

DATE: 4/21/2022

AGENDA ITEM (ACTION ITEM):

Consider/Approve the sales contract with EPES Software to purchase site licenses for all 17 sites/schools with annual renewals through FY2027.

APPLICABLE BOARD POLICY:

01.1 – Legal Status of the Board

HISTORY/BACKGROUND:

Each of the Schools operate School Activity Funds and utilize the EPES web based accounting software to manage those transactions. This software has been in use for multiple years. It is advantageous to the district to have them all on a common platform for continuity, management, training, etc. This is an annual expense and we do not foresee changing this product out for the next five years. We are asking the Board to approve the finance department being able to annually renew this software ensuring the terms and conditions are acceptable for the next five years without further Board approval.

FISCAL/BUDGETARY IMPACT:

\$154/school x 17 sites/schools = \$2,618/year

RECOMMENDATION:


Approval of the sales contract with EPES Software to purchase a school/site/license for all 17 sites/schools with annual renewals through FY2027.

CONTACT PERSON:

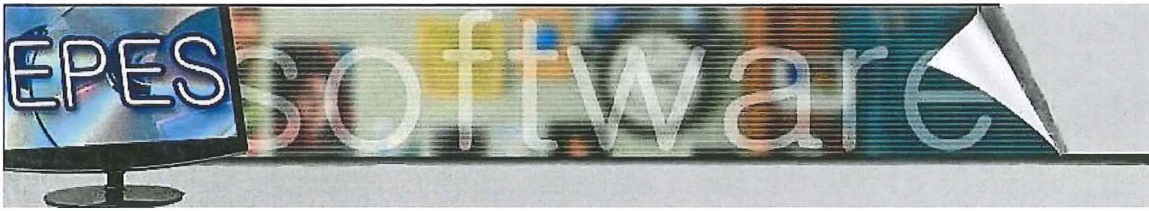
Matthew Winkler, Director of Technology; Susan Bentle, Executive Director of Finance; David Lloyd, Executive Director of Operations


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.



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License Grant

EPES Web Based Program – This Agreement entitles you to use one set of books per licensing agreement of the EPES Product. A demo or training copy is only allowed if you obtain an appropriate licensing agreement for each copy of the EPES Product.

For further information regarding multiple copy licensing of the EPES Product, please contact:

EPES Software
206 N. Armstrong
Bixby, Oklahoma 74008

Upgrades

To use the EPES Product identified as an upgrade, you must first be licensed for the original EPES Product identified by CAP as eligible for the upgrade. After upgrading, you may no longer use the original EPES Product that formed the basis for your upgrade eligibility.

Additional Software

This EULA applies to updates or supplements to the original EPES Product provided by CAP unless CAP provides other terms along with the update or supplement. In case of a conflict between such terms, the other terms will prevail.

Password Security

The user is responsible for the security of their password. Passwords on the Web Based Program will expire every 6 months and will require the user to create a new and unique password to protect your system.

Subscription Expiration

Subscription expiration will be reported 30 days prior to the expiration date. If subscription is not renewed, you will receive a 30 day grace period to export reports before the service is fully discontinued. Web Based Program demo sites will only be active for 30 days at a time.

Restrictions on Transfer

Without first obtaining the express written consent of CAP, you may not assign your rights and obligations under this Agreement, or redistribute, encumber, sell, rent, lease, sublicense, or otherwise transfer your rights to the EPES Product.

Restrictions on Use

You may not decompile, "reverse-engineer", disassemble, or otherwise attempt to derive the source code for the EPES Product.

You may not use the database portion of the EPES Product in connection with any software other than the EPES Product.

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You may not copy any part of the EPES Product except to the extent that licensed use inherently demands the creation of a temporary copy stored in computer memory and not permanently affixed on storage medium.

Consent for Use of Data

You agree that CAP and its affiliates or suppliers may collect and use technical information you provide in relation to support services related to the EPES Product. CAP and its suppliers agree not to use this information in a form that personally identifies you except to the extent necessary to provide such services.

Limited EPES Product Warranty

For a period of 60 days from the date that you download the EPES Product, as applicable, CAP warrants that when properly installed and used under normal conditions, the EPES Product will perform substantially as advertised.

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UNLESS OTHERWISE EXPLICITLY AGREED TO IN WRITING BY CAP, CAP MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OTHER THAN AS SET FORTH IN THIS AGREEMENT OR IN THE LIMITED WARRANTY DOCUMENTS PROVIDED WITH THE EPES PRODUCT.

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UNDER NO CIRCUMSTANCES SHALL CAP, ITS DIRECTORS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE TO YOU OR ANY OTHER PARTY FOR INDIRECT, CONSEQUENTIAL, SPECIAL, INCIDENTAL, PUNITIVE, OR EXEMPLARY DAMAGES OF ANY KIND (INCLUDING LOST REVENUES OR PROFITS OR LOSS OF BUSINESS) RESULTING FROM THIS AGREEMENT, OR FROM THE FURNISHING, PERFORMANCE, INSTALLATION, OR USE OF THE EPES PRODUCT, WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, OR THE NEGLIGENCE OF

CAP OR ANY OTHER PARTY, EVEN IF CAP IS ADVISED BEFOREHAND OF THE POSSIBILITY OF SUCH DAMAGES. TO THE EXTENT THAT THE APPLICABLE JURISDICTION LIMITS CAP'S ABILITY TO DISCLAIM ANY IMPLIED WARRANTIES, THIS DISCLAIMER SHALL BE EFFECTIVE TO THE MAXIMUM EXTENT PERMITTED.

Limitation of Remedies and Damages

Your remedy for a breach of this Agreement or of any warranty included in this Agreement is the correction of the EPES Product. CAP reserves the right to substitute a functionally equivalent copy of the EPES Product as a replacement. If CAP is unable to provide a replacement or substitute EPES Product or corrections to the EPES Product, your sole alternate remedy shall be a refund of the purchase price for the EPES Product.

Any claim must be made within the applicable warranty period. All warranties cover only defects arising under normal use and do not include malfunctions or failure resulting from misuse, abuse, neglect, alteration, problems with electrical power, acts of nature, unusual temperatures or humidity, improper installation, or damage determined by CAP to have been caused by you. All limited warranties on the EPES Product are granted only to you and are non-transferable. You agree to indemnify and hold CAP harmless from all claims, judgments, liabilities, expenses, or costs arising from your breach of this Agreement and/or acts or omissions.

Governing Law, Jurisdiction and Costs

This Agreement is governed by the laws of Kentucky and Kenton County, Kentucky without regard to Kentucky's conflict or choice of law provisions.

Severability

If any provision of this Agreement shall be held to be invalid or unenforceable, the remainder of this Agreement shall remain in full force and effect. To the extent any express or implied restrictions are not permitted by applicable laws, these express or implied restrictions shall remain in force and effect to the maximum extent permitted by such applicable laws.

Opt Out

Any User may deliver a written notice (an "Opt-Out Notice") to the Company requesting that such User be relieved of its rights and obligations under this Agreement and that the Company is also relieved of its rights and obligations under this Agreement with respect to such User. Once delivered, the Opt-Out Notice shall be non-revocable, unless the Company and the User, in their sole discretion, each agree, in writing, to allow such User to revoke its Opt-Out Notice. Following receipt of an Opt Out Notice from a User, the User shall be relieved of its obligations hereunder and the Company shall no longer be required to deliver to such User any notices required to be delivered under this Agreement by the Company to such User.



THE KENTON COUNTY BOARD OF EDUCATION

1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017

TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531

WEBSITE: www.kenton.kyschools.us

Dr. Henry Webb, Superintendent of Schools

Kenton County School District | It's about ALL kids

VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION

Data Security and Breach Protocols

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as "KCBOE") as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by any agency as defined under the Act;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act's notification requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

Student Data Security

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, *et seq.*), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 *et seq.*, and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 *et seq.*), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific

student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

C.A.P. INC.
Vendor Name

206 N ARMSTRONG ST BIRBY OK 74008
Vendor Address

918-366-4453
Vendor Telephone

stacey@epes.org
Vendor Email Address

Stacey K Crystal
Signature by Vendor's Authorized Representative

STACEY K CRYSTAL
Print Name

4-20-2022
Date



C.A.P. Inc.

206 North Armstrong
Bixby, OK 74008-4309
Phone: 800-424-7512
Fax: 918-366-4455
Tax ID: 73-1333022

Bill To:

KENTON COUNTY B O E
MISTY JONES
1055 EATON DRIVE
FT WRIGHT, KY 41017

Ship To:

KENTON COUNTY B O E
MISTY JONES
1055 EATON DRIVE
FT WRIGHT, KY 41017

Customer ID: 9296

Invoice No: 9569

Invoice Date: 4/5/2022

PO Number:

Acct #	Acct Title	Quantity	Amount	Extended Total
6011	WEB SINGLE SCHOOL	17	\$154.00	\$2,618.00

Invoice Total: \$2,618.00



C.A.P. Inc.

206 North Armstrong
Bixby, OK 74008-4309
Phone: 800-424-7512
Fax: 918-366-4455

Tax ID: 73-1333022

***** RENEWAL INVOICE *****

Invoice #: 9449

ATTN: MISTY JONES
KENTON COUNTY B O E
1055 EATON DRIVE
FT WRIGHT, KY 41017

Customer ID: 9296

This is notification that your district support/program lease is set to expire on 5/10/2022. Your district support contract provides you with unlimited TOLL FREE Technical Support for one year.

The cost for a District Contract:

- 1 - 10 schools ----- \$176.00 per school
- 11 - 35 schools ----- \$154.00 per school
- 36 - 59 schools ----- \$132.00 per school
- 60 - 99 schools ----- \$121.00 per school
- 100 + schools ----- \$110.00 per school

Below you will find the schools in your district that we currently have registered. Only schools listed will receive assistance.

Please include your e-mail address so that we can contact you regarding any special offers or other information. _____

Invoice Total for 17 Schools is: \$2,618.00

Customer ID	Customer Name
826	SIMON KENTON HIGH SCHOOL
979	DIXIE HEIGHTS HIGH SCHOOL
2580	R.C. HINSDALE ELEMENTARY
14748	BEECHGROVE ELEMENTARY
15352	J.A. CAYWOOD ELEMENTARY
16371	TAYLOR MILL ELEMENTARY
16372	SCOTT HIGH SCHOOL
16373	KENTON ELEMENTARY
16374	SUMMIT VIEW ACADEMIES
16375	WHITE'S TOWER ELEMENTARY
16377	FT. WRIGHT ELEMENTARY
16378	TWENHOFEL MIDDLE SCHOOL
16379	RYLAND ELEMENTARY



C.A.P. Inc.

206 North Armstrong
Bixby, OK 74008-4309
Phone: 800-424-7512
Fax: 918-366-4455

Tax ID: 73-1333022

***** RENEWAL INVOICE *****

16382	WOODLAND MIDDLE SCHOOL
16383	RIVER RIDGE ELEMENTARY
16384	PINER ELEMENTARY
16385	TURKEY FOOT MIDDLE SCHOOL