



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

Issue Paper

DATE:

7/24/2023

AGENDA ITEM (ACTION ITEM):

Consider/Approve The purchase of Emotional ABC's, a social emotional learning (SEL) curriculum for Caywood Elementary School through the 23/24 school year

APPLICABLE BOARD POLICY:

01.1 LEGAL STATUS OF BOARD

HISTORY/BACKGROUND:

Emotional ABC's is an evidence based social emotional learning (SEL) curriculum for Tier 2/3 instruction. This curriculum contains sequential workshops designed for teacher led small group intervention.

FISCAL/BUDGETARY IMPACT:

\$171.00 Annual Plan using our ESSER ARP 473GL

RECOMMENDATION:

Approval to purchase Emotional ABC's, a social emotional learning (SEL) curriculum for Caywood Elementary School through the 23/24 school year

CONTACT PERSON:

Kim Mott


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.

Membership



Choose Your Plan

☐ Billed Monthly
USD \$19/month

☒ Billed Yearly
~~USD \$228/year~~
USD \$171/year

Create Your Account

First name:

Last name:

Email:

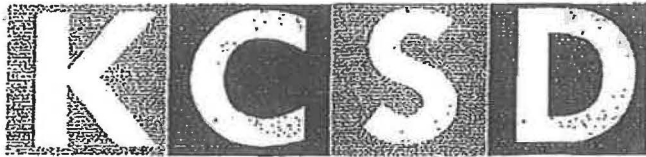
Password:

Sign Up

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Kenton County School District | It's about ALL kids

THE KENTON COUNTY BOARD OF EDUCATION

1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017

TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531

WEBSITE: www.kenton.kyschools.us

Dr. Henry Webb, Superintendent of Schools

VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION

Data Security and Breach Protocols

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as "KCBOE") as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by any agency as defined under the Act;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act's notification requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

Student Data Security

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA); as amended (20 U.S.C. sec. 1232g, *et seq.*), and its regulations; and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 *et seq.*), and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 *et seq.*), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific

student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

Emotional ABCs, Inc.

Vendor Name

3435 Ocean Park Bl. #107-259, Santa Monica

CA 90405
Vendor Address

310 399 8762

Vendor Telephone

support@emotionalabcs.com

Vendor Email Address

Ross Brodie

Signature by Vendor's Authorized Representative

Ross Brode, CEO, Emotional ABCs, Inc.

Print Name

1/23/2023

Date

Terms Of Use & Payment Policy

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Visitors agree that Company may, under certain circumstances and without prior notice, immediately suspend, terminate and/or delete Visitor's account and access to the website. Cause for such suspension, termination and/or deletion shall include, but not be limited to, (a) breaches or violations of any of the Terms of Use, or of other incorporated agreements or guidelines, (b) requests by law enforcement or other government agencies, (c) a request by Visitor (self-initiated account deletions), (d) discontinuance or material modification to the website (or any product, service or feature thereof), (e) technical or security issues or problems, (f) extended periods of inactivity, (g) fraudulent

or illegal activities by Visitor, and/or (h) nonpayment of any fees owed by Visitor in connection with the website or any product, feature or service. Termination of Visitor's account may include (a) removal of access to all offerings within the website, (b) deletion of Visitor's password and all related information, Certificates, files and content associated with or inside Visitor's account (or any part thereof), and (c) barring of further use of the website. Further, Visitors agree that all terminations for cause shall be made in Company's sole discretion and that Company shall not be liable to Visitor or any third party for any termination of Visitor's account, or access to the website, its products, services, features, Material and Content.

7. INDEMNIFICATION:

Visitor agrees to fully Indemnify and hold Company harmless from and against any expense, damage, claim, suit or action arising out of or relating to any content submitted by Visitor, posted or transmitted to Company, Visitor's use of the website, Visitor's connection to the website, Visitor's violation of website's Privacy Policy, any Term of Use, or any violation or infringement of any copyright, trademark, privacy or other right of any third party or entity.

8. CHOICE OF LAW, ARBITRATION, NO CLASS ACTIONS, ATTORNEYS' FEES:

A. Governing Law. This Agreement is a contract for services, not for the sale of goods. The Uniform Commercial Code ("UCC") and the Uniform Computer Information Transaction Act ("UCITA"), or any similar legislation, shall not apply to this Agreement. Users from outside the United States agree that the United Nations Conventions on Contracts for the International Sale of Goods shall not govern this Agreement or the rights or obligations of the Parties hereto.

B. Arbitration. If any controversy, allegation, or claim arises out of or relates to Company's website, its products or services, privacy policy or these Terms (collectively, a "Dispute"), you agree to first contact Company at Support@EmotionalABCs.com or by calling toll-free (877) 399-8763 to attempt to resolve the Dispute informally. If we are not successful in resolving your Dispute within 60 days, you agree to submit the Dispute to binding arbitration in accordance with Kentucky law and the then current Commercial Arbitration Rules of the American Arbitration Association ("AAA"). The arbitration will be heard and determined by a single neutral arbitrator who is a retired Judge or a lawyer, who will administer the proceedings in accordance with the AAA's Supplementary Procedures for Consumer Related Disputes. The arbitrator will apply applicable law and the provisions of these Terms, and any Additional Terms, will determine any Dispute according to the applicable law and facts based upon the record and no other basis, and will issue a reasoned award. If a party properly submits the Dispute to the AAA for arbitration and the AAA is unwilling or unable to set a hearing date within sixty (60) days of the filing of a "demand for arbitration," then either party can elect to have the arbitration administered by the Judicial Arbitration and Mediation Services Inc. ("JAMS") and determined by a single neutral arbitrator who is a lawyer or a retired judge, using JAMS' Streamlined Arbitration Rules and Procedures, or by any other arbitration administration service to which you and we consent. You can obtain AAA and JAMS procedures, rules, and fee information as follows:

AAA: 800.778.7879

<http://www.adr.org>

JAMS: 949.224.1810

<http://www.jamsadr.com>

(i) **Nature, Limitations, and Location of Alternative Dispute Resolution.** In arbitration, as with a court, the arbitrator will resolve the submitted Dispute and can issue an award consistent with this Section. However, WITH ARBITRATION THERE IS NO JUDGE OR JURY, THE ARBITRATION PROCEEDINGS AND ARBITRATION ARE SUBJECT TO CERTAIN CONFIDENTIALITY RULES, AND JUDICIAL REVIEW OF THE ARBITRATION OUTCOME IS LIMITED. All parties to the arbitration will have the right, at their own expense, to be represented by an attorney or other advocate of their choosing. If an in-person arbitration hearing is required, you agree it will be conducted in Kentucky. Visitor and Company will share 50%-50%, any administrative and arbitrator's fees and other costs in accordance with the applicable arbitration rules. Discovery will be permitted pursuant to the applicable arbitration rules. The arbitrator's decision must consist of a written statement stating the disposition of each claim of the Dispute and must provide a statement of the essential findings and conclusions on which the decision and any award (if any) is based. Judgment on the arbitration decision and award (if any) may be entered into any court that has jurisdiction over the parties. You expressly agree and consent to the personal and subject matter jurisdiction of the state and Federal courts located in Kentucky for this purpose. (ii) **Small Claims Matters Are Excluded.** Either of us may bring a qualifying claim of Disputes in small claims court.

C. Injunctive Relief. The foregoing provisions of this section will not apply to any legal action taken by us to seek an injunction or other equitable relief in connection with any loss, cost, or damage (or any potential loss, cost, or damage) relating to the Site, any Content, and/or our intellectual property rights (including any we may claim that may be in dispute), operations, and/or products or services.

D. No Class Actions. Disputes will be arbitrated only on an individual basis and will not be consolidated with any other arbitrations or other proceedings that involve any claim or controversy of any other party.

E. Attorney's Fees. The prevailing party in any Dispute shall be entitled to recover its attorney's fees and costs, including costs of collection of any judgment or settlement and costs on appeal, in addition to any other relief or recovery obtained.

F. Time Limitations on Claims. Except for actions by Company for nonpayment or infringement of Company's intellectual property, no action regardless of form may be brought by either Party more than one (1) year after the claim or cause of action accrued.

9. SEVERABILITY; INTERPRETATION:

If any provision of these Terms, Company's Privacy Policy, or any Additional Terms, is for any reason deemed unenforceable by a court or arbitrator, you agree that every attempt will be made to give effect to the Parties' intentions as reflected in that provision, and the remaining provisions contained in these Terms of Use will continue in full force and effect. Visitor agrees that these Terms, and Additional Terms will not be construed against Company because Company drafted them.

10. DMCA CONTACT:

Emotional ABCs® complies with the provisions of the Digital Millennium Copyright Act applicable to service providers. If you have any complaints with respect to material posted on Emotional ABCs website, you may contact our designated agent by email to Support[at]EmotionalABCs.com or at the following address:

Emotional ABCs
3435 Ocean Park Blvd #107-259
Santa Monica, CA 90405-3300

You must include the following information in your complaint: a description of the copyrighted work or other intellectual property that you claim has been infringed; a description of the material that you claim is infringing and where it is located on Emotional ABCs® Website; your mailing address, telephone number, and if available, email address; a statement by you that you have a good faith belief that the use of the material on Emotional ABCs® website is not authorized by the copyright owner, its agent, or the law; a statement by you that the above information in your notice is accurate and that, under penalty of perjury, you are the copyright or intellectual property owner or authorized to act on behalf of the copyright or intellectual property owner; and an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright or other right being infringed.

11. PAYMENT POLICY:

This Payment Policy is incorporated into the Emotional ABCs® Terms of Service, and applies to users who have purchased an Emotional ABCs® subscription or purchase plan to access Emotional ABCs® online, and to individuals whose payment details have been used to purchase the Emotional ABCs® services.

A. Subscription Plans and Payments

We offer many different types of individual plans, family, complimentary, teacher, class, and group plans. The pricing applicable to your account may vary depending on promotions, the type of subscription and the term you select at the time of purchase (e.g., individual, family, class, group plan, teacher, etc.). All fees and charges are payable in accordance with payment terms in effect at the time the fee or the charge becomes due and payable. We may revise the pricing for the Emotional ABCs® or any item associated therewith at any time. Your subscription price applies for the full subscription term and is not subject to later price fluctuations, discounts or special offers. We do not provide price protection or refunds for existing subscribers in the event of a price drop or promotional offering for new subscribers. Some subscription plans renew automatically, as described below. Refer to your Account page if you have questions.

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We may, from time to time, modify, amend, or supplement our fees and fee-billing methods, and such changes shall be effective immediately upon posting in this Agreement or on the Emotional ABCs® website. If there is a dispute regarding payment of subscription or other fees, your Account may be terminated or suspended indefinitely without warning or notice in our sole discretion.

B. No Refunds

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C. Automatic Renewals

All Emotional ABCs® subscriptions made online at Emotional ABCs®, except Complimentary, Teacher, and 1 year Premium Group plans, renew automatically using the payment details on file for your account. If you purchase a subscription with automatic renewal, you acknowledge and agree that we are authorized to use the payment information on file for the renewal fees.

By activating a subscription account, you agree that we may renew your subscription automatically for the same subscription term on the day after your previous subscription ends. For example: If you subscribe to a monthly plan on February 1st, your subscription will automatically renew on March 1st, April 1st, and so on. However, when a date does not occur in a month, your account will renew and be billed on the last day of that month. For example, if you activated a family account on January 31st, your next renewal and billing date will be on February 28th (or 29th in a leap year).

Monthly Cancellations: Subscriptions billed on a monthly basis may be cancelled at any time at least one full business day before your renewal date. If you cancel your monthly subscription, you will retain access to your services for the remainder of that month. If you do not cancel your subscription at least one full business day before your renewal date, we will renew your subscription for one more month.

D. Payment Information

By providing payment information to us, you warrant that the payment information is valid and in your name, or in the name of an individual who has authorized you to use their payment information for your subscription purchase.

You agree that you'll provide accurate and complete payment info to us or the third-party payment provider used by us, and pay all fees and applicable taxes incurred by you or anyone using an account registered to you.

12. TEACHER ACCOUNTS:

Free Teacher Accounts may only be registered by an Adult currently employed (as a Teacher or full time School Counselor) by a school, school district, licensed childcare facility, or other fully licensed elementary educational institution or program in the United States for live in class instruction in a "brick and mortar" school. The Free Teacher Account is not available to "online" or "virtual" educational institutions of any type. To be eligible for a free Teacher Account, the Teacher (or fulltime counselor) must at all times during the subscription period be currently employed by the Educational Institution. The Teacher's employment status must be independently verifiable, and the Teacher must only use or facilitate the use of the Teacher Account for students at the Educational Institution for which the Teacher has authorization. If a Teacher wants to use the Services for his or her own family, he or she must register for an Individual or Family Account. By registering for a Teacher Account, you represent and warrant that (a) you have permission from your Educational Institution to enter into these Terms on its behalf, and to use the Services as part of learning activities; and (b) your use of the

Services and provision of student data through the Services is compliant with any obligations you and your Educational Institution have under applicable laws, including, without limitation, the Family Educational Rights and Privacy Act. If at any point in time you are no longer employed at or no longer have permission to use the Services from your Educational Institution, you agree that you will notify us immediately and cancel your account. Teacher Accounts are free and are offered in our sole discretion and we reserve the right to decline to issue, cancel, or change the terms and/or conditions of any or all Teacher Accounts at any time for any reason. Free Teacher accounts may be limited to a fixed number of free logins per month.

13. PAID PREMIUM GROUP ACCOUNTS:

Paid Premium Group accounts ("PG accounts") are purchased by schools one classroom, or more, at a time for an entire year in advance and do not autorenew. If Purchase Orders are used, Emotional ABCs will only send sign-ins once payment has been received and processed. PG accounts allow up to 30 student sign-ins per classroom and 2 Instructor accounts. Account Administrators or Instructors will each be given a sign in with their own email and password and the Instructors or the Account Administrator will create a student roster of up to 30 students. Student Usernames (nicknames) are created by Instructors or School Administrators and do not need any student personal identifying information. Teachers will then be able to sign students into their individual accounts or using a QR code or a link. There is no student email address taken or any way for Company to contact Student Users. Instructors or Account Administrators will be able to email parents or adult guardians to allow parents/guardians to sign student Users into their account from home, subject to these Terms and Conditions. No advertisements will be served on the site. Company does not contact Student Users for any reason. Company has no way to contact Student Users as Company has no identifying information other than the user "nickname" and cookie information. PG account holders and Users represent and warrant that they have obtained written permission and consent for all Student Users to use the service from the Student User's parent or legal guardian and agree to defend and hold Company harmless from any breach of this warranty.

14. FREE PARENT PREVIEW:

Complementary parent site previews, if offered on the site, may allow Parents to preview the site, site videos and selected site features before purchasing a regular Parent account. Users accessing the free Parent preview agree to be bound by all the terms and conditions herein, as well as Company's Privacy Policy incorporated herein by reference.

15. SCHOOL AUTHORITY:

Only adults who purchase the Service with a credit card or other permitted payment method are permitted to open an account. Student Users or visitors under eighteen (18) years of age, may use our Service only with the involvement and consent of a parent, legal guardian, or at the direction of the Student User's School. Schools may impose additional policies regarding the use of our Service, with which you must comply.

Users that open an account to provide the Service to students in a School, hereby represent and warrant (i) User is an authorized representative of the School with the authority to bind the School to this Agreement, and (ii) User agrees to this Agreement on the School's behalf. Users contacting

Company to take any action with respect to an account represent and warrant that they have all necessary authority to request such action(s) from or on behalf of the accountholder (e.g., a School or Parent). In addition, Schools warrant and represent that no Personally Identifiable Information of students will be provided to Company and that account nicknames or passwords shall not include (a) any student's name; or (b) The name of any student's parent or other family members; (c) The address of the student or student's family; (d) Other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name; (e) 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 U.S. Children's Online Privacy and Protection Act ("COPPA") requires that online service providers obtain verifiable parental consent before collecting Personal Information from children under 13. Any School providing the Service to children under 13, hereby represents and warrants it has the authority to provide consent on behalf of Parents for Company to collect information from Users or Visitors under 13 before allowing such Users to access our Service. Company recommends all Schools provide appropriate disclosures to students and parents regarding use of service providers such as Company and that they provide a copy of Company's Privacy Policy and Company's Student Data Privacy Pledge.

- Amended 1/24/2023

Ross Brodie, CEO, Emotional ABCs