DATE:
8/28/2023

AGENDA ITEM (ACTION ITEM):
Consider/Approve the agreement between XtraMath and Caywood, Beechgrove, Hinsdale, Taylor Mill, and White's Tower Elementary Schools for the 2023-24 school year.

APPLICABLE BOARD POLICY:
01.1-Legal Status of the Board

HISTORY/BACKGROUND:
XtraMath is an online math fact fluency program that helps students develop quick recall and automaticity of basic math facts. XtraMath is able to generate individual, differentiated sessions based on assessment of each student's progress.

FISCAL/BUDGETARY IMPACT:
$0 (School Instructional Funds-7000,Title,ESSER)

RECOMMENDATION:
Approval of the agreement between XtraMath and Caywood, Beechgrove, Hinsdale, Taylor Mill, and White's Tower Elementary Schools for the 2023-24 school year.

CONTACT PERSON:
Jena Smiddy

_____
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.
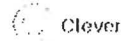
Welcome to XtraMath

First let's create an account

Here you can create a parent or teacher account

Parents: If your child brought an XtraMath flyer home from school, please begin by enrolling your child. If you already have an account and would like to add another child, sign in and click Add child.
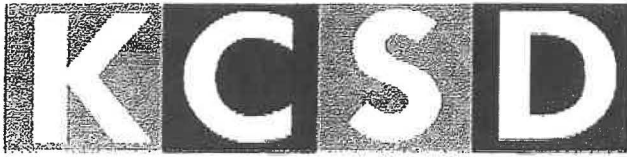
G Google   Clever

or

Full Name

> e.g. Kevin Mintz

Email

> e.g. name@domain.com   .

Password

> Must be at least 6 characters

☐ Remember me on this device 🛡

Next

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**

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

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.

XtraMath
_____
Vendor Name

4742 42nd Ave SW #625 Seattle, WA 98116
_____
Vendor Address

(805) 619-8720
_____
Vendor Telephone

sales@xtramath.org
_____
Vendor Email Address

Roy King
_____
Signature by Vendor's Authorized Representative

Roy King
_____
Print Name

06/30/2023
_____
Date

Acceptance of Terms. Please read the following Terms of Service carefully. By registering for an XtraMath account, you acknowledge that you have read, understood, and agree to be bound by the following terms and conditions. If you are a parent, guardian or teacher, by registering your child/student to use XtraMath you agree to be bound by these Terms of Service with respect to such child's/student's use of XtraMath.

1. Privacy.
XtraMath's Privacy Policy explains how XtraMath collects, uses and discloses user data. It also covers our data storage, security, retention, and deletion practices. XtraMath's Privacy Policy is incorporated into these Terms of Service (collectively, the "Terms").

2. User Accounts.
No person under the age of 13 in the United States, or under the age of 16 outside of the United States, may create their own account. A parent, guardian, or teacher must create a Student account for any child below these age thresholds before they can use XtraMath.

You agree that the information you provide to XtraMath, whether at registration or at any other time, will be true, accurate, current, and complete. As a parent, guardian, or teacher, you represent and warrant that you will not provide us with information about any child/student unless you have the legal authority to do so. By registering your child/student, you agree to be bound by the Terms on behalf of your child/student, including without limitation being liable for all use of XtraMath by the child/student. You acknowledge that XtraMath cannot guarantee the accuracy of any information submitted by any user and that XtraMath is not obligated to verify the accuracy any such information, including any user's claim to be the parent or teacher of a child/student.

Customer must: (i) keep its passwords secure and confidential; (ii) be solely responsible for Customer Data and all activity in its account; (iii) use commercially reasonable efforts to prevent unauthorized access to its account and notify XtraMath promptly of any such unauthorized access; and (iv) use the software as described in XtraMath's written guides. Customer authorizes its integrators and other third-party vendors and XtraMath to conduct initial setup and to allow continued access to the software for the sole benefit of the Customer. Customer is solely responsible for ensuring compliance by its authorized integrators or other third-party vendor(s) with all federal, state, and local privacy laws and regulations. XtraMath hereby disclaims for all purposes and circumstances any responsibility or liability for the use of the products, including the customization thereof.

All data and materials uploaded or entered during use of the software by Customer, including student information and student records, remain the property of the Customer. All student-generated content and personally identifiable information about any students shall remain the property of the student or of the parent or legal guardian of the student. Customer represents and warrants that it has appropriate rights to any Customer Data and Student Data. Customer grants XtraMath the right to use the Customer Data and Student Data solely for purposes of performing under these Terms.

3. Prohibited Conduct. You agree not to use XtraMath services for any unlawful purpose, for commercial gains, or in ways prohibited by these Terms.

This includes, without limitation:

    a. You will not use XtraMath in violation of any local, state, national, or international law, including, without limitation, laws governing data protection and privacy.

    b. You will not impersonate any person or entity, falsely claim an affiliation with any person or entity, access the XtraMath accounts of others without permission, or perform any other fraudulent activity.

    c. You will not use XtraMath for any commercial use or purpose unless expressly permitted by XtraMath in writing.

    d. You will not intentionally interfere with or damage operation of XtraMath by any means. Such interference includes, without limitation, participating in any denial-of-service type attacks and uploading or otherwise disseminating viruses, adware, or other malicious code.

4. Termination of Services. You may terminate the Terms, and any account you created for yourself or your child/student, at any time. If an account for your child was created under the "school official" exception of the U.S. Family Educational Rights and Privacy Act (FERPA), you must request such termination from your child's school that established the account. To terminate an account, you must email info@xtramath.org and discontinue your (or your child's/student's) use of any and all parts of XtraMath.

XtraMath, in its sole discretion, has the right to suspend or terminate any account and refuse any and all current or future use of XtraMath, with or without cause (such as a violation of these Terms). Such termination will result in the deactivation or deletion of your account, or your access to your account, and the forfeiture and relinquishment of all records in your account.

XtraMath also reserves the right to modify or discontinue, temporarily or permanently, any or all of XtraMath's services. You agree that XtraMath will not be liable to you or any third party for any such termination. Within ninety (90) days after expiration or termination of a Premium Membership for any reason, upon request, Customer agrees to return, delete, or destroy all proprietary XtraMath materials provided by XtraMath. Customer will confirm its compliance with this destruction or return requirement in writing upon request of XtraMath.

For a period of up to ninety (90) days after termination, upon request, XtraMath will make available for Customer to access and export Customer Data and Student Data. Alternatively, Customer may submit a written request to XtraMath up to sixty (60) days after termination to request the deletion of Student Data (other than anonymized or de-identified data that may be retained pursuant to XtraMath's Privacy Policy). Upon termination of the Terms, any provision which, by its nature or express terms should survive, will survive such termination or expiration.

5. Intellectual Property.

XtraMath graphics, logos, source code, designs, software, workflow processes, user interface, and content are protected by intellectual property laws, as copyrights, trademarks, and trade dress. The XtraMath name is a registered trademark under United States law.

Your use of XtraMath does not give you license to use our marks or create derivative works. You will not modify, adapt, translate or create derivative works based upon XtraMath, except and only to the extent expressly permitted by XtraMath or to the extent the foregoing restriction is expressly prohibited by applicable law.

You will not reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of XtraMath or any part thereof, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

6. Confidentiality.

Definition of Confidential Information. Confidential information means all non-public information including Personally Identifiable Information ("PII") as defined by applicable law, disclosed by a party ("Discloser") to the other party ("Recipient"), whether orally or in writing, that is designated as confidential, or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure ("Confidential Information"). XtraMath's Confidential Information includes without limitation the Service, its user interface design and layout, and pricing information.

The Customer must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of these Terms. The Customer must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with these Terms and who have signed confidentiality agreements with Recipient no less restrictive that the confidentiality terms of these Terms.

Confidential Information excludes information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser; (ii) was known to the Recipient before its disclosure by the Discloser without breach of any obligation owed to the Discloser; (iii) is received from a third party without breach of any obligation owed to Discloser; or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order but will provide Discloser with advance written notice to seek a protective order.

7. Warranty Disclaimer. Your and/or your child's/student's use of XtraMath is at your sole risk. XtraMath and all parts and services thereof are provided on an "as is", "as available", and "with all faults" basis. XtraMath disclaims any and all warranties and conditions, whether statutory, express or implied, to the fullest extent permitted by applicable law. No advice or information obtained by you from XtraMath will create any warranty not expressly stated herein. Specifically, but without limitation, XtraMath expressly does not warrant that: a) XtraMath will meet any specific requirements or expectations, including but not limited to yours; b) XtraMath or any data, user content, functions or any other information offered on or through XtraMath will be uninterrupted, timely, secure, or free of errors, viruses or other harmful components; c) The results that are obtained from the use of XtraMath will be accurate or reliable; d) The quality of any products, services, information, or other material purchased or obtained by you through XtraMath will meet your expectations; or e) Any errors or any issues with XtraMath's services will be corrected.

XtraMath will comply with and will cause each of its employees, agents, and contractors to comply with all state, federal, and municipal laws and regulations applicable to its performance under this Terms of Service, including without limitation the U.S. Family Educational Rights and Privacy Act (**"FERPA"**), and the Children's Online Privacy Protection Act (**"COPPA"**). XtraMath's Terms of Service, which is incorporated by reference into these Terms of Service, contains additional terms regarding XtraMath's use of and commitment to safeguarding Student Data and compliance with other student privacy laws.
Customer is responsible for providing notice of its own privacy policy to parents of its students and obtaining any necessary parental consents for student to use the software as may be required by applicable law.

You understand and agree that your or your child's/student's use of XtraMath is at your own discretion and risk, and that you will be solely responsible for any damage to your property, including your computer system, phone or personal electronic device, or loss of data that results therefrom.

8. Limitation of Liability. To the fullest extent permitted by applicable law, under no circumstances, including but not limited to negligence, will XtraMath or its affiliated contractors, employees, agents and its third-party suppliers, licensors, and partners be liable for any special, indirect, incidental, consequential, punitive, reliance, or exemplary damages arising out of or relating to these Terms or your use of (or inability to use) XtraMath, or any interactions with XtraMath. In no event will XtraMath's or its affiliated contractors', employees', agents' and its third-party suppliers', licensors', and partners' total liability to you for all damages, losses, and causes of action arising out of or relating to these Terms or your use of (or inability to use) XtraMath, or any interactions with XtraMath, exceed the amount paid by you, if any, for accessing XtraMath during the twelve months immediately preceding the date of the claim or one-hundred dollars, whichever is greater. You and XtraMath agree that any cause of action arising out of or relating to these Terms or your use of (or inability to use) XtraMath, or any interactions with XtraMath, must commence within one year after the cause of action accrues. Failure to commence a cause of action within this time limit will result in a permanent bar on the cause of action.

9. Indemnification. You agree to indemnify, defend, and hold harmless XtraMath, its affiliated contractors, employees, agents and its third-party suppliers, licensors, and partners from any claims, losses, damages, liabilities, and expenses (including legal fees and expenses), arising out of any use or misuse of XtraMath, any violation of the Terms, or any breach of the representations, warranties, and covenants made herein, whether by you or by any child/student associated with you. XtraMath reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify XtraMath, and you agree to cooperate with XtraMath's defense of these claims. XtraMath will use reasonable efforts to notify you of any such claim, action, or proceeding upon becoming aware of it.

10. Modification of Terms. XtraMath reserves the right, at its sole discretion, to change, modify, add, or remove portions of the Terms at any time. We will provide notice of such changes on our website and in our mobile apps. You or your child's/student's continued use of XtraMath after the posting of changes constitutes your binding acceptance of such changes. For any material changes to the Terms, XtraMath will make a reasonable effort to provide advance notice to you of such amended Terms, such as by an email notification to the address associated with your account (subject to your email delivery preferences) and/or by posting a notice on the XtraMath website. Disputes arising under these Terms will be resolved in accordance with the version of the Terms in place at the time the dispute arose.

10. Governing Law and Jurisdiction. These Terms will be governed by and construed in accordance with the laws of the State of Washington, without giving effect to any principles of conflicts of law. You agree that any action at law or in equity arising out of or relating to these Terms or your use of (or inability to use) XtraMath, or any interactions with XtraMath, will be filed only in the state or federal courts in and for King County, Washington, and you hereby consent and submit to the personal and exclusive jurisdiction of such courts for the purposes of litigating any such action.

All claims you bring against XtraMath must be resolved in accordance with this Section 10. All claims filed or brought contrary to this Section 10 shall be considered improperly filed. Should you file a claim contrary to this Section 10, XtraMath may recover attorneys' fees and costs related to dismissal of the claim, provided that XtraMath has notified you in writing of the improperly filed claim, and you have failed to promptly withdraw the claim.

11. Waiver. The failure of XtraMath to exercise or enforce any right or provision of the Terms will not constitute a waiver of such right or provision. Any waiver of any provision of the Terms will be effective only if in writing and signed by XtraMath.

12. Severability. If any provision of these Terms is held to be unlawful, void, or for any reason unenforceable, then that provision will be limited or eliminated from the Terms to the minimum extent necessary and will not affect the validity and enforceability of any remaining provisions.

13. Entire Agreement. These Terms and the Privacy Policy constitute the entire agreement between you and XtraMath relating to the subject matter herein and will not be modified except in writing, signed by both parties, or by a change to the Terms or Privacy Policy as set forth herein.

14. Assignment. These Terms, and any rights and licenses granted hereunder, may not be transferred or assigned by you without XtraMath's prior written consent, but may be assigned by XtraMath without consent or any restriction. Any assignment attempted to be made in violation of the Terms shall be null and void.

15. Premium Membership. Using XtraMath is free for all users. However, users have the option of purchasing a Premium Membership ("Premium Membership") for additional benefits. You may cancel your Premium Membership at any time and without reason. No refunds are issued unless expressly provided by law. No refunds are issued if your account is terminated by XtraMath because you have breached these Terms of Service or when you have requested the termination of your account yourself. When you cancel your Premium Membership, you will lose access to all additional benefits.
XtraMath reserves the right to change the Premium Membership fees at any time. We will give you an advance notice of 30 days via email before we raise any fees.

16. Payment, Invoicing, and Taxes. Unless otherwise provided in the Price Quote, Customer will pay the amount of each invoice net 60 days after the invoice date. Except to the extent that the customer provides XtraMath with a valid tax exemption certificate authorized by the appropriate taxing authority, Customer must pay any taxes, impositions, or other charges imposed or levied by any governmental authority, including any sales, use, value-added, or withholding taxes, in connection with the Premium Membership purchase.

17. Other terms. The parties may modify this Terms of Service only by written agreement signed by both parties. By submitting ideas, suggestions, or feedback to XtraMath, Customer agrees that items submitted do not contain confidential or proprietary information. Customer also grants XtraMath an irrevocable, unlimited, royalty-free, and fully paid perpetual license to use such items for any business purpose. If any term of these Terms is invalid or unenforceable, the other terms remain in effect. Except for the payment of fees, neither party is liable for events beyond its reasonable control, including, without limitation, force majeure events, failure of Internet services, any third-party service, and telecommunications services. Any breach by a party of these Terms or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.

These terms shall be effective July 1, 2022 and replace these terms of service.

XtraMath

ADDENDUM

This agreement shall be governed by and construed in accordance with the laws of the state of Kentucky and local rules of Kenton County.

LEA:

SIGNED BY: _____   **DATED:** _____

    TITLE: _____

PROVIDER:

SIGNED BY: _Roy King_____   **DATED:** _07/20/2023_____

    TITLE: Executive Director