



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

Issue Paper

DATE:

06/07/22

AGENDA ITEM (ACTION ITEM):

Consider/Approve the agreement with Houghton Mifflin Harcourt (HMH) for the renewal of the unlimited district annual hosting service for the 2022-2023 school year.

APPLICABLE BOARD POLICY:

01.1 Legal Status of the Board

HISTORY/BACKGROUND:

HMH host an unlimited number of HMH perpetual licenses for the district programs of Reading Counts, System 44, Read 180, Math 180, and the data platform SAM (Scholastic Achievement Manager) for individual assessment results and progress data, and the technical support for these programs.

FISCAL/BUDGETARY IMPACT:

\$50,000.00 from the ESSER Budget

RECOMMENDATION:


Approval to the agreement with Houghton Mifflin Harcourt (HMH) for the renewal of the unlimited district annual hosting service for the 2022-2023 school year.

CONTACT PERSON:

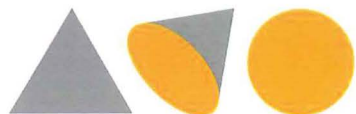
Mary Beth Huss


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.



Houghton Mifflin Harcourt

Proposal #008393348

Prepared For

Kenton Co School District

Attention:

Missy Hicks

missy.hicks@kenton.kyschools.us

For the Purchase of:

Technology Renewal 2022

District Unlimited Plan

Prepared By

Jonathan Broyles

jonathan.broyles@hmc.com

Please submit this proposal with your purchase order.

Purchase orders or duly executed service agreements for **Professional Services** purchased, must be submitted at least 30 days before the service event date.

For greater detail, the complete Terms of Purchases may be reviewed here:

<http://www.hmhco.com/common/terms-conditions>

Send **Check Payments** to:
Houghton Mifflin Harcourt Publishing
Company
14046 Collections Center Drive
Chicago, IL 60693

Attention:
Missy Hicks
missy.hicks@kenton.kyschools.us
HMH Confidential and Proprietary

Send **Orders** to:
InterventionSolutionsOrders@hmc.com
FAX: 877-287-8199
HMH Orders
9400 Southpark Center Loop
Orlando, FL 32819-8647

Date of Proposal: 5/17/2022

Proposal for Kenton Co School District

Expiration Date: 8/31/2022

ISBN

Title

Price

Quantity

Value of All
Materials

Unlimited District Plan
District Subscriptions

9781328030528 SIS District Unlimited Transition to Subscription Plan
R180/System 44 Literacy, Math 180 and Assessment Licenses

\$50,000.00

1

\$50,000.00

Total for District Subscriptions

Total for Unlimited District Plan

\$50,000.00

Renewal Date: 9/18/22 to 9/17/23

<i>Total Savings:</i>	\$0.00
<i>Subtotal Purchase Amount:</i>	\$50,000.00
<i>Shipping & Handling:</i>	\$0.00
<i>Sales Tax:</i>	\$0.00

Total Cost of Proposal (PO Amount): **\$50,000.00**

Send **Check Payments** to:
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Company
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Chicago, IL 60693

Attention:
Missy Hicks
missy.hicks@kenton.kyschools.us

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Proposal for Kenton Co School District

Total Cost of Proposal (PO Amount): \$50,000.00

Thank you for considering HMH as your partner. We are committed to providing an excellent experience and delivering ongoing, high-quality service to our customers. To meet these goals, we want to ensure you are aware of the below Terms of Purchase. These terms help us process your order quickly, efficiently, and accurately, ensuring successful delivery and implementation of our solutions.

- Please return this cost proposal with your signed purchase order that matches product, prices and shipping charges.
- Provide the exact address for *delivery* of print materials. The shipping address may be your district warehouse or individual school sites, but it is essential that this is accurate.
- Please supply the name of each important district point of contact for all aspects of the solution including their direct contact information (email/phone):
 - o Point of Contact for Print materials
 - o Point of Contact for Digital materials
 - o Point of Contact for Scheduling Professional Development
- Please confirm that we have the correct 'Ship to' and 'Sold to' information on the cost proposal.

Ship to:	Sold to:
Kenton County School District	Kenton County School District
1055 Eaton Dr	1055 Eaton Dr
Ft Wright, KY 41017-9655	Ft Wright, KY 41017-9655
- Please provide funding start and end dates.
- Please note that all products and services will be billed upon the processing of your purchase order.
- Our payment terms are 30 days from the invoice date.
- Print subscription material quantities may be adjusted across grades for like products, to accommodate enrollment fluctuations, quantities cannot be adjusted between different programs or copyrights.
- Our shipping terms are FOB shipping point. The shipping term for your proposal is Shipping Point.
- Should any of these Terms of Sale conflict with any preprinted terms on your purchase order, the HMH terms of service shall apply.

Thank you in advance for supplying us with the necessary information at time of purchase. Our goal is to ensure your success throughout the duration of this agreement, which starts with a highly successful delivery of our solution.

For greater detail, the complete Terms of Purchase may be reviewed here: <http://www.hmhco.com/common/terms-conditions>

Date of Proposal: 5/17/2022

Proposal Expiration Date: 8/31/2022



Houghton Mifflin Harcourt

Send **Check Payments** to:
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Attention:
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**Houghton
Mifflin
Harcourt**

**FIRST AMENDMENT TO HMH TERMS OF PURCHASE BETWEEN
HOUGHTON MIFFLIN HARCOURT PUBLISHING AND KENTON COUNTY
SCHOOL DISTRICT (“Amendment”)**

THIS FIRST AMENDMENT (“1st Amendment”) is entered into as of the 6th Day of June, 2022 (“Amendment Effective Date”), and amends the HMH Terms of Purchase, (“Agreement”) by and between Kenton County School District (“School/District”), and Houghton Mifflin Harcourt Publishing Company (“HMH”) as it relates to District’s purchase through Cost Proposal #008393348. Capitalized terms in this 1st Amendment and not defined herein shall have the same definition as provided in the Agreement.

WHEREAS, the Parties desire to adjust the following clauses included in the Agreement.

Delete and Replace 18. Jurisdiction; Venue; Choice of Law: “THE STATE COURTS OF THE STATE OF KENTUCKY SITTING IN KENTON COUNTY AND, IF THE JURISDICTIONAL PREREQUISITES EXIST AT THE TIME, THE UNITED STATES DISTRICT COURT FOR KENTUCKY SHALL HAVE THE SOLE AND EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY DISPUTE OR CONTROVERSY ARISING UNDER OR CONCERNING THIS CONTRACT. THIS CONTRACT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HERETO SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF KENTUCKY, WITHOUT REFERENCE TO ITS PRINCIPLES OF CONFLICTS OF LAWS, EXCEPT THAT FOR GOVERNMENTAL CUSTOMERS IN THE UNITED STATES THESE TERMS SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE LAWS OF THE STATE IN WHICH THE GOVERNMENT AGENCY CUSTOMER IS LOCATED.”

Entire Agreement: For clarity, there are no other changes to the Terms of Purchase between the parties. The Agreement, as modified by the 1stAmendment, sets forth the entire agreement between the parties with respect to the matters set forth herein and supersedes all prior and contemporaneous discussions or understandings between them relating thereto. Except as expressly modified in this 1st Amendment, the Agreement, as previously amended, shall remain in full force and effect.

IN WITNESS WHEREOF, the undersigned have duly executed this Amendment this 6th day of June, 2022.

**KENTON COUNTY
SCHOOL DISTRICT**

**HOUGHTON MIFFLIN HARCOURT
PUBLISHING COMPANY**

By: _____

By: *Lisa A. Jacobson* _____

Printed Name: _____

Printed Name: Lisa A. Jacobson _____

Title: _____

Title: Sr. Director, Bids and Contracts _____



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, such as Houghton Mifflin Harcourt Publishing Company (hereinafter “vendor” or “non-affiliated third party”), 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 receives personal information from the KCBOE pursuant to KCBOE’s use of vendor’s products Into Reading, Waggle, Read 180, System 44 and Math 180.

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; and using contact information found here: <https://education.ky.gov/districts/tech/Pages/Data-Security-Privacy.aspx>, 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 a confirmed 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, promptly and within seventy-two (72) 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 a reasonable apportionment of the actual 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).
- The vendor may use de-identified information in accordance with FERPA.

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, promptly and within seventy-two (72) hours, any confirmed 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 may be 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 may be 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.

Houghton Mifflin Harcourt Publishing Company

Vendor Name

125 High Street, Boston, MA 02110

Vendor Address

617.351.5415

Vendor Telephone

Lisa.jacobson@hnhco.com

Vendor Email Address



Signature by Vendor's Authorized Representative

Lisa Jacobson, Sr Director, Bids and Contracts

Print Name

July 25, 2022

Date