



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

Issue Paper

DATE:

May 1, 2024

AGENDA ITEM (ACTION ITEM):

Consider/Approve a sales contract with Kenton Elementary to purchase Zearn and a vendor assurance for Ft. Wright Elementary to use the free version for the 2024-2025 school year.

APPLICABLE BOARD POLICY:

01.1 - Legal Status of the Board

HISTORY/BACKGROUND:

Zearn is an online math resource that supports instruction in grades K-5. The lessons are aligned to KAS for math and allow students to independently practice math skills taught in class. The lessons include short interactive videos that provide concrete math manipulatives and pictorial representations to help students learn and understand math concepts. Zearn will be used to supplement core math instruction and provide instruction during needs based learning.

FISCAL/BUDGETARY IMPACT:

\$2500 (School Instructional Funds-7000, Title I)

RECOMMENDATION:

Approve a sales contract with Kenton Elementary to purchase Zearn and a vendor assurance for Ft. Wright Elementary to use a 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.



Zearn Master Service Agreement

This Master Services Agreement (the "Agreement") is between Zearn and KENTON CO SCHOOL DISTRICT ("Account Holder") in Kentucky for the 2024-2025 school year. The Agreement sets out the terms and conditions with respect to the Services that the Account Holder may receive throughout the school year, as defined below, and incorporates Zearn’s Terms of Use (<https://www.zearn.org/termsfuse>) and Privacy Policy (<http://www.zearn.org/privacy>).

1. Covered Schools and Services

Zearn will provide the following Services to the district/school(s) listed below (“Covered Schools”):

District / School Name	Services
KENTON ELEMENTARY SCHOOL	School Account

2. Fees and Payment

The combined fee associated with the Services above is \$2,500.00 (the “Fee”). The Fee does not include state taxes that may be applicable. Once this Agreement is signed, the Account Holder is responsible for full payment. Zearn will provide Account Holder an invoice with payment due within 30 days of the invoice date. Account Holders who purchase Zearn School Account(s) and On-Demand Professional Development will receive an invoice at the earliest in July 2024 unless an invoice is requested sooner. Account Holders who purchase a live Professional Learning offering will receive an invoice following Zearn’s delivery of Professional Learning Services. Payments are non-refundable.

3. Zearn School Account and On-Demand Professional Development Terms

For Account Holders who purchase a Zearn School Account and On-Demand Professional Development for the 2024-2025 school year, the following terms apply.

3.1. Zearn School Account License Period

Account Holder’s Zearn School Account license begins on the day this Agreement is signed, or if purchased later, on the purchase date, and runs through June 30, 2025. When noted in Section 1 above, “Legacy” refers to customers who piloted Zearn Math in the 2016-17 school year.

3.2. Authorization

By purchasing a Zearn School Account and On-Demand Professional Development license, Account Holder represents and warrants that it is an authorized representative of the Covered Schools with permission to enter into this Agreement on behalf of the Covered Schools, inclusive of staff members and students who will utilize the Services. Account Holder understands and acknowledges that a Zearn School Account is for the use of students and school staff only, and that Zearn does not authorize third parties to access Zearn School Accounts. Account Holder further represents and warrants that it has read, understands and accepts the terms of this Agreement on behalf of Covered School. Account Holder further acknowledges and agrees that it or its designated representatives has the right to share student personal, performance and other information with Zearn for the purpose of Zearn providing the Services to the Covered Schools and as further described in the Privacy Policy, in accordance with the terms of this Agreement.

3.3. Privacy

Zearn and Account Holder agree to comply with all applicable federal, state and local laws. In the event Account Holder, or its Covered Schools, are subject to the Family Educational Rights and Privacy Act (FERPA), Zearn and Account Holder agree as follows:



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(A) Account Holder appoints Zearn as a "school official" as that term is used in FERPA Regulation 34 C.F.R §99.31 (a)(1)(i) and 34 C.F.R Part 99 et seq., with a "legitimate educational interest" to carry out its responsibilities under the Agreement.

(B) Account Holder represents and warrants that it, or its Covered Schools, has received all necessary signed and dated written consents from the parents/legal guardians of students to provide student data for the purpose of receiving the Services, as required under FERPA.

Zearn agrees to support Account Holder's compliance with FERPA, including operating under the direct control of Account Holder with respect to its use of student information provided by Account Holder or its Covered Schools, teachers or students.

3.4. Data Retention

Upon termination of the Zearn School Account services under this Agreement or other account inactivation, Zearn will retain account and student information provided by Account Holder and its Covered Schools for a period of 180 days for Account Holder's convenience in the event of renewal or reactivation. Account Holder or its Covered Schools may request deletion of account information at any time by providing a written request to Zearn through schoolaccounts@zearn.org.

3.5. Data Security

Zearn maintains reasonable security standards appropriate to the type of data collected. This includes multiple safeguards to help protect against loss, misuse or alteration of information, including encryption of data in transit and at rest, use of two-factor authentication to access the system, regular software security updates and industry best practices for network and physical security.

3.6. Account Holder Privacy Obligations

Account Holder and its Covered Schools are responsible for managing the privacy and security of student, teacher and administrator account credentials affiliated with Zearn School Accounts. As such, log-in and password information should not be shared or used by more than one individual in order to access content including On-Demand Professional Development material; to knowingly share account information is a violation of Zearn's Privacy Policy and this Agreement. Account Holder agrees to notify Zearn immediately if it knows or suspects there has been unauthorized access to accounts or any other breach of security. Zearn will comply with all applicable laws concerning sending appropriate notifications in the event of an unauthorized disclosure of personal identifying information.

3.7. On-Demand Professional Development License

Account Holder may receive from Zearn a non-exclusive, non-transferable, revocable license to access and use the On-Demand Professional Development materials for non-commercial, professional development purposes. As part of this Agreement, teachers and administrators with access to the On-Demand Professional Development materials agree not to share, redistribute, or otherwise make available the Zearn Professional Development materials to individuals or entities who are not affiliated with the Account Holder. Zearn retains ownership of the On-Demand Professional materials and retains all intellectual property rights in these materials. Zearn is the sole provider of these Professional Development materials; any commercial use or distribution of them is strictly prohibited.

4. Professional Learning Sessions

If Account Holder who purchases Professional Learning sessions ("Professional Learning"), the following terms apply.

4.1. Scope



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The purpose of Professional Learning is to provide comprehensive training to support district and school-based educators and leaders with launching and growing Zearn Math implementation at the classroom, school, and district level. Professional Learning sessions are provided live either on-site or virtually. Professional Learning sessions include all instructional materials needed to fully participate in the training program.

4.2. Rescheduling and Fee Policy

Account Holder may reschedule its training date provided Account Holder gives Zearn written notice at least two (2) weeks prior to the date of on-site training or training sessions over four (4) hours in duration, or five (5) days prior to the date of virtual training under four (4) hours in duration (“Reschedule Window”).

Zearn's training team incurs expenses in preparation for Professional Learning sessions and is not able to absorb these expenses if Account Holder cancels or reschedules outside of the Reschedule Window. For this reason, requests to reschedule made closer to the training date cannot be accommodated by Zearn, and in the event of a cancellation, Account Holder understands and agrees that it remains responsible for the full training fee.

4.3. Intellectual Property Disclaimer

Zearn has developed intellectual property, including content, tools, and materials that are included in its training sessions. Zearn maintains all ownership rights and interests in and to all training content, tools, and materials. The delivery of and payment for training sessions does not imply a transfer of any ownership rights or interests, and does not allow for Account Holder to claim ownership or interests in any of Zearn's intellectual property. Account Holder agrees to use the training materials solely for its own personal and non-commercial purposes and in compliance with this Agreement and Zearn's Terms of Use.

4.4. Suggestions and Feedback

During the training, Account Holder may provide Zearn with certain suggestions or feedback regarding Zearn Math, including curriculum or content development recommendations (collectively, “Suggestions”). Account Holder agrees that Zearn shall own all such Suggestions, including all copyrights therein.

5. Purchasing Add-on Services

At the time of signing this Agreement and/or throughout its term, Account Holder may request services in addition to those listed in Section 1 (“Add-on Services”). Zearn will deliver to Account Holder Add-on Services following Zearn's receipt of a Purchase Order from Account Holder. Each Purchase Order, once received by Zearn, constitutes a separate binding contract between the Parties which incorporates and is subject to the terms and conditions of this Agreement.

5.1. Zearn School Account and On-Demand Professional Development

If Account Holder orders additional license(s) for Zearn School Accounts or On-Demand Professional Development, Account Holder will provide Zearn a Purchase Order confirming the Covered Schools and relevant fees.

5.2. Zearn Printed Materials

If Account Holder orders Zearn Printed Materials, Account Holder will provide Zearn a Purchase Order and Order Form for the number of books, delivery details (location and recipient), and the relevant fees, including whether Account Holder is exempt from state taxes.

5.3. Professional Learning Sessions

If Account Holder orders Professional Learning, Account Holder will provide Zearn a Purchase Order confirming the training type, date(s), number of session(s), and the relevant fees.

6. Miscellaneous

6.1. Conflicting Provisions

In the event of a conflict between the terms and conditions of this Agreement and any other written agreement entered into between Zearn and Account Holder, the terms and conditions of this Agreement will control.

6.2. Modifications

Modifications to this Agreement are effective only if confirmed in writing between Zearn and an authorized representative of Account Holder.

6.3. Signature Authorization

This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures received by PDF file or other electronic format are agreed to be acceptable as original signatures.

ZEARN TERMS OF USE

LAST UPDATED JANUARY 09, 2023

These Terms of Use govern your use of Zearn.org and the services we provide (collectively, “Services”), which are owned and operated by Zearn. By accessing or using our Services, any person who accesses or uses the Site (“you” or “your”) agrees to be bound by the following Terms of Use and by our Privacy Policy available at <https://about.zearn.org/privacy> which is incorporated here by reference.

The Services are offered subject to your acceptance without modification of these Terms of Use. If you do not agree to these Terms of Use, you may not access or otherwise use the Services.

We reserve the right, at our discretion, to change these terms in the future. When we do, we will notify you by updating the date of these Terms of Use and posting it on this page of our site. We will also notify you by email of any material changes to these Terms of Use. Your continued access or use of the Services following any changes to the Terms of Use constitutes your acceptance of those changes.

Use of Services

SERVICES

Zearn operates a web-based platform that delivers content and provides educators and administrators of educational institutions—as well as parents if they are the adults setting up accounts for their children to use at home—with insight into their students’ performance. In order to access and use portions of the Services, you will be required to register for an account. Zearn also offers the option for schools and/or districts to purchase a Zearn School Account that includes, but is not limited to, unlimited classroom sizes, administrative-level accounts, school or district-level reporting, dedicated support and roster set-up (“Zearn School Account”). Individual free accounts in the Services are subject to single



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classroom creation and classroom capacity limits. If you register for a Zearn School Account to use the Services on behalf of your educational institution, you will be required to agree to additional terms and conditions as the authorized representative of such educational institution (the "Zearn School Account Agreement"). If you have registered for an individual account, and your school or district subsequently purchases a Zearn School Account covering your classroom, Zearn may deactivate your individual account and you may be required to log in using your School Account credentials.

PASSWORDS AND SECURITY

Some portions of the Services may be restricted to registered users or a subset of users, e.g. Zearn School Account holders. When you register for access to such restricted Services, you agree to submit and maintain accurate and complete information. If we suspect that your information is untrue, inaccurate, out-of-date, or incomplete, we may suspend or terminate your access to the Services or request additional information from you. When registering for access to restricted portions of the Services, you may be asked to select a personal, non-transferable password. You may also be asked to provide information that we will use to confirm your identity in the event you submit a request for a lost or forgotten username or password. You are solely responsible for all activities that occur under your password-protected account and for ensuring the protection of your account information. You agree to notify us immediately of any unauthorized use of your password or account or any other breach of security that is known or suspected by you. Password-protected accounts may not be shared or used by more than one individual. You agree that we may send to you in electronic form any notices or other communications regarding the Services.

INTELLECTUAL PROPERTY



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We retain all right, title, and interest in and to the Services, which are protected by applicable intellectual property laws, including United States and foreign copyright and trademark laws. No portion of the Services, including the trademarks and service marks, may be used, displayed or reproduced without the prior written consent from Zearn. You may not share or reproduce any portion of the Services outside of the Services or in any public forum.

ZEARN®, Z-SQUAD®, ZEARN SQUAD®, TOWER OF POWER®, NUMBER GYM®, LEARNING LAB™, MATH CHAT™, FRACTION ACTION®, MULTIPLY MANIA®, ADDITION MAGICIAN®, ADDITION MAGICIAN RETURNS®, PAIR COMPARE®, MAKE AND BREAK®, NEXT STOP TOP®, MIX AND MATCH™, TOTALLY TIMES®, BLAST™, FORM TO FORM®, THE COUNTING TRAIN®, HOP SKIP SPLASH®, SUM SNACKS®, BUNDLE THE SEA®, DISCOVERY CANYON®, COUNT THE COSMOS®, POLAR PLACE VALUES®, ZEARN PD®, ZEARN 101®, zearn , z , and ALL KIDS ARE MATH KIDS® are trademarks and service marks owned by Zearn.

You may not use, display or reproduce them without the prior written consent of Zearn. Further, you may not remove, obscure, or otherwise modify any copyright, trademark, confidentiality or other proprietary rights notices displayed on, embedded in, or otherwise appearing in any content offered by, viewed on, or received through this site or through the services. All other trademarks identified and contained on this site or within the Services are the property of their respective owners and their use herein does not imply sponsorship or endorsement of their products or services.

Portions of Zearn Math are derivative of Eureka Math and licensed by Great Minds. ©2017 Great Minds, Inc. All rights reserved.

Eureka Math was created by Great Minds in partnership with the New York State Education Department and also released as EngageNY.



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Portions of Zearn Math are also licensed under a Creative Commons Attribution-NonCommercial-ShareAlike 4.0 License (CC BY-NC-SA 4.0) at www.creativecommons.org/licenses/by-nc-sa/4.0/legalcode. ©2017 Great Minds, Inc. Some rights reserved. www.greatminds.org/math. The original work has been modified.

LICENSES

Zearn grants you a limited, personal, non-exclusive, non-transferable, revocable license to access and use the Services for your personal, non-commercial use.

COPYRIGHT INFRINGEMENT

Zearn respects the intellectual property rights of others, and requires that the people who use the Services do the same.

If you believe that your work has been copied in a way that constitutes copyright infringement and is accessible on the Services, you may notify us by providing our copyright agent with the following information in writing:

1. Your name, postal address, telephone number and email address;
2. A description of the copyrighted work that you claim has been infringed;
3. A description of where the alleged infringing material is located, with a link, if possible;
4. A statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent, or the law;
5. An electronic or physical signature of the person authorized to act on behalf of the owner of the copyrighted material; and



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6. A statement made under penalty of perjury that the above information in your notice is accurate and that you are the copyright owner or are authorized to act on the copyright owner's behalf.

Our designated agent to receive notification of claimed infringement under the Digital Millennium Copyright Act of 1998 ("DMCA") is:

Zearn CEO

PO Box 20, New York, NY 10116

USER SUBMISSIONS

Zearn does not solicit creative ideas or suggestions relating to products or marketing plans via the Services. If you do send such materials, including any concepts, know-how, notes, drawings or techniques, Zearn shall be free to use them for any purpose whatsoever, including but not limited to developing, manufacturing and marketing products. Zearn shall not be liable to you or to any person claiming any commercial or non-commercial rights related to our use or disclosure of any submission.

Liabilities

LIMITATIONS OF LIABILITY

In no event shall Zearn or its affiliates, or any of their respective directors, officers, employees, agents, representatives and suppliers (or their respective successors and assigns) be liable to you or any third party in contract, tort (including negligence) or otherwise for any direct, indirect, consequential, special, incidental or putative damages, including, but not limited to, loss of use, service interruptions and loss of data, regardless of whether these parties had advance notice of the possibility of any such damages.

Zearn's total liability to you for any claim arising out of or relating to the services shall not exceed \$100. Some states do not allow the foregoing limitation of liability so they may not apply to you.

INDEMNITY

To the extent that state law allows, you agree to indemnify and hold Zearn and its directors, officers, employees and agents harmless from any loss, damage, liability or demand, including reasonable attorneys' fees, arising out of, resulting from or connected with the use of the Services and/or arising from your breach of these Terms of Use. We reserve the right to assume the exclusive defense and control of any matter for which you are required to indemnify us. You agree to cooperate with any reasonable requests to assist us in our defense of such matters.

RELEASE

In the event that you have a dispute with any user(s) of the Services, you release Zearn and its directors, officers, employees and agents from claims, demands, and damages (actual and consequential) of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way connected with such disputes. If you are a California resident, you waive California Civil Code 1542, which says: "A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor."

Representations

USER REPRESENTATIONS

By using and/or registering for the Services, you represent that:

- You are an adult, parent or legal guardian or you are a school or district employee authorized by your education institution to create an account for the Services;



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- You will use the Services in compliance with all applicable laws and regulations;
- Your registration information is accurate;
- You will keep your account credentials, including your user name and password, confidential and will be responsible for all use of your account. If you suspect any unauthorized use of your account, please contact us at privacy@zearn.org; and
- If you create an account on behalf of any student, you represent that you are authorized to accept these Terms of Use on their behalf, and agree to be responsible for ensuring that those student users comply with these Terms of Use.

In addition, you will not:

- Infringe on our or any third party's intellectual property or other proprietary personal or legal rights;
- Obtain or attempt to obtain unauthorized access to our systems, materials or information;
- Impersonate another user, misrepresent your affiliation with a person or entity, or attempt to hide your identity;
- Upload, post or otherwise transmit content that contains personally identifying information (including, but not limited to actual names, phone numbers, mailing addresses or e-mail addresses), derogatory, harmful, abusive, defamatory or unlawful content, content that is invasive of another's privacy or otherwise objectionable or commercial in nature;
- Use the Services in any manner that could damage, disable, impair or overburden the Services;
- Use the Services to gain any competitive advantage over Zearn;
- Reproduce, rent, sell, modify, translate, decompile, disassemble, reverse engineer or create derivative works of the Services; or
- Circumvent or disable any security or technological features or measures that protect the Services.

NO WARRANTIES



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The Services are provided “as is”. Zearn makes no representations or warranties about the reliability, quality, suitability, availability, accuracy or completeness of the Services, and is not subject to liability for any delays or interruptions, viruses or other harmful components. You agree that your use of the Services is at your own risk. We reserve the right to modify, suspend or discontinue the Services at any time without notice. We further reserve the right, at any time without prior notice, to terminate your account and use of the Services for lack of use or if Zearn believes that you have violated these Terms of Use. You agree that we shall not be liable to you or any third party for such actions.

LINKS

We may provide links to other Web sites or resources. These links are provided solely as a convenience to you and inclusion of such links does not represent an endorsement by Zearn. We are not responsible for the content of any linked websites or resources, and make no representations regarding the accuracy of such websites or resources.

RESTRICTIONS

In compliance with the Children’s Online Privacy Protection Act (COPPA), we do not knowingly request or collect personally identifiable information from users under 13 years of age. Zearn collects personal information about students when it is provided by a parent or a school representative authorized to share the student’s information.

If you provide a child with access to the Services, you represent and warrant that you are the parent or legal guardian, or the educator or administrator of an educational institution and have obtained the necessary consents from the parent or legal guardian to provide such access.



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Communications

NOTICE

By using the Services, you consent to receiving electronic communications from Zearn providing notices about your account and information concerning or related to the Services. You agree that any notice, agreements, disclosure, or other communications that we send to you electronically will satisfy any legal communication requirements, including that such communications be in writing.

QUESTIONS

Please direct any questions regarding these Terms of Use to:

privacy@zearn.org

Miscellaneous

HEADINGS

The headings identifying the sections and subsections of these terms of use are for reference only and do not define, modify, expand, or limit any of the terms or provisions herein.

GOVERNING LAW AND ARBITRATION

These Terms of Use are governed by the laws of the State of Delaware. Any controversy or claim arising out of or relating to these Terms of Use will be settled by binding arbitration in accordance with the commercial arbitration rules of the American Arbitration Association. Any such controversy or claim will be arbitrated on an individual basis, and will not be consolidated in any arbitration with any claim or controversy of any other party. The arbitration will be conducted in Kenton County, Kentucky~~Delaware~~, and judgment on the arbitration award may be entered into any court having jurisdiction thereof. The award of the arbitrator will be final and binding upon the



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parties without appeal or review except as permitted by Delaware law. Notwithstanding the foregoing, either party may seek any interim or preliminary injunctive relief from any court of competent jurisdiction, as necessary to protect the party's rights or property pending the completion of arbitration.

If any portion of these terms is held to be unenforceable, the unenforceable portion shall be construed in accordance with applicable law to the greatest extent possible and the remainder of the provisions shall remain in full force and effect.

Zearn controls and operates the Services from its offices in New York, NY, United States of America and makes no representation that these materials are appropriate or available for use in other locations including, but not limited to, outside the United States of America.

State-Specific Notices

For California local educational agencies, pursuant to California Education Code Section 49073.1:

Definitions:

"Deidentified information" means information that cannot be used to identify an individual pupil.

"Pupil-generated content" means materials created by a pupil, including, but not limited to, essays, research reports, portfolios, creative writing, music or other audio files, photographs, and account information that enables ongoing ownership of pupil content. "Pupil-generated content" does not include pupil responses to a standardized assessment where pupil possession and control would jeopardize the validity and reliability of that assessment.

"Pupil records" means both of the following:

- i. Any information directly related to a pupil that is maintained by the local educational agency.
- ii. Any information acquired directly from the pupil through the use of instructional software or applications assigned to the pupil by a teacher or other local educational agency employee.

"Pupil records" does not mean any of the following:

- i. Deidentified information, including aggregated deidentified information, used by the third party to improve educational products, for adaptive learning purposes, and for customizing pupil learning.
 - ii. Deidentified information, including aggregated deidentified information, used to demonstrate the effectiveness of the operator's products in the marketing of those products.
 - iii. Deidentified information, including aggregated deidentified information, used for the development and improvement of educational sites, services, or applications.
1. Zearn agrees and acknowledges that pupil records as defined in California Education Code Section 49073.1 are the property of and remain under the control of the local educational agency.
 2. Zearn does not include any features by which pupils may enter pupil-generated content.
 3. Zearn will never use any information from the pupil record for any purpose other than those required or specifically permitted by our Terms of Use or the Zearn School Account agreement, if applicable.
 4. A parent, legal guardian or eligible pupil age 18 and older may review personally identifiable information in the pupil's record and correct erroneous information by contacting the school or district, which has the sole responsibility to access, amend and correct information through the classroom portal provided as part of Zearn.
 5. Zearn maintains commercially reasonable security standards to help safeguard pupil records. These include encryption of data in transit and at rest, use of two-factor authentication to access the system, regular software security updates and additional network and physical security measures. In addition, Zearn staff members undergo annual privacy and security training.
 6. In the event of an unauthorized disclosure of pupil records, Zearn will notify the school or district as required by law. In



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addition, Zearn shall provide the school or district with the name and contact information for a Zearn staff member who shall be available to assist the school or district in resolving obligations associated with any such incident.

7. Upon receipt of written notice, or if applicable, upon completion of the term of a Zearn School Account Agreement and with written authorization from the school or district, Zearn will delete pupil records. Zearn will provide written certification of such deletion upon request.
8. (A) In support of the school or district compliance with FERPA, the school or district appoints Zearn, and any third parties assisting Zearn in carrying out its responsibilities under the Terms of Use and, if applicable, Zearn School Account Agreement, as reasonably determined by Zearn, as a "school official" as that term is used in FERPA §§99.31(a)(1), and determines that Zearn, and any such third party, as appropriate, has a "legitimate educational interest," for the purpose of carrying out its responsibilities under the Terms of Use and Zearn School Account Agreement, if applicable. (B) Zearn acknowledges that it shall be bound by all relevant provisions of FERPA and agrees that personally identifiable information obtained from the school or district by Zearn in the performance of its responsibilities under the Terms of Use and Zearn School Account Agreement, if applicable, will not be disclosed to a third party unless that third party is assisting Zearn in carrying out its responsibilities.

Zearn acknowledges and agrees that personally identifiable information from pupil records shall not be used for the purpose of engaging in targeted advertising

For Connecticut local or regional boards of education, pursuant to Connecticut Public Act 16-189:

"Student information," "student records" and "student-generated content" have the same definitions as appear in CT Public Act 16-189.



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1. Student information, student records and student-generated content as defined in CT Public Act 16-189 are the property of and under the control of the school or district and not Zearn.
2. The local or regional board of education may request the deletion of student information or student records in the possession of Zearn by sending a written request to Zearn. Zearn will delete the data as requested.
3. Zearn shall not use the student information or student records for any purposes other than those authorized pursuant to the Terms of Use and, if applicable, the Zearn School Account Agreement.
4. A student, parent or legal guardian of a student may review personally identifiable information contained in the student records and correct erroneous information, if any, in such student record by contacting the school or district, which may access and amend all such records via the classroom portal provided by Zearn.
5. Zearn maintains commercially reasonable security standards to help safeguard your student information. These include encryption of the data in transit and at rest, use of two-factor authentication to access the system, regular software security updates and additional network and physical security measures. In addition, Zearn staff members undergo annual privacy and security training.
6. In accordance with the provisions of Section 4 of CT Public Act 16-189, in the event of an unauthorized release, disclosure or acquisition of student information or student records, Zearn shall notify the local or regional board of education as soon as practicable, but no later than the period of time required in clauses (a) (1) or (2) of Section 4 of CT Public Act 16-189 (as applicable) after Zearn becomes aware of it.
7. Upon completion of the contracted services, and with the written request from the school or district that student information be deleted, Zearn shall delete the data. If no such request is received, personally identifiable information from pupil records will be destroyed in accordance with the Zearn Privacy Policy.



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Zearn does not include any features that allow for submission of student-generated content.

8. Zearn shall work with the local or regional board of education to ensure compliance with the Family Educational Rights and Privacy Act of 1974, 20 USC 1232g, as amended from time to time.
9. The laws of the state of Connecticut shall govern the rights and duties of the parties with respect to this section of the Terms.
10. Should any provision of these Terms be held invalid by a court of competent jurisdiction, the invalidity does not affect other provisions or applications of the Terms which can be given effect without the invalid provisions or application.

For Colorado local or regional boards of education, pursuant to Colorado Revised Statute 22-16-101, et seq.:

“Student personally identifiable information,” “school service contract provider”, “contracting public education entity” and “local education provider” have the same definitions as appear in CRS 22-16-101 et seq.

1.

Zearn collects the following student personally identifiable information in order to provide its educational content and services to each student at the appropriate grade level and to facilitate reporting to teachers:

- Student first and last name
- *If shared with us: Student middle name or initial*
- Student date of birth
- Student grade
- School name
- District name
- School Address
- Student Information Systems ID
- School MDR number
- Teacher name



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- Teacher email
- *If shared with us: Teacher identification*
- Class name
- *If shared with us: Class identification*

2.

Zearn will provide notice when making material changes to its privacy policy

3.

Zearn, through its classroom portal, shall facilitate access to and correction of any factually inaccurate student personally identifiable information by a contracting local education provider in response to a request for correction that the local education provider receives and responds to in accordance with section 22-16-112(1)(c).

4.

In accordance with the provisions of CRS 22-16-108, upon discovering the misuse or unauthorized release of student personally identifiable information held by Zearn, a subcontractor, or a subsequent subcontractor, Zearn shall notify the contracting public education entity as soon as possible, regardless of whether the misuse or unauthorized release is a result of a material breach of the terms of the contract

5.

Zearn's use of data complies with CRS 22-106-109. Zearn shall not use the student personally identifiable information for any purposes other than those authorized pursuant to the Terms of Use and, if applicable, the Zearn School Account Agreement. Zearn does not share or use student personally identifiable information for purposes of targeted advertising to students or to create a personal profile of a student other than for supporting purposes authorized by the contracting public education entity.

6.

As required by CRS 22-106-110, Zearn maintains a comprehensive information security program that is reasonably designed to protect the security, privacy, confidentiality and integrity of student personally



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identifiable information. It makes use of appropriate administrative, technological and physical safeguards. These include encryption of the data in transit and at rest, use of two-factor authentication to access the system, regular software security updates and additional network and physical security measures.

7.

During the term of a contract between Zearn and a public education entity, the contracting public education entity may request the destruction of a student's student personally identifiable information that was collected, generated or inferred as a result of the contract. Zearn shall destroy the information as soon as practicable after the date of the written request unless provisions (a) or (b) of 22-16-110 applies.

8.

Upon the termination of or the conclusion of the contracted services, and with the written request from the public education entity that student information be deleted, Zearn shall delete the data. If no such request is received, student personally identifiable information from school records will be destroyed in accordance with the Zearn Privacy Policy. Upon written request, Zearn will notify the public education entity of the date upon which all of the student personally identifiable information is destroyed.

For Illinois local educational agencies, pursuant to 105 ILCS 85/1 et. seq. (SOPPA):

"Covered information" has the same definition as appears in 105 ILCS 85, § 5.

1. Pursuant to the Federal Family Educational Rights and Privacy Act of 1974, Zearn is acting as a school official with a legitimate educational interest, is performing an institutional service or function for which the school would otherwise use employees, under the direct control of the school, with respect to the use and maintenance of covered information, and is using the covered information only for an authorized purpose and may not re-



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disclose it to third parties or affiliates, unless otherwise permitted under SOPPA, without permission from the school or pursuant to court order.

2. In the event of an unauthorized release of covered information attributable to Zearn (“breach”), Zearn will agree to reimburse the school for those reasonable costs and expenses incurred in investigating and remediating the breach, and as shall be agreed between the school and Zearn. Such costs and expenses may include: providing notification to the parents of those students whose covered information was compromised and to the regulatory agencies or other entities as required by law or contract; reasonable legal fees, costs, fines, fees, or damages imposed against a school as a result of the breach; providing any other notifications or fulfilling any other requirements adopted by the State Board or of any other State or Federal laws.
3. Zearn must delete or return all covered information if the information is no longer needed for the purposes of providing the Services. Zearn will delete covered information in accordance with the timelines in Zearn’s Privacy Policy, or upon written request from the school.
4. If the school maintains a website, these terms must be published on the school’s website. If the school does not maintain a school website, the school must make these terms available for inspection by the general public at its administrative office.
5. In order to deliver the Services, Zearn relies upon certain third-party service providers who may have access to covered information, as described further in Zearn’s Privacy Policy.

For New York educational agencies, pursuant to N.Y. Education Law § 2-d:

"Student data" has the same definition as appears in N.Y. Education Law § 2-d.

- 1.



Zearn Master Service Agreement

Zearn shall maintain the confidentiality of the shared student data or teacher or admin data in accordance with federal and state law and the educational agency's policy on data security and privacy.

2.

Zearn will not use personally identifiable information collected for any purpose not explicitly authorized by these Terms of Use.

3.

Zearn shall not disclose any personally identifiable information to any other party without the prior written consent of the parent or eligible student;

- a. except for authorized representatives of the third-party contractor such as a subcontractor or assignee to the extent they are carrying out the contract and in compliance with state and federal law, regulations and its contract with the educational agency; or
- b. unless required by statute or court order and the third-party contractor provides a notice of disclosure to the department, district board of education, or institution that provided the information no later than the time the information is disclosed, unless providing notice of disclosure is expressly prohibited by the statute or court order

4.

Zearn does not sell personally identifiable information nor use or disclose it for any marketing or commercial purpose or facilitate its use or disclosure by any other party for any marketing or commercial purpose or permit another party to do so.

5.

Zearn uses the following administrative, operational and technical safeguards and practices in place to protect personally identifiable information:

- a. Zearn limits internal access to personally identifiable information to only those employees or subcontractors that need access to provide the contracted services.



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- b. Encryption of data in transit and at rest at 128-bit encryption or better.
- c. Two-factor authentication prior to access to personal identifiable information.
- d. Antivirus and malware software.

6.

Any Zearn employee who has access to student data or teacher or principal data has received or will receive training on the federal and state law governing confidentiality of such data prior to receiving access.

7.

Zearn shares personally identifiable information with third-party service providers solely for the purposes of providing the Services. To ensure student personal data is protected, Zearn reviews the data security practices of its third-party service providers and obtains written assurances and agreements from them.

8.

Zearn maintains an internal incident response plan to manage data security and privacy incidents that implicate personally identifiable information and to enable Zearn to notify educational agencies of unauthorized disclosure.

9.

Zearn gives users control over the deletion of personal data through the product account dashboard, or by written request to privacy@zearn.org.

For Utah education entities, pursuant to Utah Code 53A-1-1409:

Zearn agrees that at the request of the Utah education entity that has contracted with Zearn, the education entity or the education entity's designee may conduct an audit to verify compliance with these Terms.



By signing the below, the Account Holder and Zearn agree to the terms of this Agreement.

For Account Holder:

Name _____

Title _____

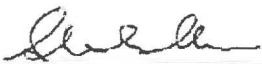
Signature _____

Date _____

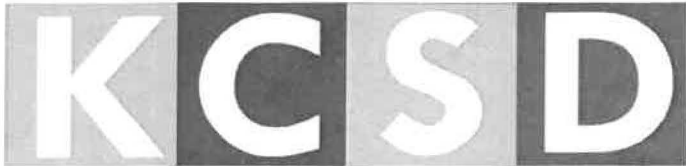
For Zearn:

Name Shalinee Sharma

Title Chief Executive Officer

Signature 

Date 04/30/2024



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

This Vendor Assurances Regarding Protection of Personal and Confidential Information applies to and is incorporated into the Zearn Master Services Agreement between the Kenton County School District Kenton Elementary School and Zearn.

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 Educational 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. 175 *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.

Zearn

Vendor Name

421 8th Avenue #20, New York, NY 10116

Vendor Address

212-967-6070

Vendor Telephone

partnercontracts@zearn.org

Vendor Email Address

Lia M. Brooks

Signature by Vendor's Authorized Representative

Lia M. Brooks

Print Name

05 / 09 / 2024

Date