



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

Issue Paper

DATE:

02.16.23

AGENDA ITEM (ACTION ITEM):

Consider/Approve The sales contract with NearPod, Inc., Inc for Summit View Academy to purchase a teacher membership for the remainder of the 22-23 school year.

APPLICABLE BOARD POLICY:

01.1 – Legal Status of the Board

HISTORY/BACKGROUND:

NearPod allows teachers to identify student’s current academic achievement levels and supplement classroom instruction in all content areas. This program is able to be differentiated to students’ current level of achievement to target specific skills to close gaps and focus on growth. This agreement will allow membership to continue for the remainder of the 22-23 school year for students at all grade levels K-8 .

FISCAL/BUDGETARY IMPACT:

\$397 – ESSER FUNDS

RECOMMENDATION:

Approval of the sales contract with NearPod, Inc., Inc for Summit View Academy to purchase a teacher membership for the remainder of the 22-23 school year.

CONTACT PERSON:

Alex Fangman

Principal/Administrator

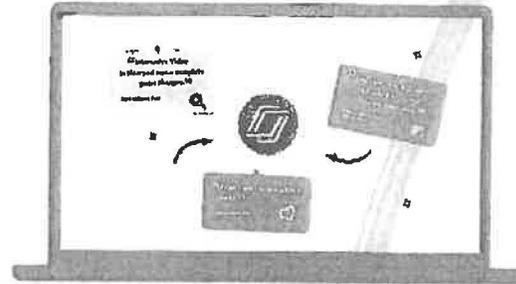
District Administrator

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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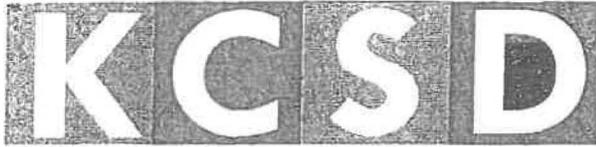
Platinum
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THE KENTON COUNTY BOARD OF EDUCATION

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 Educational 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.

Nearpod Inc.

Vendor Name

~~1855 Griffin Road, A290, Dania Beach, FL 33004~~

Vendor Address

305.677.5030

Vendor Telephone

vendorforms@nearpod.com

Vendor Email Address

Jose Carrera

Signature by Vendor's Authorized Representative

Jose Carrera

Print Name

09 / 07 / 2022

Date

Nearpod® Terms and Conditions

For the previous version of these terms, please [click here](#).

For a printable version of these terms, please [click here](#).

If you are purchasing subscriptions to Flocabulary, please refer to Flocabulary's Terms, [here](#).

If you are purchasing subscriptions (or piloting) to Nearpod in the UK via Renaissance Learning, UK Ltd., please refer to the terms [here](#).

I agree to these Terms and Conditions ("Terms") or using, accessing, or registering for Nearpod Inc.'s (collectively, "we," "us," or "Nearpod") website, Nearpod mobile applications, or any other websites, applications, or online services that link to these Terms (collectively the "Nearpod Materials"), you are agreeing to these Terms, which is a binding contract with Nearpod Inc. for the benefit of itself and its affiliates.

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1. Introduction

Please read these Terms carefully as they provide that You and Nearpod will arbitrate certain claims instead of going to court and that you will not bring class action claims against Nearpod. It is important to us that the Nearpod Materials provide you with a helpful and reliable experience. To protect our rights and yours, these Terms govern all uses of the Nearpod Materials.

Access or use of the Nearpod Materials for which you have registered or enrolled constitutes acceptance of these Terms as a binding agreement. By using the Nearpod Materials, you represent that you: (1) you are an adult (according to the rules of the country where you are located), (2) have read and understood these Terms; (2) agree to use the Nearpod Materials in compliance with applicable laws and these Terms; (3) are an authorized user; and (4) that you will be responsible for ensuring that any user authorized by you to use and access the Nearpod Materials does so in accordance with these Terms. If you are a holder of a Nearpod for Higher Education or Nearpod Enterprise Edition account, for commercial purposes, then these Terms, to the extent applicable, apply to you too.

Furthermore, if you are an Educator Nearpod User, regardless of teaching at a private or public institution, you represent and warrant to us that you are (i) authorized to agree to these Terms on behalf of your organization and (ii) provide consent on behalf of your Student Nearpod Users to use and access the Nearpod Materials. Additionally, as an educator, you represent and warrant that Nearpod shall be considered a School Official, as defined by FERPA, with a legitimate educational interest, and performing services otherwise provided by the educator.

If you do not agree to these Terms, then please do not purchase a subscription, create an account, or use the services.

Additional terms and conditions may apply to some services offered on the Nearpod Materials if we post such terms within such services or if we sign a separate agreement with you. Please contact privacy@nearpod.com if you have questions about these Terms. Nearpod is a registered trademark of Nearpod Inc.

Unauthorized commercial, corporate or other misuse of Nearpod may result in the cancellation of your account. Nearpod empowers educators to choose how much student personal information students input into the Nearpod Materials. While some Nearpod features may request student personal information, such as first name, first initial of student's last name, a nickname or student voice, it is ultimately in the Educator

Nearpod User/District Administrator's discretion as to what information is actually provided.

Outside the US, if you are under the age of majority in your country of residence, you must review these Terms with your parent or guardian to make sure that you and your parent or guardian understand and agree to them.

Nearpod and the Nearpod Materials comply with (and facilitate compliance with) applicable law, including the Family Educational Rights and Privacy Act (FERPA) and Children's Online Privacy Protection Act (COPPA). We rely on consent by the Educator Nearpod User as the basis for collecting this information via the participation portion of the Nearpod Materials or through the activation of the Student Account feature. If you are a parent, guardian, or teacher and believe that your child or student under the age of 16 has provided Nearpod with personally identifiable information without your consent, please notify privacy@nearpod.com so that we can promptly delete the information from our servers. For more information about our privacy policy, please read [here](#).

If you have any questions about how to use the Nearpod Materials, please contact us at: Nearpod Support.

The section headings and highlights contained below are for your convenience only, and do not have any legal meaning or effect.

2. Definitions

For purposes of these Terms:

- **"Admin Nearpod User"** means a User who has administrator access to the Nearpod Materials for an Institution.
- **"Educator Nearpod User"** means a single, named, person of legal age who can enter into a contract in the state or country in which the User resides and in no case, is under the age of 18, and who is an Instructor or school administrator who has an end-user account to use the Nearpod Materials and is not a student.
- **"Institution"** is defined as: a school, district, college, university or other education institution or education agency, whether public or private, that adopts or uses the Nearpod Materials.
- **"Nearpod, "we" or "us"** means Nearpod Inc., who provides the platform through which the Nearpod Materials are delivered.

- **"Nearpod Materials"** means the Nearpod website, Nearpod mobile applications, or any other websites, applications, or online services that link to these Terms.
- **"Student Nearpod Users"** means those Nearpod users who participate in the participant portion of the Nearpod Materials by entering a code provided by the Educator Nearpod User and accessing the lesson materials or only obtain access to a Student Account (available only in School or District License Editions) if the administrator on that account enables the Nearpod Materials the ability to do so.
- **"You"** refers to an Educator Nearpod User (defined below) of the Nearpod Materials in the event that an individual Nearpod license is used (e.g. Silver, Gold, or Platinum) or the Institution (e.g. School or District), as context may require. In the event that you're entering into these Terms as a representative of an institution, then the institution agrees that it will take all reasonable steps to ensure that its authorized users adhere to these Terms.

Highlights

The following are some of the key points to our Terms; however these aren't legally binding and are meant for reference only. You should read these entire Terms along with our Privacy Policy and Privacy FAQ (the terms of which are incorporated by reference into these Terms):

1. These terms, in addition to our Privacy Policy, are the contract between you and Nearpod. If you don't agree to these terms, don't use Nearpod. If you break these rules, we reserve the right to cancel your subscription.
2. There may be other terms that apply to you (e.g. if we sign a separate agreement with you).
3. Regardless of the type of account you have, there are two kinds of users: Teachers (i.e. presenters) and Students (i.e. those who join lessons via codes or via a Student Account provisioned by their school/district administrator). By registering for Nearpod you're representing that you're an adult, that you have the ability to and, in fact, do provide consent for the child(ren) to use Nearpod, and that any child(ren) who uses Nearpod at your direction will follow the rules.
4. Nearpod does not intend for students and/or minors to sign up to the Nearpod

Materials on their own; rather, Nearpod's features permit administrator holders of School or District licenses to enable the creation of student accounts.

5. You're promising that if you're representing a school or district, you're able to agree to these terms on behalf of your organization and provide consent on behalf of students. You're designating us a school official as defined by FERPA. We base our COPPA required verifiable consent from teachers.
6. We give teachers the power to decide what personal information students enter into the platform.
7. If you're a minor outside the US, you should review these terms with your parent or guardian.
8. If you think a student accidentally created an account in a way not intended for student use, email us at privacy@nearpod.com and we'll delete it.
9. For Silver, Gold, or Platinum Accounts: These are individual accounts for teachers. You can only sign up for these if: you're an adult, currently employed by a school or district and remain employed by school or district during the term of your license. You can only use the account for access to students if you have the right to do so by your school.
10. You cannot share accounts between two or more educators.
11. You cannot share your password.
12. We own all the Nearpod Materials, or have the right to use third-party materials that we license. Using, sharing, distributing, or otherwise accessing the Nearpod Materials in a way that is not allowed by Nearpod's functionalities is a violation of these Terms.
13. When you pay for or otherwise sign up to use the Nearpod Materials, you do not own the Nearpod Materials. Rather, we grant you a license to use the Nearpod Materials for the term of your agreement.
14. While using Nearpod you may create content. You will own the content subject to the license you grant us for the content. We're not responsible for the content that you post. We don't guarantee the availability of your content through the platform. Similarly, we are not responsible for content provided by third parties, even if Nearpod links to the third-party.

15. You won't try to sell or reverse engineer the Nearpod materials. Additionally, you agree not to try and scrape our website or use external forces to try and interfere with our platform or scan our systems.

16. You won't infringe on other people's IP with the material you post; won't advertise or market for business; or, use defamatory, obscene, violent, or otherwise inappropriate language.

Terms

3. Accounts, Passwords, and Payments

A. *Accounts.* Nearpod has two types of accounts: individual accounts (e.g. Silver, Gold, or Platinum) or Institution accounts (e.g. School or District) as more particularly described below. All of these accounts are meant for Educator Nearpod Users. Students do not need accounts to access the Nearpod Materials; however, administrators of Institution accounts will have the option to enable the Student Account feature (as more particularly explained below). Additionally, Nearpod offers non-education related accounts for enterprise customers. Nearpod reserves the right to change, add, or remove the types of accounts offered and/or how they're named at any time.