



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

Issue Paper

DATE:

April 18, 2024

AGENDA ITEM (ACTION ITEM):

Consider/Approve a sales contract with River Ridge Elementary to purchase 99math and a vendor assurance for Ft. Wright and Caywood Elementary to use the free version for the 2024-2025 school year.

APPLICABLE BOARD POLICY:

01.1 - Legal Status of the Board

HISTORY/BACKGROUND:

99math is an online platform for students to practice math fact fluency using group activities, individual practice and interactive games. 99math can also be used to reinforce lesson concepts during whole group instruction through an interactive platform. The program allows teachers to personalize learning by identifying areas where students need extra practice and assigning specific tasks to address those needs. Student progress will be monitored using reports generated by 99math and the program will be used to supplement tier one math instruction.

FISCAL/BUDGETARY IMPACT:

\$1,995.00 (Title I Funds)

RECOMMENDATION:

Approve a sales contract with River Ridge Elementary to purchase 99math and a vendor assurance for Ft. Wright and Caywood Elementary to use the free version for the 2024-2025 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.

Proposal



Solution to achieve math mastery & engage students

For: River Ridge Elementary School

Presented to: Jena Smiddy

By: Ulla-Mari Niit

Presented on: May 15th, 2024

Proposal expires: 45 days from delivery

Quantity	Product	Months	Total
1 Site License	School-wide access to Math Facts Premium Plan	14	\$1,995.00
1 Package	99math Professional Development. 60 minutes of synchronous, guided instruction on the website navigation, data analysis, and evaluation of student performance.		\$0.00

Subtotal: \$1,995.00

Total: \$1,995.00

This proposal is made on behalf of 99math, LLC. Resulting orders are subject to 99math's standard terms and conditions, which can be found at: www.99math.com.

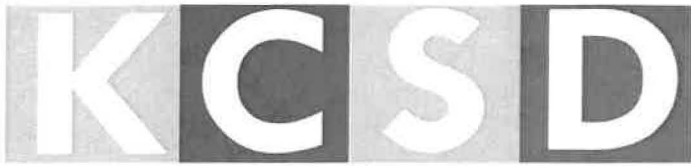
Prices contained herein do not include applicable state and local sales taxes. Sales tax may be adjusted at the time of invoicing. Pricing information made herein is strictly confidential and is supplied on the understanding that it will be held confidential and not disclosed to third parties without the prior written consent of 99math.

Next Steps

Please contact Ulla-Mari Niit at ulla@99math.com for more information on any aspect of this proposal.

If applicable, please include your certificate of tax-exempt status with your purchase order. Purchase Orders may be sent to 99math via the following method:

Email to: premium@99math.com



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.

99math OÜ

Vendor Name

Suve street 2-51, Tallinn, Republic of Estonia

Vendor Address

+1 718 618 4260

Vendor Telephone

legal@99math.com

Vendor Email Address



Signature by Vendor’s Authorized Representative

Martin Kusmin

Print Name

May 07, 2024

Date

[Go to 99math](#)



Terms of Use

Last revised at: March 24th. 2021

Introduction

Welcome to 99math!

99math is a platform for learning and practicing math, motivated by fun gameplay and friendly competition. The platform is owned and controlled by 99math OÜ (Estonian Commercial Registry code 14682374) (“we”).

These Terms of Use (“Terms”) cover the rules according to which you may access and use 99math’s website and app. Using 99math means creating an account, playing the games within, or simply browsing 99math. These Terms specify the rights and obligations of both you and 99math as the parties to an agreement. This in turn allows us to provide you our services and allows you to use them.

Please read these Terms carefully before using 99math. The Terms are legally binding. By using our site and services, you agree to be bound by these Terms without any reservations. If you do not agree with these Terms or any rule within them, then you cannot access and use 99math. You agree and warrant that you have the legal right and capacity to enter into these Terms. You must also keep in mind that your use of 99math must be in accordance with the laws and regulations that apply to you in your own country of residence, wherever that may be.

99math collects and processes your personal data. Please visit our [Privacy Policy](#) for more information on how and why we collect your data or in which cases we may use that data.

Your Account

You must create an account to use 99math for its intended purposes. We provide the ability to create three different accounts: a student account, a teacher account and a parent account. Do not share or give others access to your account. Any activity that is made on your account or through it, is considered to be made by you personally.

If you create an account, you agree to provide us with true, complete and accurate information.

You are solely responsible for maintaining the secrecy of your username and password. Remember your password! Keep in mind that we do not ask students for contact information, which in other cases can be used as an additional login option. Therefore, if you have a student account and forget or lose your password, you will be permanently unable to access that account. However if there is a parent account or a teacher account linked with your student account, the parent and the teacher can reset your password.

If you have a student account, then it may be linked with a parent account or a teacher account. If a student account is linked in such a way, the parent can request the deletion of the student account. In that case, 99math will delete the student account permanently.

If you create a parent or a teacher account, you certify that you are at least 18 years old. If you link your parent account or teacher account to a student account, you certify that you are either the parent/legal guardian or teacher of that student.

We have the right to terminate, suspend or disable your account, if you breach any of these Terms in any way. We may do so immediately, without giving prior notice and without any liability arising out of it. When your account is terminated, your right to use 99math will immediately cease.

99math reserves the right to change or replace the system of accounts described in these Terms or the features an account can or cannot use.

If you wish to terminate your account yourself, you may do so by requesting it in writing.

Paid Subscription

Using 99math is free for all users, however users have the option of subscribing to a membership ("Premium account"). Premium account is paid for by a monthly fee. We will bill you automatically from the date you convert your account to a Premium account. You will be billed on each date of renewal until you cancel the Premium account.

You may cancel your Premium account subscription at any time and without giving us a reason. No refunds are issued, unless expressly stated by law (for example, in the case where a EU citizen uses their right of withdrawal within 14 days of subscribing). No refunds are issued if your account is terminated by 99math because you have breached these Terms or when you have requested the termination of your account yourself.

The premium account gives the user access to special content and analytics. When you cancel your Premium account, you will lose access to all special content and the advanced analytics.

99math reserves the right to change the subscription fees. We will give you an advance notice of 30 days via email before we raise any fees.

Your Responsibilities

You agree not to misuse 99math's website or app or help someone else in doing so. Misuse is considered to mean, but not limited to, doing or attempting to do the following:

- accessing 99math's platform or areas of the platform that are not publicly available, or available to a user without an account or to user with a different account; - disrupting the use of 99math by a virus, overloading, spamming, or any other malicious attack; - circumventing security or authentication measures; - testing the vulnerability of 99math's software or network; - using automated means (e.g scripts, bots) to play games; - impersonating another person; - using the platform to stalk another person or access their personal data; - harassing other users or 99math employees or representatives; - creating accounts in bulk or by automated means (e.g scripts, bots); or - violating the law in any other way.

Your username or nickname must not be harmful, insulting, obscene, sexually explicit or unlawful in any other way.

No Warranties

We try to provide the best service possible. There are still certain things that may happen, in business and practice, that will not allow us to do so. Therefore 99math is provided "as is" and we make no warranties of any kind about 99math, whether express or implied, to the fullest extent permitted by law. That includes no warranties of merchantability, fitness for a particular purpose, non-infringement, completeness, availability, compatibility, accuracy, safety or security.

We cannot and do not warrant that the service will be free of errors, that errors will be fixed in a time suitable for you, or that 99math can be used uninterrupted. Any information that is received from 99math but not expressly stated in these Terms does not constitute or create a warranty.

Indemnity

You agree that you will indemnify, defend and hold harmless 99math, its representatives, directors, owners and employees for any and all claims, demands and lawsuits arising out of your use of 99math. Such indemnity includes the payment of attorneys' fees and cost of other legal aid if you have given a cause for action due to not complying with these Terms. If your actions may cause harm to 99math, then you must cooperate with 99math's

defense.

Liability

You agree that you use 99math at your own risk. We limit our liability for damages to the maximum extent that is permissible by law. 99 math is not liable for any indirect, incidental, punitive or consequential damage. 99math is also not liable for any loss of data, business or profits. Our liability is however not limited in cases where the damages are caused intentionally by us or due to gross negligence on our part. In no event shall the liability for damages exceed 100 euros.

99math is not liable for damages caused by, but not limited to, the following:

- personal injury or property damage resulting from your use of 99math; - interruptions to your use of 99math; - any unauthorized access to 99math's servers or the information stored in them; or - bugs, viruses, Trojan horses etc., which are transmitted through 99math.

99math may have links to external websites. 99math has no control over any such website, its quality or legality. Therefore we are not liable for any damages caused by visiting such websites.

When using 99math for school purposes, you must keep in mind that 99math will in no case be an intermediary between a teacher or a school and a student. If you are a student and you were unable to complete your assignments due to a failure on 99math's part, then you must bring that up and solve the issue with your teacher.

Other Provisions

Changes to 99math. 99math reserves the right to modify, suspend or discontinue 99math at any time and for any time. 99math is not liable for any damages that may be caused because of that. Liability is limited to refunds for prepaid subscriptions in the case where 99math is permanently discontinued, in which case the paid fee will be refunded pro rata to the time remaining until the end of prepaid subscription.

Changes to the Terms. 99math reserves the right to modify these Terms at any time and to any extent. All changes are effective immediately or, if specified otherwise, at a later date. Please check the Terms regularly to make sure that you are using 99math in compliance with the Terms. If you are unhappy with the changes, then you must stop using 99math. Continuing to use or access 99math after the updates come into effect means that you agree to be bound by the new Terms.

Resolving disputes. You agree that if you have any complaints against 99math, you will

first try to resolve them with us informally and out of court. You must contact us via email and describe your complaint. We will answer you in 14 days and try to solve the complaint. You must provide us with additional information about your complaint when necessary. You may file an official claim against us only if we are unable to solve your complaint or refuse to do it, or if we do not reply to you in due time.

Governing law and jurisdiction. These Terms and all claims, complaints and actions related to these Terms or 99math's platforms are governed by the laws of the Republic of Estonia. You and 99math agree that any judicial proceedings will be taken to and held in Harju County Court in Tallinn, Estonia. Your local consumer laws may give you an option for a different judicial forum in case of a conflict of laws.

Notices. Notices (requests, complaints etc.) must be served predominantly via email. If communication via email is impossible, only then will either party use traditional mail. You must notify us of any change to your email or mail address, if you have given us one beforehand.

Severability. If any of the provisions laid out in these Terms is found to be invalid, void or unenforceable under whichever applicable law, then it shall not have an effect on the validity of other provisions of these Terms. In such an event, the invalid provision shall be changed and interpreted so that it accomplishes the original intent of the provision as much as legally possible.

Entire Agreement. These Terms constitute the entire agreement between you and 99math, unless there is a written and signed agreement beside these Terms. Otherwise, the Terms supersede all prior communications and agreements.

Contact Information

For any questions, requests or complaints, please contact us at:

**99math OÜ Suve street 2-51 10149 Tallinn, Estonia Phone: +1 718 618 4260
hello@99math.com**

License Agreement

This license agreement («**License Agreement**») is entered between:

- (1) 99math OÜ, («**Licensor**»), and
- (2) Kenton County School District, («**Licensee**»)

Licensor: 99math OÜ, address: Filmi 5-17, Tallinn, Estonia

Licensee: Kenton County School District, address: 1055 Eaton Drive Ft. Wright, KY 41017, primary contact: Jena Smiddy, primary contact phone: 859-344-8888, primary contact e-mail address: jena.smiddy@kenton.kyschools.us

Licensor and Licensee are together referred to as the «**Parties**» or separately as «**Party**».

1. Background

- 1.1. Licensor has developed an online learning platform called 99math («**99math**»).
- 1.2. Licensee wants to use 99math in their education offering.
- 1.3. Under the terms set forth in this License Agreement, Licensee is granted a license to use 99math in its business.

2. License

- 2.1 Licensor gives Licensee a limited and non-exclusive use license under the terms set forth in this License Agreement («**The License**»)
- 2.2. Licensee's right to use 99math under this agreement is limited to educational purposes.
- 2.3. Licensee has no right to use 99math for other purposes than mentioned above.
- 2.4. Licensee cannot give away, sell, lease or in other ways transfer their License to third parties.
- 2.5. Licensor reserves the right to further develop and improve 99math based on their sole discretion during the term of this agreement.

3. Intellectual property rights

3.1 Licensor keeps the ownership and all rights to 99math. The Licensor does not give the Licensee any immaterial rights, including but not limited to, technology, methods, copyright, brand, source code, design in 99math. This is valid also when improvement, development or changes are done in cooperation with Licensee, or based on suggestions, recommendations or tips from Licensee.

3.2. Licensee shall when the License Agreement ceases, return all data, documentation and other material that Licensee has received from the Licensor in connection with this License Agreement.

4. Licensee's duties and responsibilities

4.1 Licensee shall:

4.1.1. not cause or permit anything that may infringe the Licensor's intellectual property rights or contribute to or allow others to do so

4.1.2. give Licensor notice of any infringement or suspected infringement of Licensor's intellectual property rights, including but not limited to unlicensed use. Notice shall be given as soon as Licensee becomes aware of or suspects such infringement;

4.1.3. not use or apply to get registered the licensor's intellectual property rights without the prior written consent of Licensor, including, but not limited to, trademarks, trade secrets, designs, websites, company names, or domain names that include, are similar to, or may be confused with, all or part of Licensor's intellectual property rights.

4.2. Clause 4.1 also applies after the expiry of the License Agreement.

4.3. Licensee is responsible for all activities performed by their employees, consultants, users, mentors, administrators and others who are granted access to the platform.

5. Licensor's duties

5.1. 99math is provided "as is" and without any form of warranty, whether express or implied, including but not limited to, any implied warranties of fitness for a particular use or results that may be obtained. All risks associated with using 99math are with Licensee.

5.2. The Licensor is under no circumstances responsible for any damage or loss of any kind arising out of, or in connection with the use of 99math.

5.3. The Licensee will have access to receive technical support from the Licensor regarding 99math.

5.4. The Licensor shall commence assistance within 3 business days after having received a request on normal business days between 09:00 a.m. and 05:00 p.m. GMT+2 ("Business Hours"). Support is not manned on Saturdays & Sundays.

6. Data Privacy

6.1 Licensee retains ownership of all data generated or uploaded by Licensee's users when using the Software.

6.2 Licensor shall implement necessary measures to protect the privacy and security of Licensee's data as per applicable laws and regulations.

To know more about Licensor's privacy policy, visit <https://legal.99math.com/privacy-policy>.

7. License Fee

7.1. The Licensee shall pay Licensor a license fee of \$1,995.

7.3. The license fee must be paid in full within 30 business days of receiving the invoice.

8. Breach of the License Agreement

8.1. The party wishing to plead that the License Agreement has been in breach must notify the other Party in writing and without due notice after the person has discovered or should have discovered the breach.

8.2. In the event of material breach, the other Party has the right to terminate the Agreement with immediate effect, if the error is not rectified within 30 days of the written notice being sent. Defaults beyond 7 days are considered to be material breaches.

8.3. Compensation for indirect loss cannot be claimed and compensation cannot exceed the total annual license fee pursuant to clause 7.1 of the Agreement.

8.4 In the event the Licensor terminates this Agreement due to a breach by the Licensee, no fees paid by the Licensee shall be subject to refund. In the event the Licensee terminates this Agreement due to a breach by the Licensor, the Licensor is obligated to refund the fee paid for the subscription period proportionally based on the remaining unused period of service.

9. License Agreement Duration

9.1. The duration of this agreement is 15 months from the day of signing, and will be automatically renewed after 15 months, unless one of the Parties give written notice to cancel no later than 30 days before the start of the next subscription period. All subscription periods following the first one are 12 months in duration.

9.2. Both Parties have the right to terminate this Agreement by providing a written notice. The termination will take effect in 30 days from providing the notice, unless the notice specifies a longer period.

9.3 In the event the termination is initiated by the Licensee and the termination is not made due to any breach of this Agreement by the Licensor, no fees paid by the Licensee shall be subject to refund. In the event the termination is initiated by the Licensor and the termination is not made due to any breach of this Agreement by the Licensee, the Licensor is obligated to refund the fee paid for the subscription period proportionally based on the remaining unused period of service.

10. Indemnification

10.1. The Licensee shall indemnify the Licensor for any claim and loss arising from the Licensee or any Licensee responsible, including the Licensor's costs of legal and other assistance. The Licensee shall give written notice of such claim as soon as it is made.

11. Confidentiality

11.1. The Parties undertake to keep confidential all information in any form (including, but not limited to, written, oral or visual form, or electronic form or on magnetic or optical disk or memory pen or any other format) received from the other Party related to this Agreement, the parties' business operations and trade secrets (including, without limitation, suppliers, customers, products, services, technical information, know-how).

12. Transfer of rights and obligations

12.1. Licensor has the right to assign its rights and obligations under this Agreement to a third party without Licensee's consent.

12.2. If Licensee transfers its rights and obligations under this Agreement, the Licensor shall have the right to terminate the Agreement with immediate effect.

13. Law choice and venue

13.1. This Agreement is governed by Kentucky law.

PARTIES' SIGNATURES:

LICENSOR:	Signature	LICENSEE	Signature
99math OÜ Representative: Ulla-Mari Niit By the power of attorney	 161A9A60647645D	Kenton County School District Representative: Jena Smiddy	