



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

## Issue Paper

**DATE:**

2/15/2024

**AGENDA ITEM (ACTION ITEM):**

Consider/ Approve the agreement between XtraMath and Piner Elementary for the 2024-25 and 2025-26 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:**

\$1,000 (School Instructional Funds-7000, Title,ESSER)

**RECOMMENDATION:**

Approval of the agreement between XtraMath and Piner Elementary Schools for the 2024-25 and 2025-26 school year.

**CONTACT PERSON:**

Emily Thompson

  
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.*



## Piner Elementary

**Kenton County Schools**

1055 Eaton Dr

FT Wright, KY 41017-9655

**Emily Thompson**

Admin

emily.thompson@kenton.kyschools.us

**Quote From:****XtraMath**

4742 42nd Ave SW #625

Seattle, WA 98116

**Prepared by: Tina Hansen**

School Partnership Team

sales@xtramath.org

Quote Number: 20240205-123309816

Quote created: February 5, 2024

Quote expires: July 31, 2024

ITEM	ITEM NO.	QUANTITY	UNIT PRICE	PRICE
School - 24 Month XtraMath Premium License Includes unlimited teachers and students on one campus. Valid 24 months.	SL-24	1	\$1,000.00	\$1,000.00 for 2 years
Total				\$1,000.00

**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](mailto: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.

**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.



## Terms of Service

**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.

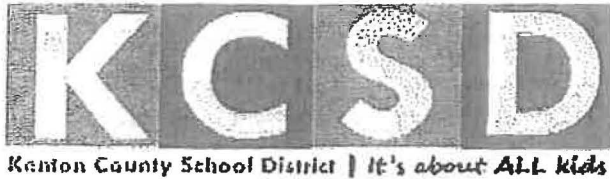
XtraMath reserves the right to change the Premium Membership fees at any time. We will give you an advance notice of 30 days via email before we raise any fees.

**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.*

*If you have question or concerns, contact [info@xtramath.org](mailto:info@xtramath.org).*



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](http://www.kenton.kyschools.us)  
Dr. Henry Webb, Superintendent of Schools

## **VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION**

### **Data Security and Breach Protocols**

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

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

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

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

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

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

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

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

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



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

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

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

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

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