to help them achieve their future readiness goals.

Agreement to the Terms

These Terms of Service ("Terms") are entered into by and between Xello Inc. (doing business as, and hereinafter referred to as "Xello," "we," or "us") and the school or school district or other entity agreeing to these terms ("School"). These Terms govern School's and administrators or educators who are acting on a School's behalf ("Authorized Administrator") access to and use of the Xello platform, website, or any other website or application of Xello that link to or incorporate the Terms (collectively the "Services"). These Terms are effective: (i) as of the date the School accepts or agrees to these Terms or, (ii) if these Terms are attached to a separate agreement, the date such separate agreement is accepted by you.

In accepting these Terms on behalf of a School, you represent and agree that: (i) you have the legal authority to bind such School to these Terms; (ii) you have read and understand these Terms; (iii) you agree, on behalf of the School, to these Terms; and (iv) School or any Authorized Administrator setting up user accounts is solely responsible for providing any legally required notices and obtaining any necessary permissions to use and share information in the Services and providing any legally required means for a parent or legal guardian to review or correct any student data. The term "you" as used herein shall refer to School or Authorized Administrator with respect to the Services.

Educators, Students, parents or guardians of a Student, or Authorized Administrators of a School account who use the Services through an account are each individually a "User" and collectively "Users."

IMPORTANT: AS SET FORTH BELOW, THE SERVICES ARE PROVIDED "AS IS" AND XELLO'S TOTAL LIABILITY FOR ANY CLAIMS RELATED TO THE SERVICES IS LIMITED AS PROVIDED HEREIN.

Using the Services

You agree not to use the Services for any purpose or in any way that is unlawful or prohibited by these Terms. Without limiting the foregoing, you may not: (a) knowingly use the Services in any manner that could damage, disable, overburden, or impair the Services or interfere with any other party's use and enjoyment of the Services; (b) obtain or attempt to obtain any Content (as defined below) or information through any means not intentionally made available or provided for through the Services; or (c) submit or transmit any content, files, videos, photos, web links, or other materials to the Services, including but not limited to User Content (as defined below) or otherwise use the Services in ways that: (i) are defamatory, threatening, obscene, or harassing, (ii) contain a virus, worm, Trojan horse, or any other

harmful component, (ii) interfere with the operation, appearance, security or functionality of the Services; (iv) include unsolicited commercial messages; or (v) impersonate a Xello employee, or any other person, or falsely stating or otherwise misrepresenting your affiliation with any person or entity.

We, in our sole discretion, may suspend or stop providing the Services to any User or you for actions that violate these Terms, or to protect the security, safety, and rights of other Users, Xello or the Services, including to investigate suspected misconduct.

Intellectual Property

The Services, and the information, data and content made available in the Services ("Content") and any software used to provide the Services, is protected by copyright under Canadian, United States, and foreign laws and international treaties. Unauthorized use of the Services, including the Content, may violate copyright, trademark, and other laws. Using the Services does not give you ownership of any intellectual property rights in the Services or the Content you access.

You may not store, modify, reproduce, transmit, reverse engineer, create derivative works, or distribute a portion of the Content.

You may not copy the design, layout, organization, or "look and feel" of the Services in any form or media. The systematic retrieval of data from the Services is also prohibited.

You may use the Services and access, download, and print materials from the Services solely for your (and your Students') educational and non-commercial use. No right, title, or interest in any of the content contained in the Services, including but not limited to Content, is transferred to you as a result of accessing, downloading, or printing such Content.

If you submit feedback, suggestions, or ideas about how to improve the Services ("Feedback"), we may use such feedback, suggestions, or ideas without obligation to you.

Security and Confidentiality

Both parties will use commercially reasonable efforts to maintain the security and confidentiality of personal information, including Student Personal Information (as defined in the [Privacy Policy](#)), collected in the Services, consistent with applicable law, in order to help protect such personal information from unauthorized access, provided that certain information may be available to School and Users or third parties pursuant to the direction of School, Educators, or Authorized Administrators and depending on how Users choose to use the Services' features.

We may disclose Student Personal Information that is confidential: (a) at the direction of the School or Authorized Administrator; (b) as required or permitted by applicable law; (c) in accordance with valid legal process; or (d) with the written consent of the School or parent (to the extent required or permitted by applicable law). Before disclosing such information in accordance with legal process, we will use commercially reasonable efforts to promptly notify School. We shall not be required to provide notice before such disclosure if (i) we are legally prohibited from giving notice or (ii) the legal process relates to exceptional circumstances involving danger of death or serious physical injury to any person. School understands that we will rely on one or more subcontractors to provide the Services. We have contracts in place with such subcontractors requiring them to protect Student Personal Information in a way that is at least as protective as we have undertaken to treat such information in these Terms and comply with applicable law.

FERPA

For Schools subject to United States federal law, we acknowledge that data from Student Users may include “personally identifiable information” from “education records” that are subject to Family Educational Rights and Privacy Act (“FERPA”) (“FERPA Records”). To the extent that we receive FERPA Records in providing the Services, the parties agree that Xello functions as a “school official” with a legitimate educational interest pursuant to 34 CFR § 99.31(a)(1). With respect to FERPA Records, Xello will maintain its status as a School Official and acknowledges that a failure to do so may result in a termination of these Terms and any other agreement for the Services. As between the parties, School owns and controls all Student Personal Information, including but not limited to FERPA Records, provided in the Services, whether provided by the School, another User, or any other third-party.

The limitations set forth in this section shall not apply to any information which we receive or that is provided to the Services pursuant to consent of Student User’s parent or guardian or consent of a Student User who is at least 18 years of age or the age of majority in such User’s jurisdiction of residence. To the extent permitted by law, nothing contained herein shall be construed as precluding either party from releasing such information to the other so that each can perform its respective responsibilities.

Services’ Accounts

School and Authorized Administrators are responsible for (a) maintaining the security and confidentiality of their account credentials and taking reasonable steps to prevent unauthorized access to such account (e.g., logging out when done using the Services or away from your device); (b) creating Student accounts and (c) providing all required notices and obtaining all necessary rights, permissions, or consents to access, monitor, use, or disclose any information, including Student Personal Information, from accounts of other Users. As between Xello and School, School is responsible for any activities, including any violation of the Terms, that occur under a School account, an Authorized Administrator account, and any User accounts created by School or Authorized Administrator account.

You shall notify Xello of any known or suspected unauthorized use of your account, other User accounts, or any known or suspected breach of security of the Services, including loss, theft, or unauthorized disclosure of your password.

User Content

While using the Services, School and Users can upload, submit, store, send, or receive content (“User Content”). User Content does not include Feedback. As between the parties, School retains ownership of any intellectual property rights held in User Content. You agree that we can use, host, display, modify and publish such content for the purpose of providing the Services. We do not claim any ownership rights in User Content that is submitted to the Services.

As set forth in the [Privacy Policy](#), upon request or upon termination of the Agreement, we shall, at direction and election of the School, destroy Student Personal Information, including FERPA Records, and User Content or return them to the School with rights to such information and direct our subcontractors to do the same, provided that we may comply with applicable law regarding the transfer of and/or retention of such records. Such records or User Content may persist in backup copies for a reasonable period of time following deletion (but will not be available to others).

At all times, you and your School are responsible for, and agree you have the rights to submit, post and upload the User Content or Feedback you submit to the Services.

We reserve the right, at any time and without prior notice, to pre-screen, reject, move, edit, delete, or remove any User Content submitted to the Services that we, in our sole discretion, consider to be objectionable for any reason, in violation of these Terms or otherwise harmful to Xello, the Services or its users, consistent with applicable law, but we do not assume the obligation.

Third Party Services

Certain third-party products or services may be available for you to choose to use within the Services. You are not required to use such additional products in relation to the Services. If you elect to use such third-party services, you should review the terms, policies and practices of the third-party products and services to understand their terms and policies with respect to any personal information, including Student Personal Information, they may collect from you Users. We are not responsible for any practices of the third-party services you select and make no assurances that their services will meet your needs.

Privacy Policy

Xello's [Privacy Policy](#) explains how we treat and protect personal data in the Services. By using the Services, you agree that we can use such data in accordance with such policy. If a conflict exists between Xello's [Privacy Policy](#) and these Terms, these Terms will govern.

WARRANTIES AND DISCLAIMERS

WE PROVIDE THE SERVICES USING A COMMERCIALY REASONABLE LEVEL OF SKILL AND CARE. WE HOPE YOU WILL ENJOY USING THE SERVICES. OTHER THAN AS EXPRESSLY SET OUT IN THESE TERMS, WE DO NOT MAKE ANY SPECIFIC PROMISES ABOUT THE SERVICES. FOR EXAMPLE, WE DON'T MAKE ANY COMMITMENTS ABOUT THE ACCURACY, COMPLETENESS, CURRENCY, OR RELIABILITY OF THE CONTENT WITHIN THE SERVICES, THE SPECIFIC FUNCTIONS OF THE SERVICES, OR THE SERVICES' RELIABILITY, AVAILABILITY, OR ABILITY TO MEET YOUR NEEDS. **WE PROVIDE THE SERVICES "AS IS."**

SOME JURISDICTIONS PROVIDE FOR CERTAIN WARRANTIES, LIKE THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. TO THE EXTENT PERMITTED BY LAW, WE EXCLUDE ALL WARRANTIES.

LIMITATIONS ON LIABILITY OF XELLO

EXCEPT AS OTHERWISE PROVIDED IN THESE TERMS, WHEN PERMITTED BY LAW, WE WILL NOT BE RESPONSIBLE FOR LOST PROFITS, REVENUES, FINANCIAL LOSSES, OR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES.

TO THE EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF XELLO, FOR ANY CLAIMS UNDER THESE TERMS, INCLUDING FOR ANY IMPLIED WARRANTIES, IS LIMITED TO THE AMOUNT YOU PAID US TO USE THE SERVICES.

THE ABOVE LIMITATION OF LIABILITY SHALL NOT APPLY TO ANY CLAIMS FOR ACTUAL DAMAGES RESULTING FROM XELLO'S BREACH OF THIS AGREEMENT CAUSED BY ITS GROSS NEGLIGENCE, WILLFUL MISCONDUCT OR FRAUD.

Changes to The Services

We may, at any time, make changes to the Services, including its "look and feel," features, and Content.

We may also modify these Terms or any additional terms that apply to the Services, for example, to reflect changes to the law or changes to the Services. We will post modifications to these Terms on this page and in the Services. We will provide notice to School and seek its consent to material changes to the Terms. Such material changes will not apply retroactively and will become effective no sooner than 14 days after they are posted and notification is provided. Depending on the changes, if you do not agree to the modified terms for the Services, we may not be able to continue to provide the Services to you and may have to discontinue your use of the Services.

If there is a conflict between these Terms and the additional terms, the additional terms will control for that conflict.

About these Terms

These Terms shall be governed by the federal, state, and/or provincial law of the jurisdiction in which the School is located with respect to such School and its Users. If an applicable law is in conflict with any part of the Terms, the Terms will be deemed modified to conform to the law. To the extent there is a conflict between the laws of the United States and the state in which the School is located, the applicable state law shall apply. The other terms will not be affected by any such modification.

If a particular term is not enforceable, this will not affect any other terms set forth herein.

Neither agreement to these Terms nor the failure of either party to assert a right or remedy under these Terms or under applicable law shall constitute a waiver by such party of such right or remedy.

You may have other agreements with Xello. Those agreements are separate and in addition to these Terms. These Terms do not modify, revise, or amend the terms of any other agreements you may have with Xello.

Xello Quote

Proposal for **Kenton County School District**

Prepared By:

Idan Firestein

Sr. Success Manager

(800) 965-8541 Ext.227

idanf@xello.world

ORDER / QUOTE

xello

REF-045902

QUOTE FOR:

ATTN: **Accounts Payable**
Kenton County School District
1055 Eaton Dr
Ft Wright, KY 41017

REQUESTED BY:

Francis O'Hara
Kenton County School District
1055 Eaton Dr
Ft Wright, KY 41017

SUBSCRIPTION PERIOD:

Start Date: **Jan 1, 2022**
End Date: **Dec 31, 2022**
Duration: **12 months**

PRODUCT	QTY	ANNUAL RATE	PRICE	SUBTOTAL
Xello for High School ▾ Kentucky Special Pricing	4,483	\$3.75 Per Student Reg \$4.95	\$3.75 24% (\$1.20) discount	\$16,811.25
Xello for Middle School ▾ Kentucky Special Pricing	3,295	\$3.75 Per Student Reg \$4.25	\$3.75 12% (\$0.50) discount	\$12,356.25

NOTES:

An invoice will be sent shortly.

GRAND TOTAL:

\$29,167.50
USD

Xello Terms of Use Agreement
W8 Form
Billing + Renewals FAQ's

APPROVAL STATUS:

This order has been approved

NEXT STEPS:

- **IMPORTANT:** Please email the Purchase Order to Idan Firestein at idanf@xello.world.
- Your order will be processed and an invoice sent to:
 - cathy.finley@kenton.kyschools.us
 - francis.ohara@kenton.kyschools.us


idanf@xello.world


Phone: (800) 965-8541 Ext.227


Fax: 416.463.0938

1867 Yonge Street • Suite 700 • Toronto, ON M4S 1Y5 • Canada