

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

Issue Paper

DATE:

June 3, 2022

AGENDA ITEM (ACTION ITEM):

Consider/Approve a one-year license agreement with MobyMax for software to support R.C. Hinsdale Elementary kindergarten-fifth grade students in RTI for reading and math.

APPLICABLE BOARD POLICY:

08.2321 Copyrighted Materials

HISTORY/BACKGROUND:

Hinsdale has found MobyMax to be a valuable tool supporting our students in RTI and we would like to renew this license.

FISCAL/BUDGETARY IMPACT:

\$3,495.00 total paid by Hinsdale's 0451118-0650-7000 – Other Supplies – Tech Related

RECOMMENDATION:

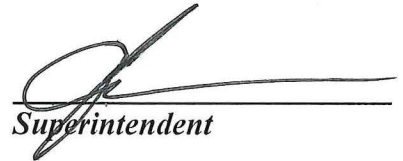
Approval to renew license agreement with MobyMax which will provide instructional software for Hinsdale's RTI students.

CONTACT PERSON:

Mr. Josh Feldmann, Principal


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.

MobyMax Renewal Quote

MobyMax, LLC
P.O. Box 392385 | Pittsburgh, PA 15251
888-793-8331

Quote For

Quote Date: May 31, 2022
District: Kenton County
School: R C Hinsdale Elementary School
Quote Receiver: Andi Tekulve
Telephone: 859-341-8226
Email Address: Andrea.Tekulve@kenton.kyschools.us

License Quoted

Subject: **MobyMax ALL Schoolwide License**
Complete K-8 curriculum for all subjects including Math, Fact Fluency, Reading, Early Reading, Language, Writing, Science, and Social Studies

License Period: 1 year

Price: \$3,495.00

Subtotal \$3,495.00

Total amount due:	\$3,495.00
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Ways to Order

- **Fax to** 1-888-793-8330
- **Email to** billing@mobymax.com
- **Mail to:**
MobyMax
P.O. Box 392385
Pittsburgh, PA 15251
- **Call** 888-793-8331
- **Order online** with credit card or purchase order at www.mobymax.com/order.

Please Include with Purchase Order

- School name and school zip code
- Email address or fax number for accounts payable department
- A copy of this quote
- A copy your tax exemption letter or certificate, if applicable

Quote expires after 90 days.

You can download our current W-9 form at www.MobyMax.com/w9.pdf.

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c. Accessing (or attempting to access) any of our Resources by any means other than through the means we provide is strictly prohibited. You specifically agree not to access (or attempt to access) any of our Resources through any automated, unethical, or unconventional means.

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b. Infringes on any trademark, patent, trade secret, copyright, or other proprietary right of any party.

c. Contains any type of unauthorized or unsolicited advertising;

d. Impersonates any person or entity, including any www.MobyMax.com employees or representatives.

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- c) the information obtained by using our Resources will be accurate or reliable, and
- d) any defects in the operation or functionality of any Resources we provide will be repaired or corrected.

Furthermore, you understand and agree that:

- e) any content downloaded or otherwise obtained through the use of our Resources is done at your own discretion and risk, and that you are solely responsible for any damage to your computer or other devices for any loss of data that may result from the download of such content.
- f) no information or advice, whether expressed, implied, oral or written, obtained by you from MobyMax or through any Resources we provide shall create any warranty, guarantee, or conditions of any kind, except for those expressly outlined in these Terms of Use.

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You may not modify, copy, distribute, display, perform, reproduce, publish, license, create derivative works from, transfer, retransmit, or sell any content from the Web Site.

Number of Students Allowed for Teacher Licenses

The maximum number of students allowed for a teacher license is 200 students.

Number of Students and Teachers Allowed for Schoolwide Licenses

The number of students and teachers allowed for a schoolwide license is unlimited for a traditional brick-and-mortar school. All non-traditional schools, including but not limited to after-school programs, online schools, virtual schools, and adult education programs, require a per-student license.

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Signed for MobyMax 6/10/22



John Jennings
Head of Business Development



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

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

**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.

MobyMax Education LLC

Vendor Name

500 Westover Dr #12127 Sanford, NC 27330

Vendor Address

888-793-8331

Vendor Telephone

RFP@mobymax.com

Vendor Email Address



Signature by Vendor's Authorized Representative

Glynn Willett

Print Name

6/9/2022

Date

Fix learning gaps.



Differentiated Learning

Assessments

Interactive Class

Engagement

Training

Remote Learning

The Legal Mumbo Jumbo

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Last updated on July 6, 2020

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- a. Is illegal, threatening, defamatory, abusive, harassing, degrading, intimidating, fraudulent, deceptive, invasive, racist, or contains any type of suggestive, inappropriate, or explicit language;
- b. Infringes on any trademark, patent, trade secret, copyright, or other proprietary right of any party.
- c. Contains any type of unauthorized or unsolicited advertising;
- d. Impersonates any person or entity, including any www.MobyMax.com employees or representatives.

We have the right at our sole discretion to remove any content that we feel in our judgment does not comply with these Terms of Use, along with any content that we feel is otherwise offensive, harmful, objectionable, inaccurate, or violates any 3rd party copyrights or trademarks. We are not responsible for any delay or failure in removing such content. If you post content that we choose to remove, you hereby consent to such removal, and consent to waive any claim against us.

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You agree, if permitted by law, to indemnify and hold harmless MobyMax and its parent company and affiliates, and their directors, officers, managers, employees, donors, agents, and licensors, from and against all losses, expenses, damages, and costs, including reasonable attorneys' fees, resulting from any violation of these Terms of Use, the failure to fulfill any obligations relating to your account incurred by you or any other person using your account, or arising out of your use of, or conduct on, our Web Site. We reserve the right to take over the exclusive defense of any claim for which we are entitled to indemnification under these Terms of Use. In such event, you shall provide us with such cooperation as is reasonably requested by us.

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Family Licenses

Family licenses are for a single household. Students from multiple households cannot be registered in one Family account.

Number of Students Allowed for Teacher Licenses

The maximum number of students allowed for a teacher license is 200 students.

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