



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

Issue Paper

DATE:

02/17/2023

AGENDA ITEM (ACTION ITEM):

Consider/Approve the Vendor Assurance between Accelerate Learning (Math Nation) and the Kenton County School District for 2022 through 2024 school years.

APPLICABLE BOARD POLICY:

01.1 Legal Status of the Board

HISTORY/BACKGROUND:

The Kentucky General Assembly has purchased a supplemental math resource, Math Nation, for all students in Algebra I (8th grade and high school), Geometry, and Algebra II for the remainder of the 2022-23 school year and all of the 2023-24 school year. While the resource is not comprehensive, it could serve as a useful tool for teachers to meet the needs of their students. A brief overview of this supplemental resource was shared with teachers at the instructional resource meeting on February 2. The district will provide training on the effective use of this resource for teachers of these courses in the spring and summer of 2023. Math Nation includes the following consumable student workbooks, digital practice problems, videos providing multiple levels of support (4 videos per topic, one of which is in Spanish), virtual tutoring available from 3:00-9:00 and on weekends (by a certified math teacher), and teacher resources..

FISCAL/BUDGETARY IMPACT:

There is no budgetary impact for the Kenton County School District. Funds have been allocated by the Kentucky General Assembly.

RECOMMENDATION:


Approval of the Vendor Assurance between Accelerate Learning (Math Nation) and the Kenton County School District for 2022 through 2024 school years.

CONTACT PERSON:

Jennifer Barrett and Allison Beck.

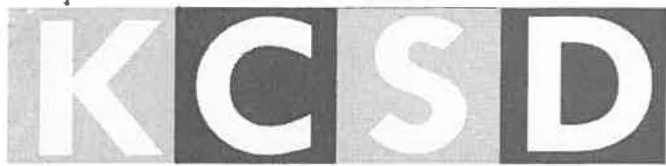

Principal/Administrator


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.



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.

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.

Accelerate Learning, Inc.

Vendor Name

5177 Richmond Ave, Houston, TX 77056

Vendor Address

800 531 0864

Vendor Telephone

CustomerSupport@acceleratelearning.com

Vendor Email Address

John Sims

Signature by Vendor's Authorized Representative

John Sims

Print Name

February 13, 2023

Date

[PRIVACY POLICY](#)[TERMS OF USE](#)

TERMS OF USE

These terms and conditions apply for Study Edge, LLC ("**Study Edge**"), a Florida limited liability company and Math Nation, LLC ("**Math Nation**"), a Florida limited liability company, both located at 1717 NW 1st Avenue, Gainesville, Florida and collectively referred to as "**SE/MN**", and those who enter into agreement with SE/MN (the "**School**"). (In this Agreement, each of Study Edge, Math Nation and the School is a "**Party**", and collectively, they are the "**Parties**.") WHEREAS, SE/MN is in the business of providing an online platform to assist individuals in preparing for Algebra as well as various other mathematics related curriculum including, but not limited to, the curriculum, services, programs, and applications provided under SE/MN's Math Nation and Math Nation services ("**SE/MN's Services**"); and WHEREAS, the School desires to have SE/MN's Services available for the School's students, teachers and other persons affiliated with the School (each of the School's students who is then enrolled with the School is a "**Student**", and collectively, they are the "**Students**", and each teacher and other persons affiliated with the School who use SE/MN's Services is a "**Teacher**", and collectively, they are the "**Teachers**"); NOW THEREFORE, in consideration of the mutual covenants contained herein the Parties agree as follows:

1. GENERAL



(<https://www.mathnation.com>)

- Clever.com (Clever): SE/MN shall provide the School with access to Clever.com. The School shall then submit all necessary data and information to SE/MN via Clever. In addition, SE/MN will provide technical support, as well as Clever technical support, to assist in said integration. The School shall be solely responsible for ensuring that Student files and School files are entered into the Clever system, updated in an appropriate and timely fashion, and maintained so as to facilitate continued integration of SE/MN's Services.
3. The School agrees that the School and its Students and Teachers shall abide by and comply with SE/MN's Privacy Policy (the "**Privacy Policy**"), which is posted on SE/MN's website (www.MathNation.com/privacy) as such may be amended from time to time.
 4. SE/MN agrees to provide access to SE/MN's Services to Students who are officially and currently enrolled at the School, subject to reasonable limitations on streaming. Such streaming limitations shall be determined at SE/MN's sole discretion.
 5. Provision of access to SE/MN resources is contingent upon SE/MN receiving adequate funding each year for the continuation of this program. In the event SE/MN fails to secure or receive adequate funding for the continuation of the no-cost provision of SE/MN Services to the School, SE/MN may, in SE/MN's sole discretion and upon sixty (60) days written notice to the School of such failure to receive funds.

2. TERM AND RENEWAL

1. The Term of this Agreement shall continue unless the Agreement is terminated by one or both Parties or the Parties otherwise agree in writing. If a Party desires to terminate this Agreement, the terminating Party shall provide the other Party written notice of such intent not less than 60 days prior to the scheduled termination; provided however, that SE/MN shall have the rights, in its sole discretion, to modify the terms of this Agreement for such additional term, by posting on MathNation.com/Agreement.



Students of this Agreement (including but not limited to a violation of the Terms of Use and/or the Privacy Policy).

3. CUSTOMER SERVICE

During the term of this Agreement, SE/MN will provide customer service to all Students and Teachers through email at help@mathnation.com and/or by toll-free phone number at (888) 608-MATH.

4. INTELLECTUAL PROPERTY

The Parties agree that any and all intellectual property, confidential information, formulae, devices, patterns, know-how, technology, computer programs, computer software, computer code, computer applications, web applications, websites, documentation, processes, lists, compilations, literature, inventions, methodologies, parts, equipment, techniques and other work product (including, without limitation, improvements thereon) used by SE/MN in the provision of the SE/MN Services are and shall remain the exclusive property of SE/MN. Moreover, nothing in this contract may or shall be construed as a sale, assignment, or license of any intellectual property rights held by SE/MN to the School.

5. DISCLAIMER

1. SE/MN's Services are provided on an "AS IS" basis. SE/MN makes no representation that the services and technology provided will be uninterrupted or error-free. SE/MN and its agents, employees, and licensors cannot and do not warrant the accuracy, completeness, non-infringement, merchantability or fitness for a particular purpose of the information available through the application.



implied warranties, promises and conditions of merchantability, fitness for a particular purpose, title and/or non-infringement, whether as to any content or services rendered by SE/MN and the technology deployed in connection therewith.

3. SE/MN may monitor, but has no duty or obligation to become involved in, any interactions between SE/MN and any Student or Teacher. SE/MN is not responsible for any disputes, claims, loss, injury, or damage of any kind that might arise before, during, and/or after the interaction between SE/MN and any Student or Teacher and will not retain responsibility for or be required to be involved in any.

6. COPYRIGHT AND LIMITATIONS ON USE

. The Parties acknowledge that some or all of the information and instruction available is protected by copyright and/or other intellectual property laws. The School agrees that neither the School nor any Student shall reproduce, re-transmit, distribute, disseminate, sell, publish, broadcast or circulate any information received through SE/MN's Services to anyone, including but not limited to other persons in the same group or association as the Student, without the expressed prior written consent of SE/MN, or the applicable copyright holder.

7. LIMITATIONS OF LIABILITY

1. The Parties agree that neither the School nor any Student or Teacher shall hold SE/MN or its employees, contractors, agents, officers, directors, shareholders, successors, assigns, partners, and attorneys, liable for any indirect, incidental, special or consequential damages that result from:(i) the use of or inability to use the SE/MN's Services or SE/MN's applications;(ii) changes to the application platform, future changes to specific features of applications, or downtime associated with the application platform, or hardware failures of SE/MN or of any particular user; or(iii) mistakes, omissions, interruptions, deletion or loss of



(<https://www.mathnation.com>)
destruction or unauthorized access to SE/MN's or Clever's records, programs or applications electronic or mechanical failures, communication line failures, third party internet service provider interruption, unauthorized breaches, thefts, or destruction of SE/MN's records, programs, or applications, regardless of whether such failure was caused by intentional or negligent acts or omissions of SE/MN or a third party. SE/MN had a strict privacy and security governance policy (accessible at [MathNation.com/privacy](https://www.mathnation.com/privacy))

2. In the event that a court of competent jurisdiction holds that SE/MN and its employees, contractors, agents, officers, directors, shareholders, successors, assigns, partners, and attorneys may not disclaim liability for damages caused as a direct result of the actions or negligence of SE/MN and/or its employees, contractors, agents, officers, directors, shareholders, successors, assigns, partners, and attorneys, then SE/MN shall not be liable to the School, any Student or Teacher, or anyone else for any damages other than direct damages (and shall not be liable for any consequential, special, incidental, indirect, or similar damages) even if advised of the possibility of such damages. In all events, the School agrees that the liability of SE/MN and its employees, contractors, agents, officers, directors, shareholders, successors, assigns, partners, and attorneys, arising out of any kind of legal claim (whether in contract, tort, or otherwise) in any way connected with SE/MN or SE/MN's Services, the information and instruction available in SE/MN's applications, (i) to the School shall not exceed the amount the School paid to SE/MN, if any, and (ii) to any Student shall not exceed the amount paid by the Student for SE/MN's Services, if any.

8. INDEMNIFICATION

. To the extent permitted by applicable law, each Party agrees to indemnify and hold harmless the other Party and their employees, contractors, agents, officers, directors, shareholders, successors, assigns, partners, and attorneys from and against any and all claims, liabilities, costs, damages and expenses, including attorney's fees and costs, incurred by the other Party incurred in connection with or arising from any breach of this Agreement by the breaching party of any warranty contained in this agreement; or



(<https://www.mathnation.com>)
administrative laws or regulations.

The School further agrees to indemnify and hold harmless SE/MN from and against any and all claims, liabilities, costs, damages and expenses, including but not limited to SE/MN's attorneys' fees, arising directly or indirectly out of the actual or alleged use of any part of SE/MN's Services or applications, by the School, the Teachers, or the Students, in violation of any applicable civil, criminal, or administrative laws or regulations, including but not limited to, violations of copyrights, or any criminal activity. Nothing herein shall be deemed to constitute a waiver by either Party of any privilege, protection, or immunity otherwise afforded it under any state or federal law.

9. WARRANTIES BY THE SCHOOL

. The School represents that, to the best of its knowledge, it is the sole owner of all right, title, and interest in the School's trademark and stylized logo(s) ("the Marks") and that SE/MN's use of the Marks, and trade names, trademarks, service marks, or other intellectual property of the School, in the manner contemplated pursuant to this Agreement, shall not infringe or cause the breach of any rights held or claimed by any third party under any contract, copyright, trademark or other property right of any third party.

In addition, the School hereby grants to SE/MN a non-exclusive, royalty-free license to make limited use of the Marks solely in connection with the services to be provided by SE/MN to the School contemplated in this Agreement

10. ASSIGNMENT

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~~(<https://www.mathnation.com>)~~ controlled substantially by that party, a parent or affiliated company of that party, or an acquirer of all or substantially all of that party's assets, provided the assigning party guarantees the performance of and causes the assignee to assume in writing all obligations of the assignor under this Agreement. The rights and obligations of this Agreement shall bind and benefit any successors or assigns of the parties.

11. GOVERNING LAW

This Agreement shall be construed in accordance with the laws of Florida. Any dispute between the Parties concerning this Agreement shall be resolved by arbitration in Gainesville, Florida, under the rules of the American Arbitration Association.

12. SEVERABILITY

If any provision or provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

13. RELATIONSHIP OF THE PARTIES

The parties each acknowledge and agree that in fulfilling the mutual obligations required pursuant to this Agreement, SE/MN is acting and will act as an independent contractor and not as an employee of the School. Except for the authority to engage in activities described in this Agreement, SE/MN acknowledges and agrees that it is not an agent for the School, and it will not have nor will it represent or hold itself out as having authority to bind the School or to incur any obligations whatsoever on behalf of the School. Neither party hereto shall be liable to any third party in any way for any engagement, obligations, commitment, contract, or transaction for any act nor omission to act of the other except as provided herein.



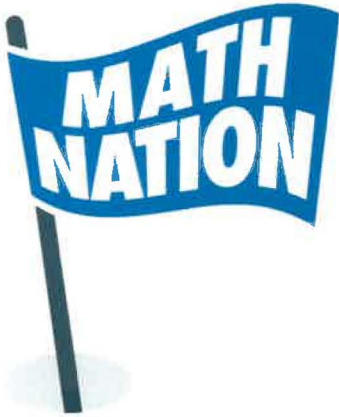
Select State ([/#state](#))

(<https://www.mathnation.com>)

supersedes all previous agreements and understandings concerning the subject matter hereof.

15. NOTICE

All notices provided for hereunder shall be deemed sufficient if in writing via [MathNation.com/privacy](https://www.mathnation.com/privacy)



CONTACT US

✉ [Email Us](#)

☎ [\(888\) 608-MATH](#)

<tel://888-608-6284>

March 2, 2023

Kenton County Schools
Kenton, KY

To whom it may concern:

For the purposes of the Agreement between Kenton County Schools and Acceleration Learning, Inc. for the purchase of Math Nation Software and Curriculum the following shall be amended in the Math Nation Terms of Use.

11. GOVERNING LAW

This Agreement shall be construed in accordance with the laws of Delaware. Any dispute between the Parties concerning this Agreement shall be resolved by arbitration in Kenton County, Kentucky, under the rules of the American Arbitration Association.

Sincerely,



Glen Kimmel
Senior VP, Finance