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Issue Paper

DATE:

January 23, 2023

AGENDA ITEM (ACTION ITEM):

Consider/Approve Dixie Heights High School to contract with Carnegie Learning for use of the Level 1, 2 and 3 German Bookshelf renewal license.

APPLICABLE BOARD POLICY:

01.1 Legal Status of the Board

HISTORY/BACKGROUND:

Our German classes currently use the Level 1, 2 and 3 German Bookshelf license for access to the Deutsch Aktuell eAnnotated Teacher's edition and all of the corresponding audio and video files.

FISCAL/BUDGETARY IMPACT:

Cost of the Level 1, 2 and 3 German Bookshelf license is \$304.71 per year and will be paid from SBDM funds.

RECOMMENDATION:

Approval Dixie Heights High School to contract with Carnegie Learning for the use of the Level 1, 2 and 3 German Bookshelf renewal license.

CONTACT PERSON:

Teresa Catchen/Chris Welch

A handwritten signature in black ink, appearing to be 'R. S.', written over a horizontal line.

Principal/Administrator

A handwritten signature in black ink, appearing to be 'John H.', written over a horizontal line.

District Administrator

A handwritten signature in black ink, appearing to be 'J. H.', written over a horizontal line.

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.



501 Grant St, STE 1075
Pittsburgh, PA 15219
(888) 851-7094
Send Payment to: PO Box 6001, Hermitage, PA 16148-1001

ORDER NO: 94-001

DATE: 5/11/2023
EXPIRES ON: 7/28/2023

CONTACT INFORMATION		
Dixie Heights High School 3010 Dixie Hwy. Edgewood, KY, 41017	Chris Welch Teacher 859-341-7650 chris.welch@kenton.kyschools.us	Ben Stavros AE bstavros@carnegielearning.com

ITEM	DESCRIPTION	TERM	UNITS	NET TOTAL
Deutsch Aktuell 7e - Bookshelf eAnnotated Teacher's Edition	eAnnotated Teacher's Edition with links to all the resources corresponding to each level, including any audio and/or video files Level 1, 2, 3.	1 Yrs	3	\$304.71

SUBTOTAL:	\$304.71
SHIPPING AND HANDLING:	\$0.00
STATE SALES TAX:	\$0.00
TOTAL:	\$304.71

TERMS AND CONDITIONS

- The attached quotation is confidential and proprietary information not to be distributed or shared by the Customer.
- By accepting this quote, Customer accepts Carnegie Learning, Inc.'s Terms of Use policy available at: <http://www.carnegielearning.com/terms-of-use>, for #22 references to state of Pennsylvania replaced with Kentucky.
- Prices are subject to change without notice.
- Quote is valid for 30 days.
- Please include your tax exempt certificate with your purchase order. The Carnegie Learning Federal Tax ID# is 25-1805640.
- Payment Terms: Net 30 Days. Payment of entire invoice amount is required within 30 days from invoice date.
- All media sold by Carnegie Learning, Inc. are sold on a non-returnable basis. The only exceptions to this policy are:
 - Media received that was not ordered (wrong title, wrong quantity). Materials must be in original shrink wrap, if applicable, and not used.
 - Media received in a damaged condition that would render it unsuitable for use.
 - Customer is responsible to inspect textbook shipments and report any textbook quantity, title or damage issues within 45 days of receipt. Failure to report issues within the 45 days could result in additional return fees.
- Carnegie Learning, Inc. is under no obligation to accept return requests after 45 days of customer receipt of order.
- Customer is responsible for expedited shipping costs that fall outside of our standard delivery process. All textbooks carry a standard shipping time frame of 4-6 weeks. Shipments will occur earlier if stock is available.
- Multi-year licenses run consecutively from license activation date.
- The school district is responsible for providing all hardware necessary to run the software, as specified in CLI's Systems Requirements (available at <http://carnegielearning.com/support>). Prices do not include hardware.
- All Professional Development services purchased expire at the term of this agreement. Standalone Professional Development purchases will expire one year from the purchase date.
- An additional credit card fee of 2.5% of total before sales tax will be applied if customer decides to pay by credit card.
- All credit memos and credit balances that exceed 120 days old will first be applied to any existing balances. After application, any remaining credit balance will be refunded via a check. Carnegie Learning will mail the check to the address on file.

[Handwritten Signature]

5/19/2023

BEN STAVROS

Account Executive

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www.carnegielearning.com



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501 GRANT STREET, SUITE 1075, PITTSBURGH, PA 15219

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Updated and Effective Date: These Terms of Use are updated and effective as of October 31, 2022

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3. Additional terms apply if you register for or use an account on our Sites.
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8. User Content Submissions
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22. ARBITRATION AGREEMENT/GOVERNING LAW/CLASS ACTION WAIVER/DISPUTE RESOLUTION (U.S. Residents only)
23. Governing Law
24. Termination
25. Certain other miscellaneous provisions also apply.
26. If you have questions or concerns, please contact us, and we will try to resolve them.
- 1. These Terms apply to all use of our Sites**

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- Cease to operate the Sites or features within the Sites.
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- Impose conditions on the product licenses.
- Restrict or terminate your access or registration to the Sites or otherwise deny you access in our sole discretion without notice.

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- **No pictures or images of anyone without permission.** If you choose to upload photos to the Sites, link to embedded videos, or include other images of real people, make sure you have their express permission to post it.
- **Don't upload third party materials.** Your User Content should not contain any visible logos, phrases or trademarks or other third party materials. Do not use any User Content that belongs to other people and pass it off as your own. This includes any content that you might have found elsewhere on the Internet.
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- **Keep it relevant.** Your User Content should relate to the content on the Sites and should be intended to add to the discussion and community on the Site.
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DMCA Agent

Carnegie Learning

501 Grant Street

Union Trust Building, Suite 1075

Pittsburgh, PA 15219, USA

dmca@carnegielearning.com

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any infringing material. If a dispute develops as to the correct owner of the rights in question, we reserve the right to remove your content along with that of the alleged infringer pending resolution of the matter.

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NOTICE TO THIRD-PARTY SITES: Any Site Content made available in connection with your web page, social networking site, or otherwise, by our Widgets, third-party widgets or otherwise is our exclusive property and no grant of any intellectual property rights is made by us. We retain the right to demand that you cease any use of our Site Content upon notice.

13. Linking Policy

Carnegie Learning grants you the revocable permission to link to the Sites; provided, however, that any link to the Sites: (a) must not frame or create a browser or border environment around any of the content on the Site or otherwise mirror any part of the Site; (b) must not imply that Carnegie Learning or the Sites are endorsing or sponsoring any third party or its products or services, unless Carnegie Learning has given the third party prior written consent; (c) must not present false information about, or disparage, tarnish, or otherwise, in Carnegie Learning's sole opinion, harm Carnegie Learning or its products or services; (d) must not use any Carnegie Learning trademarks without the prior written permission from Carnegie Learning; (e) must not contain content that could be construed as distasteful, offensive or controversial or otherwise objectionable (in Carnegie Learning's sole opinion); and (f) must be owned and controlled by you or the person or entity placing the link, or otherwise permit you to enable such link subject to these Terms. By linking to the Site, you agree that you do and will continue to comply with the above linking requirements. Notwithstanding anything to the contrary contained in these Terms, Carnegie Learning reserves the right to prohibit linking to the Site for any reason in our sole and absolute discretion.

14. Promotions

The Sites may contain or offer sweepstakes or other promotions, which may be governed by a separate set of rules that describe the sweepstakes or promotion and may have eligibility requirements, such as certain age or geographic area restrictions. It is your responsibility to read those rules to determine whether or not your participation, registration or entry will be valid and to determine the sponsor's requirements of you in connection with the applicable sweepstakes or promotion.

15. Correction of Pricing and Related Product Information

The Sites may contain pricing information on certain Carnegie Learning or other products. While Carnegie Learning strives to provide accurate pricing and other product information, errors may occur from time to time. We reserve the right to correct any errors, inaccuracies or omissions, and to change or update information (including, without limitation, information related to pricing, availability and product descriptions), at any time without notice (including, without limitation, after a consumer may have submitted an order and received confirmation from us). In the event that an item is listed at an

subsequently concerned, Carnegie Learning will issue a credit to your credit card. We apologize for any inconvenience this may cause you.

We shall not be liable to you or to any third party for any price changes or errors. Unless otherwise stated, for users viewing the Sites from the United States prices on the Sites are in United States dollars. For users viewing the Sites from other countries, the prices on the Sites are in United States dollars.

16. Accuracy of Billing and Account Information

We reserve the right to refuse any order or any part of any order you place with us. We may, in our sole discretion, limit or cancel quantities purchased per person, per household, or per order. These restrictions may include orders placed by or under the same customer account, the same credit card, and/or orders that use the same billing and/or shipping address. In the event that we make a change to or cancel an order, we may attempt to notify you by contacting the email and/or billing address/phone number provided at the time the order was made. We reserve the right to limit or prohibit orders that, in our sole judgment, appear to be placed by unauthorized dealers, resellers or distributors. Further, we reserve the right to verify the validity of all orders and cancel any order if we find evidence of fraud, tampering and/or any other violation of these Terms. We reserve the right, in our sole and absolute discretion, to require proof of identity (in a form acceptable to us): (i) for the purposes of verifying the legitimacy of any order and/or other information; and/or (ii) for any other reason we deem necessary, in our sole and absolute discretion, for the purposes of fulfilling an order in accordance with our interpretation of the terms and conditions of these Terms.

You agree to provide current, complete and accurate purchase and account information for all purchases made at the Sites. You agree to promptly update your account and other information, including your email address and credit card numbers and expiration dates, so that we can complete your transactions and contact you as needed.

17. E-Commerce

Sales transactions on the Sites are subject to these Terms and our sales policies, where applicable. You agree to pay all applicable fees and taxes. Applicable tax will also be applied to the shipping and handling, return shipping and other charges. Taxes may depend on delivery location. You will be billed for your order at the time your order is placed. We may use one or more third parties to process your payment information when you make a purchase on the Sites. The payment processor may depend on the payment method you select. Additional terms and conditions imposed by the third party processor may apply.

18. DISCLAIMER OF WARRANTIES; WAIVER.

To the fullest extent permissible by applicable law, Carnegie Learning, Inc. and its subsidiaries, affiliates, directors, officers, employees, agents, contractors, interns, suppliers, vendors, service providers, licensors, or other representatives of each of them (collectively, "Carnegie Learning Parties") make no representations, warranties, endorsements, or conditions of any kind whatsoever, either express or implied, as to: (1) the Sites or Site Content, (2) products and services sold by Carnegie Learning, Inc. (3) User Content; and/or (4) security associated with the transmission of information to Carnegie Learning, Inc. or via the Sites.

In addition, to the fullest extent permissible by applicable law, the Carnegie Learning Parties disclaim all warranties or conditions: (1) that the Sites will meet your requirements; (2) that the Sites or access to them will be uninterrupted, timely, secure, or free of errors or omissions; (3) that defects will be corrected; (4) that the Sites or the servers hosting them will be free of viruses, other harmful code or components; or (4) that the Sites or its content will continue to be available. You agree that from time to time we may disable the Sites for indefinite periods of time or shut down the Sites at any time, without notice to you. The Carnegie Learning Parties shall have no liability for any such issues.

To the fullest extent permissible by applicable law, the Carnegie Learning Parties disclaim any express or implied warranties or conditions as to the Sites, including, without limitation, non-infringement, merchantability, merchantable quality, fitness for a particular purpose, durability, title, custom, trade, quiet enjoyment, system integration, and freedom from computer virus, and as to quality, availability and subject matter of content.

To the maximum extent permitted by applicable law, the Sites, Site Content, and all products and services sold by Carnegie Learning, Inc. are (except as expressly stated by us) provided "as is," "as available," and "with all faults."

Your access to, use of, and/or participation in the Sites, or inability to access, use, or participate, is solely at your own risk. If you are dissatisfied with the Sites, your sole and exclusive remedy is to discontinue accessing and using them. The Carnegie Learning Parties do not represent or warrant that your use of the Sites is lawful in any particular jurisdiction, and the Carnegie Learning Parties specifically disclaim such warranties.

The Carnegie Learning Parties do not guarantee, represent, or warrant that any advice or information, whether oral or written, obtained by you from us or through the Sites, its employees, consultants and/or experts, are accurate, complete, timely, or useful or that results that may be obtained from the use of the Sites will be accurate or reliable.

You understand and agree that any material and/or data downloaded or otherwise obtained through the use of the Sites is at your own discretion and risk and that you will be solely responsible for any damage to your computer system or loss of data that results from the download of such material and/or data.

You understand and agree that we do not guarantee that any information in or provided in connection with the Sites is accurate, complete, or current. The material on the Sites is provided for informational purposes and should not be relied upon or used as the sole basis for making decisions without consulting primary, more accurate, more complete, or more timely sources of information. We are not responsible for any errors or omissions or for the results obtained from the use of such information. The information is provided with the understanding that neither we nor our members, while such members are participating in the Sites, are engaged in rendering legal, medical, counseling or other professional services or advice. We encourage you to seek appropriate professional advice or care for any situation or problem which you may have. Any reliance on the material on the Sites is at your own risk.

By accessing or using the Sites, you represent and warrant that your activities are lawful in every jurisdiction where you access or use the Sites.

(b) you have the full power and authority necessary to agree to these Terms of Use and doing so will not conflict with any other obligation or agreement with any third party; and (c) you have all rights and permissions from a parent or legal guardian of each student to whom you provide access to the Sites that are necessary for such student to use the Sites and provide Carnegie Learning with personal information relating to such student or you hereby grant such permissions as permitted by and in accordance with applicable law.

The Carnegie Learning Parties do not endorse User Content and are not responsible for User Content.

19. LIMITATION OF LIABILITIES; WAIVER.

The laws of certain jurisdictions, which may include the province of Quebec, do not allow the exclusion or limitation of legal warranties, conditions or representations, or the limitation of liability or certain damages for consumers. If these laws apply to you, some or all of the below exclusions or limitations may not apply to you and you may have additional rights.

To the maximum extent permitted by applicable law, you agree that under no circumstances shall the Carnegie Learning Parties be liable to you or anyone else for any injury, loss, claim, or any direct, indirect, incidental, punitive, special, or consequential damages of any kind, including, without limitation lost profits, lost revenue, lost savings, loss of data, replacement costs, or any similar damages, whether based in contract, tort (including negligence), strict liability or otherwise, arising from: (A) the Sites or Site Content; (B) User Content; (C) your use, or inability to use, or the performance of the Sites or any Carnegie Learning, Inc. products or services; (D) action taken in connection with an investigation by the Carnegie Learning Parties or law enforcement authorities regarding your use of the Sites; (E) action taken in connection with copyright or other intellectual property owners; (F) any errors or omissions in the Sites' technical operation; (G) any damage that results from events beyond our reasonable control, such as damages to any user's computer, mobile device, or other equipment or technology including, without limitation, damage from any security breach or from any virus, bugs, tampering, fraud, error, omission, interruption, defect, delay in operation or transmission, computer line or network failure or any other technical or other malfunction, including, without limitation, damages for lost profits, loss of good will, loss of data, work stoppage, accuracy of results, or computer failure or malfunction, even if foreseeable or even if the Carnegie Learning Parties have been advised of or should have known of the possibility of such damages. However, in no event will the Carnegie Learning Parties total liability to you for all damages, losses or causes or actions exceed the amount paid by you, if any, to Carnegie Learning, Inc. for a product or service ordered through the Sites in the twelve (12) months preceding the claim or, in the event there has been no amounts paid, the amount of ten United States dollars (\$10.00). The prior limitation on damages is not intended to limit the Carnegie Learning Parties' obligation to pay prevailing party costs or fees if recoverable pursuant to applicable law. The limitations set forth in this section will not limit or exclude the Carnegie Learning Parties' liability for personal injury or property damage caused by the Carnegie Learning Parties, or for the Carnegie Learning Parties' gross negligence, fraud or intentional, willful, malicious or reckless misconduct.

Because some states or jurisdictions do not allow the exclusion or the limitation of liability for consequential or incidental damages, in such states or jurisdictions, our liability shall be limited to the maximum extent permitted by law. **By accessing the Sites, you understand that you may be waiving rights with respect to claims that are at this time unknown or unsuspected, and in accordance with such waiver, you acknowledge that you have read and understand, and expressly waive, the benefits of section 1542 of the Civil Code of California, and any similar law of any state or territory which provides as follows:**

"A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party."

20. If you violate these Terms, and someone makes a claim against us as a result, you must make us whole; INDEMNIFICATION

To the fullest extent permitted by applicable law, you agree to defend, indemnify, and hold the Carnegie Learning Parties harmless from and against any and all claims, demands, investigations, liabilities, judgments, settlements, including damages, costs and expenses, or reasonable attorneys' fees, made by any third party, due to or arising from or related to your (or any other subscriber of your account's): (1) use or misuse of the Sites or activities in connection with the Sites; (2) your User Content; (3) your breach of these Terms or the documents they incorporate by reference or anticipatory breach (4) your violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities, including, without limitation, all regulatory, administrative and legislative authorities; (5) information or material transmitted through your computer, even if not submitted by you, that infringes, violates or misappropriates any copyright, trademark, trade secret, trade dress, patent, publicity, privacy or other rights of any person; (6) any misrepresentation made by you; or (7) the Carnegie Learning Parties' use of your information as permitted under these Terms, the Privacy Policy, or any other written agreement between you and Carnegie Learning, Inc. The Carnegie Learning Parties reserve the right to assume the exclusive defense and control of any matter subject to indemnification, and in such cases you agree to cooperate with us to defend such claim. You may not settle any claim without the prior written approval of a duly authorized employee of the Carnegie Learning Sites.

21. Location of the Sites and Territorial Restrictions

Carnegie Learning controls and operates the Sites from offices located in the United States of America. The information provided on the Sites are not intended for distribution to, or use by, any person or entity in any jurisdiction or country where such distribution or use would be contrary to law or regulation or which would subject Carnegie Learning to any registration requirement within such jurisdiction or country. We reserve the right to limit the availability of the Sites or any portion of the Sites, to any person, geographic area, or jurisdiction, at any time and in our sole discretion, and to limit the quantities of any content, program, product, service or other feature that we provide.

Software related to or made available by the Sites may be subject to United States export controls. Thus, no software from the Sites may be downloaded, exported or re-exported: (a) into (or to a national or resident of) Cuba, North Korea, Iran, Syria or any other country to which the United States has embargoed goods or that has been designated by the U.S. government as "terrorist supporting"; or (b) to anyone on the U.S. Treasury Department's list

22. ARBITRATION AGREEMENT/GOVERNING LAW/CLASS ACTION WAIVER/DISPUTE RESOLUTION (U.S. Residents only)

If you are a resident of the United States, then, as part of these Terms of Use, you and Carnegie Learning, Inc. each agree as follows (the "Arbitration Agreement")

Any claim or controversy arising out of or relating to your use of the Site (including without limitation the arbitrability of any claim or controversy) shall be resolved by binding arbitration in accordance with the Federal Arbitration Act. The parties waive their rights to file suit in court to assert any allegation, claim, or cause of action against the other, or to have a jury trial on any allegation, claim, or cause of action, and any right to do so (including without limitation the right to a jury trial) is hereby waived. Notwithstanding the foregoing, you and Carnegie Learning, Inc. retain the right to seek remedies in small claims court for disputes or claims within that court's jurisdiction, and Carnegie Learning, Inc. retains the right to apply to a court of competent jurisdiction for provisional or conservatory relief, including without limitation pre-arbitral attachments or injunctions, and to adjudicate disputes relating to the infringement or misappropriation of intellectual property.

Any claim or controversy arising out of or relating to your use of the Sites or this Arbitration Agreement shall be governed by the procedural and substantive laws of the Commonwealth of Pennsylvania, without reference to choice-of-law rules. The arbitration will be administered by JAMS pursuant to its Streamlined Arbitration Rules & Procedures then in effect. The arbitration shall be presided over by a single arbitrator in Pittsburgh, Pennsylvania. In the event this venue will cause undue hardship to you, then, the discretion of the arbitrator, the arbitration will be conducted solely on the basis of documents submitted, with the parties participating through telephonic or video conference hearings, or at a location reasonably convenient to the parties in the state in which you reside at the time the arbitration is commenced, provided that it is within the Continental U.S. To the extent that any of the foregoing provisions are inconsistent with JAMS applicable standards then in effect, such JAMS rules shall apply.

Claims subject to this Arbitration Agreement may not be arbitrated on a class or representative basis and you will not be able to participate in an arbitration as a representative or member of any class of claimants pertaining to that claim.

All aspects of the arbitration and award shall be confidential, except to the extent disclosure is necessary in connection with an application to a court for a preliminary or permanent injunction, a petition to confirm or vacate an award, to obtain legal or other professional advice necessary for the protection of a party's rights, or as required by law or judicial decision.

Subject to you demonstrating that the costs of arbitration will be prohibitive as compared to the costs of litigation, Carnegie Learning, Inc. will pay as much of the fees charged to you by JAMS as the arbitrator deems necessary to prevent the arbitration from being cost prohibitive to you.

The arbitrator will not have authority to award punitive or exemplary damages, and the parties waive any right to recover such damages. As part of the award, the prevailing party shall be awarded its costs, including without limitation arbitration fees, expert witness fees, if any, and reasonable attorney's fees.

You and Carnegie Learning, Inc. agree that, in the event that there are fifty (50) or more individual requests for arbitration of a similar nature filed against Carnegie Learning, Inc. within an approximately thirty-day period (or otherwise in close proximity), JAMS will administer all such similarly situated arbitration demands on a collective basis as a single, consolidated arbitration (subject to a single set of fees, proceeding schedule, and, if required, hearing) before a single arbitrator in accordance with the requirements outlined elsewhere in this section, provided that – in the event that the arbitrator deems it impracticable or inequitable to administer all such claims collectively in a single arbitration – (s)he may group demands for arbitration into groups of not fewer than twenty (20) matters, plus a remainder group as needed (or as otherwise deemed by the arbitrator to be practicable, equitable, and in best keeping with the spirit of this provision) and arbitrate each group of matters as a single, consolidated arbitration (either structure a "Batch Arbitration"). You and Carnegie Learning, Inc. agree (1) to work with JAMS in good faith to facilitate the resolution of disputes on a Batch Arbitration basis and (2) that requests for arbitration are of a "similar nature" if they arise out of the same event, agreement, or factual scenario and raise the same or similar legal issues and seek the same or similar relief. Disagreements over the applicability of this Batch Arbitration process will be settled in a single, consolidated arbitration proceeding that includes all affected parties and is resolved by a single arbitrator subject to the requirements of this section. This Batch Arbitration provision shall in no way be interpreted as authorizing a class or collective arbitration or action of any kind, or any suit or arbitration involving joint or consolidated claims, under any circumstances other than those expressly set forth in this section.

If any portion of this Arbitration Agreement is found to be invalid, illegal or unenforceable, for any reason, that specific portion shall be severed from the rest, but such severance shall not affect the enforceability of the remainder of this agreement. No waiver of any provision of this Arbitration Agreement will be effective or enforceable unless recorded in a writing signed by the party waiving the provision, and any such waiver shall not waive or affect any other provision of this agreement.

The foregoing provisions limit certain rights, including without limitation, the right to maintain a court action, the right to a jury trial, the right to participate in any form of class or representative claim, the right to engage in discovery except as provided in the JAMS rules and these dispute resolution terms, and the right to certain remedies and forms of relief; provided that nothing herein will restrain a California resident's right, if any, to seek public injunctive relief as permitted by law. Other rights that you would have in court also may not be available in arbitration.

23. Governing Law

Except where prohibited by law, which may include the Province of Quebec, these Terms shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without giving effect to its conflict of laws provisions. For US residents, except otherwise stated in the Arbitration Agreement, by registering for or using the Sites, you consent and submit to the exclusive jurisdiction and venue of the state and federal courts located in Pittsburgh, Pennsylvania.

the original intentions of the parties in accordance with applicable law, and the remainder of these Terms of Use will remain in full force and effect.

24. Termination

If you violate any of the Terms, we reserve the right to immediately terminate your access to or registration on the Sites, remove material from the Sites, take other remedial actions, and seek any remedies permitted by law. The obligation and liabilities of the parties prior to termination shall survive the termination of this agreement for all purposes.

We also reserve the right to investigate suspected violations of these Terms, including, without limitation, any violation arising out of any emails you send to the Sites or us. Any violation of these Terms may be referred to law enforcement authorities. We will cooperate fully with any law enforcement officials and/or agencies in the investigation of any person or persons who violate the Terms.

25. Certain other miscellaneous provisions also apply.

The failure of either party to insist upon or enforce strict performance by the other party of any provision of the Terms or to exercise any right under the Terms will not be construed as a waiver or relinquishment to any extent of such party's right to assert or rely upon any such provision or right in that or any other instance, rather, the same will be and remain in full force and effect. Neither the course of conduct between the parties nor trade practice will act to modify these Terms.

In the event that any provision of these Terms is determined to be unlawful, void or for any reason unenforceable, such provision shall nonetheless be enforceable to the fullest extent permitted by applicable law, and the unenforceable portion shall be deemed to be severed from these Terms, such determination shall not affect the validity and enforceability of any other remaining provisions.

If a court or other decision-maker should determine that any provisions of these Terms is overbroad, unfair or unreasonable, such provision shall be given effect to the maximum extent possible by narrowing or enforcing in part that aspect of the provision found overbroad or unreasonable. The Section titles are inserted only as a matter of convenience and have no legal or contractual effect.

We may assign our rights and obligations under these Terms to any party at any time without any notice to you and upon such assignment we may be relieved of any further obligation hereunder. Terms may not be assigned by you without Carnegie Learning, Inc.'s prior written consent. You represent to us that you have the authority to register with the Sites according to these Terms.

Any ambiguities in the interpretation of these Terms shall not be construed against the drafting party.

No amendment to or modification of these Terms, or action, or delay, will be binding unless in writing and signed by Carnegie Learning, Inc. Provisions of these Terms that would logically survive termination shall survive the termination of these Terms for any reason (including without limitation, Disclaimer of Warranties; Waiver, Limitation of Liability; Waiver and Arbitration). These Terms and any additional terms (as such terms shall be identified when posted on the Sites by us) constitute the entire understanding between the parties as to subject matter hereof, and supersede all prior agreements and understandings.

26. If you have questions or concerns, please contact us, and we will try to resolve them.

If you have any questions or concerns about these Terms or the Sites, please call us toll-free at [888-851-7094](tel:888-851-7094) or contact us at:

Carnegie Learning
501 Grant Street
Union Trust Building, Suite 1075
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legal@carnegielearning.com

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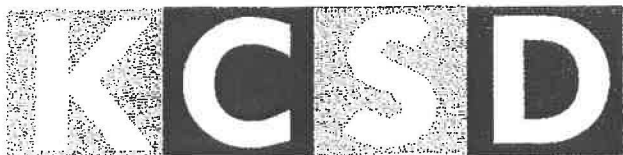
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WEBSITE: www.kenton.kyschools.us

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.

Carnegie Learning, Inc.

Vendor Name

501 Grant Street, Suite 1075, Pittsburgh, PA 15219

Vendor Address

312.330.6704

Vendor Telephone

placasse@carnegielearning.com

Vendor Email Address

Peter LaCasse

Signature by Vendor's Authorized Representative

Peter LaCasse

Print Name

1/26/2023

Date