

## CONTRACT

**THIS CONTRACT** is entered into this 1 day of September, 2024 , by and between the **BOARD OF EDUCATION OF FAYETTE COUNTY, KENTUCKY**, 450 Park Place, Lexington, Kentucky 40511 ("Board") and **Curriculum Associates, LLC** 153 Rangeway Road. North Billerica, MA 01862 ("Second Party").

### **A. PARTIES:**

The Board of Education of Fayette County, Kentucky, **Multilingual Services Department** has established the need to **have access to an English learner program management solution** and has determined that this need cannot be met by existing district staff.

**Curriculum Associates, LLC** provides **the ELlevation Platform proving a comprehensive English learner program management solution across three main cloud-based software solutions to support administrators, specialist and teachers** and has expertise or needed products as described herein.

### **B. PURPOSE:**

The purpose of this contract is to improve the availability of a **comprehensive English learner program management solution across three main cloud-based software solutions to support administrators, specialist and teachers.**

**NOW, THEREFORE**, for and in consideration of the mutual promises set out herein, it is hereby agreed by and between the parties hereto as follows:

1. The Second Party shall provide to the **Multilingual Services Department**, as an independent contractor, services under the direction of **Rose Santiago, Director**.
2. The second party shall provide a **comprehensive English learner program management solution across three main cloud-based software solutions to support administrators, specialist and teachers.**
3. The Board agrees to pay the Second Party for the services/products provided in this contract the amount of \$ 114,945.00. Additional expenses to be reimbursed are **none**, with a total amount of this contract not exceeding \$ **114,945.00**.
4. The Second Party shall provide to the Fayette County Board of Education an invoice for services rendered under this contract and any agreed upon expenses to be reimbursed. Unless otherwise stated, travel and per diem shall be reimbursed based upon the district's current travel policies.
5. The Second Party is not debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."
6. This contract may be re-negotiated based upon, but not limited to, increases in services to participants. Any modifications shall be agreed to in writing and signed by both parties.
7. The staff providing services to the Board herein are employees of the Second Party and shall not represent to anyone that they are employees or agents of the Board.
8. Either party shall have the right to terminate this agreement at any time upon a fourteen (14) day written notice, either personally delivered or served by some form of return receipt mail evidencing delivery, to the other party.
9. Each of the parties agrees to comply with all applicable law concerning the performance of the provisions of this contract.
10. The Second Party certifies that it shall not discriminate in any of the services performed in connection with this contract or in any program or activity it operates on the basis of race, color, national origin, religion, age, creed, political affiliation, marital status, sex, or disabling condition.
11. The Second Party certifies that it has read and will comply with the Family Education Rights and Privacy Act ("FERPA"), 20 U.S.C. § 1232g; 34 CFR Part 99).
12. Any contractor who is permitted access to school grounds on regularly scheduled and continuing basis

pursuant to a written agreement for the purpose of providing services directly to a student or students as part of a school-sponsored program or activity must submit to a national and state criminal history background check by the

Department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services ("CHFS") stating the contractor is clear to hire based on no finding of substantiated child abuse or neglect found through a background check of child abuse and neglect records maintained by the Cabinet for Health and Family Services. The required background checks and letter from CHFS must be submitted to the FCPS Human Resources Office prior to the beginning of work. Failure to comply with this statute will be considered a breach of contract and will subject the contract to cancellation without penalty.

13. KRS 45A.455 PROHIBITS CONFLICTS OF INTEREST, GRATUITIES, AND KICKBACKS TO EMPLOYEES OF THE BOARD OF EDUCATION IN CONNECTION WITH CONTRACTS FOR SUPPLIES OR SERVICES WHETHER SUCH GRATUITIES OR KICKBACKS ARE DIRECT OR INDIRECT. KRS 45A.990 PROVIDES SEVERE PENALTIES FOR VIOLATIONS OF THE LAWS RELATING TO GRATUITIES OR KICKBACKS TO EMPLOYEES WHICH ARE DESIGNED TO SECURE A PUBLIC CONTRACT FOR SUPPLIES OR SERVICES.

14. If any section, paragraph, or clause of this contract shall be held invalid by any court of competent jurisdiction, the invalidity of said section, paragraph, or clause shall not affect any remaining provisions herein.

15. This contract is deemed to be made under and shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

16. Venue for any legal action filed concerning this contract shall be Fayette County, Kentucky.

17. This writing reflects the entire agreement between the parties. No change or modification of this Agreement shall be valid or binding upon the parties hereto, nor shall any waiver of any terms or conditions hereof be deemed a waiver of such terms or conditions in the future, unless such change, modification or waiver shall be in writing and signed by the parties hereto.

18. This agreement will be in effect from **September 1, 2024**, through **August 29, 2025**, unless terminated by either party as defined in Paragraph 8. The agreement may be renewed annually based upon evaluation of the effectiveness of the agreement in meeting the goals set forth herein and funding availability.


IN WITNESS WHEREOF, the parties have executed this contract the day, month, and year above written

  
\_\_\_\_\_  
Rose Santiago, Multilingual Department Director

7/11/2024  
Date

\_\_\_\_\_  
Dr. Demetrus Liggins, Superintendent or Designee  
BOARD OF EDUCATION OF FAYETTE COUNTY  
KENTUCKY

\_\_\_\_\_  
Date

  
LEGAL IN: \_\_\_\_\_  
CAB. IN: \_\_\_\_\_

\_\_\_\_\_  
Name of Second Party

\_\_\_\_\_  
Date



Individualized Tools for Today's ELI Professionals

### SOLE SOURCE STATEMENT

Fayette County Public Schools  
450 Park Place  
Lexington, KY 40511

May 28, 2024

To Whom It May Concern,

I am an authorized representative of Curriculum Associates, LLC and I affirm that Curriculum Associates, LLC is the sole source supplier, publisher and holder of all copyrights for all items related to the Ellevation subscription-based instructional management and training service.

Subscriptions and support services related to all Curriculum Associates, LLC data management and training products are provided only by Curriculum Associates, LLC and are not available through resellers.

We have done extensive market research and confirm there is/are no other like products or services available for purchase that would serve the same purpose or function for the above-named product or service.

Please let us know if you have any questions. Our contact information is below.

Sincerely,

A handwritten signature in black ink, appearing to read "Teddy Rice", with a stylized flourish at the end.

Teddy Rice  
President and Co-Founder  
Ellevation Education  
50 Milk Street, Floor 20  
Boston, MA 02109  
[sales@ellevationeducation.com](mailto:sales@ellevationeducation.com)







# Curriculum Associates, LLC Price Quote - Q-48294

Version: 1

Quote Date: 6/7/2024

Quote Expiration Date: 8/31/2024

This price quote from Curriculum Associates, LLC having an address at 153 Rangeway Road, North Billerica, MA 01862 ("Company") has been prepared for the Customer Name identified as "Customer" below. Customer's use of Ellevation subscriptions shall be subject to the Ellevation Terms and Conditions of Use, which can be found at <https://ellevationeducation.com/platform-legal-notice>.

Company: Curriculum Associates, LLC

Representative: Erica Williams

Email: [erica.williams@ellevationeducation.com](mailto:erica.williams@ellevationeducation.com)

Phone: 617-307-5755

Address: 153 Rangeway Road,  
North Billerica, MA 01862

Start Date: 8/1/2024

Customer: Fayette County Public Schools, KY

Contact Name: Rose Santiago

Email: [rose.santiago@fayette.kyschools.us](mailto:rose.santiago@fayette.kyschools.us)

Phone: (859) 381-4224

Address: 450 Park Place,  
Lexington, KY 40511

End Date: 7/31/2025

## Subscription Fees

Product	Quantity	Unit Price	Total Fees
Strategies	7,663	\$15.00	\$114,945.00
Subscription Total:			\$114,945.00

## Services Fees

Product	Quantity	Unit Price	Training Product	Total Fees
Strategies Data/Implementation	1	\$17,241.75		\$17,241.75
Online Training Hour	7	\$1,250.00		\$8,750.00
Online Webinar Training - 1 Hr (Strategies)	5	\$1,250.00	Strategies	\$6,250.00
Services Total:				\$32,241.75

## Total Investment - Q-48294

Grand Total:	\$147,186.75
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Invoicing Schedule: Up Front, In Full

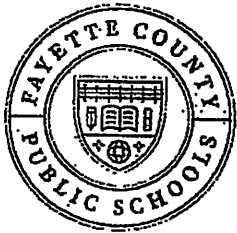
Payment Term: Net 30

Contract Term: 12

- Account Number: 4418064408 | Account Name: Curriculum Associates, LLC
- Bank Name: Wells Fargo Bank - San Francisco, CA
- ABA Routing: 121000248
- Tax ID: 26-3954988

To the extent your purchase is subject to sales tax, tax will be applied at final invoicing. If tax exempt, please submit valid exemption certificate with PO and quote in order to avoid processing delays. Exemption certificates can also be submitted to [exempt@cainc.com](mailto:exempt@cainc.com).

To place an order - Please submit this quote with your purchase order to your Ellevation Sales Rep at: [erica.williams@ellevationeducation.com](mailto:erica.williams@ellevationeducation.com)



450 Park Place  
Lexington, KY 40511  
Phone: (859) 381-4100  
FCPS.net

Board of Education:  
Tyler Murphy, Chair  
Amy Green, Vice Chair  
Amanda Ferguson  
Marilyn Clark  
Jason Moore

Superintendent:  
Demetrius Liggins, PhD

An Equal Opportunity  
School District

## ***Memorandum of Agreement: Data Sharing Agreement***

### **PARTIES**

1. Fayette County Public Schools ("FCPS") is a public school district organized and existing under and pursuant to the constitution and laws of the State of Kentucky and with a primary business address at 450 Park Place, Lexington, Kentucky 40511.
2. Curriculum Associates, LLC ("Contractor") provides License to access and use its Elevation platform [CONTRACTOR TO INSERT DESCRIPTION] with a primary place of business at 153 Rangeway Rd, North Billerica, MA 01862 [ADDRESS].

### **PURPOSE AND SCOPE**

1. The purpose of this Data Sharing Agreement ("DSA") is to allow FCPS to provide the Contractor with student and teacher personally identifiable information (PII) data and the subsequent processing of that data.
2. This Agreement is meant to ensure that both parties adhere to the requirements concerning the use of student information protected under the Family Educational Rights and Privacy Act ("FERPA"), 20 U.S.C. §1232g, 34 Code of Federal Regulations Part 99; the Children's Online Privacy Protection Act ("COPPA"), 15 U.S.C. §6501-6506, 16 Code of Federal Regulations Part 312
3. This DSA shall be effective as of 7/1/2024 ("Effective Date"), terminating on 06/30/2029 and shall not continue longer than five (5) years.
4. This Agreement is deemed to be made under and shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky, pursuant to KRS 61.932 and KRS 365.734.

6. This DSA excludes any data which is freely and publicly available through other sources.

### **PROCESS FOR DATA TRANSFER**

FCPS and the Contractor will at the appropriate time agree on a file or data sharing process that will involve the encrypted transfer of the data via the public network.

### **FCPS DUTIES**

FCPS shall provide confidential data in compliance with all applicable federal, state, and local privacy laws, rules, and regulations.

### **CONTRACTOR DUTIES**

**The Contractor warrants that it will:**

1. Use this data only for the joint project outlined above and in the Service Agreement.
2. The Contractor shall comply with all applicable federal, state and local laws, rules and regulations pertaining to data privacy and security, including but not limited to FERPA; the Kentucky Family Educational Rights and Privacy Act, KRS 160.700 et seq.; the Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.932 et seq.;
3. While in possession of this data maintain it in a secure, non-public location.
4. Allow FCPS access to any relevant records for the purposes of completing authorized audits . Contractor reserves the right to provide FCPS with a recent independent audit report on Contractor's privacy and security practices as an alternative to undergoing an audit. Audits under this section must be: (i) notified to Contractor in writing at least thirty (30) days in advance of the suggested date for such audit; (ii) conducted at FCPS's expense by FCPS or a mutually agreed third-party contracted by FCPS; (iii) subject to reasonable confidentiality obligations; (iv) conducted during Contractor's regular business hours; (v) carried out in a manner that prevents unnecessary disruption to Contractor's operations; and (vi) limited to once (1) per annum.
5. Ensure that the student data will be accessed, used and manipulated **only** by those individuals necessary for the successful implementation of the project.
6. Advise all individuals accessing the data on proper procedures for securely maintaining the data.
7. Take appropriate technical and organizational measures against the unauthorized or unlawful accessing of the data.



8. Securely delete all copies of the student data when they are no longer required. "Securely delete" means that industry-standard methods will be taken for the purpose of ensuring that no unauthorized person shall be able to reasonably locate or extract the data after the deletion date.
9. Promptly comply with any request from FCPS to amend, transfer or delete the data or a subset thereof.
10. The Contractor 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 purpose, and shall not sell, disclose, or otherwise process student data for any commercial purpose.
11. To the extent permitted by law, the Contractor assumes all liability for damages which may arise from its use, storage or disposal of the data. FCPS will not be liable to the Contractor for any loss, claim or demand made by the Contractor, or made against the Contractor by any other party, due to or arising from the use of the data by the Contractor, except to the extent permitted by law when caused by the gross negligence or willful misconduct of FCPS.
12. Defend, indemnify, and hold harmless FCPS its agencies, officers and employees from any and all claims of any nature, including all costs, expenses, and attorney's fees, which may in any manner result from or arise out of this Agreement, except for claims resulting from or arising out of the FCPS' sole negligence. The legal defense provided by the contracting party to FCPS under this provision must be free of any conflicts of interest, even if retention of separate legal counsel for the FCPS is necessary. The contracting party also agrees to defend, indemnify, and hold FCPS harmless for all costs, expenses, and attorneys' fees finally awarded by a court or that are included in a settlement entered into by the parties. FCPS agrees to notify the contracting party of such a claim within a reasonable time and agrees to cooperate with the contracting party in the defense and any related settlement.

#### **DATA BREACH ACT**

In the event of an unauthorized release, disclosure, or acquisition of confidential data that compromises the security, confidentiality, or integrity of the confidential data maintained by the Contractor, the Contractor shall provide notification to FCPS within seventy-two (72) hours of confirmation of the incident. The contractor shall follow the following process:

1. The security breach notification described above shall include, at a minimum, the following information to the extent known by the Contractor and as it becomes available:
  - a. The name and contact information of the individual reporting a breach subject to this section
  - b. A list of the types of personal information that were or are reasonably believed to have been subject of a breach.
  - c. If the information is not possible to determine at the time the notice is provided, then either (1) the date of the breach, (2) the estimated date of the breach, or (3) the date range within which the breach occurred. The notification shall also include the date of the notice.
  - d. A general description of the breach incident, if that information is possible to determine at the time the notice is provided.
2. The Contractor agrees to adhere to all federal and state requirements with respect to a data breach related to the confidential data, including, when appropriate or required, the required responsibilities and procedures for notification and mitigation of any such data breach.
3. The Contractor further acknowledges and agrees to have a written incident response plan that reflects best practices and is consistent with industry standards and federal and state law for responding to a data breach, breach of security, privacy incidents or unauthorized acquisition or use of confidential data or any portion thereof, including personally identifiable information and agrees to provide FCPS, upon request, with a summary of said written incident response plan.
4. FCPS shall provide notice and facts surrounding the breach to the affected students, parents or guardians, or staff, as applicable.
5. In the event of a breach originating from FCPS's use of service, the Contractor shall cooperate with FCPS to the extent necessary to expeditiously secure the confidential data.
6. If the Contractor receives personal information as defined by and in accordance with Kentucky Personal Information Security and Breach Investigation Procedure and Practices Act, KRS 61.932, *et seq.*, the Contractor shall secure, protect and maintain the confidentiality of the personal information by, without limitation, complying with all requirements applicable to "non-affiliated third parties" set forth in KRS

61.932, *et seq.*, including but not limited to the following:

- a. "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.
  - i. An account, 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;
  - ii. A Social Security number;
  - iii. A taxpayer identification number that incorporates a Social Security number;
  - iv. A driver's license number, state identification card number or other individual identification number issued by an agency;
  - v. A passport number or other identification number issued by the United States government; or
  - vi. 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 FERPA.
- b. As provided in KRS 61.931 (5), a "non-affiliate third party" means any person or entity that has a contract or agreement with an agency and receives (accesses, collects or maintains) personal information from the agency pursuant to the contract or agreement.
- c. The Contractor shall not re-disclose, without the written consent of FCPS, any "personal information" as defined in KRS 61.931, or any other personally identifiable information of a student or other persons, such as employees.
- d. The Contractor agrees to cooperate with FCPS in complying with the response, mitigation, correction, investigation, and notification requirements of KRS 61.931, *et seq.*
- e. The Contractor agrees to undertake a prompt and reasonable investigation of any breach as required by KRS 61.933.

7. If the Contractor is a cloud computing service provider (as defined in KRS 365.734(1)(b) as "any person other than an educational institution that operates a cloud computing service"), The Contractor agrees that:
  - a. The Contractor shall not process student data for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the Contractor receives express permission from the student's parent. The Contractor shall work with the students' school and district to determine the best method of collecting parental permission. KRS 365.734 defines "process" and "student data."
  - b. Pursuant to KRS 365.734 (2), the Contractor 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 purpose, and shall not sell, disclose, or otherwise process student data for any commercial purpose.
  - c. Pursuant to KRS 365.734 (3), the Contractor shall certify in writing to the agency that it will comply with KRS 365.734 (2).
8. Within 48 hours of completion of the investigation, the contracting party shall notify the above if the investigation finds that the misuse of personal information occurred or is likely to occur.



**NOTICES**

All notices or other communication required or permitted to be given pursuant to this agreement may be given via e-mail transmission, or certified mail, sent to the designated representatives below.

The designated representative for FCPS for this DSA is:

Name: Raymond Ross Title: Information Security Manager

Address: 450 Park Place, Lexington, KY 40511

Phone: (859) 381-3886 Email: raymond.ross@fayette.kyschools.us

The designated representative for the Contractor for this DSA is:

Name: Legal Department Title: \_\_\_\_\_

Address: 153 Rangeway Rd, North Billerica, MA 01862

Phone: 800-225-0248 Email: customercontracts@cainc.com

**DATA OPT OUT**


FCPS may provide a mechanism for students, parents or guardians to opt out of any data sharing agreement with any contracting party.

**SUCCESSORS BOUND**

This DSA is and shall be binding upon the respective successors in interest to Contractor in the event of a merger, acquisition, consolidation or other business reorganization or sale of all or substantially all of the assets of such business. In the event that the Contractor sells, merges, or otherwise disposes of its business to a successor during the term of this DSA, the Contractor shall provide written notice to FCPS no later than sixty (60) days after the closing date of sale, merger, or disposal. Such notice shall include a written, signed assurance that the successor will assume the obligations of the DSA and any obligations with respect to confidential data within the service agreement. FCPS has the authority to terminate the DSA if it disapproves of the successor to whom the Contractor is selling, merging, or otherwise disposing of its business.

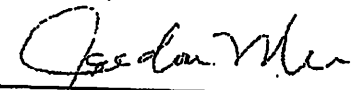
IN WITNESS WHEREOF, FCPS and the Contractor execute this DSA as of the Effective Date above.

Dr. Houston Barber/Deputy Superintendent  
FCPS Superintendent/Designee (Print full name/title)

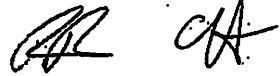
  
FCPS Superintendent/Designee (Signature)

6/4/2024  
Date

Jordan Meranus, Ellevation Division CEO  
Contracting party representative (Printed)

  
Contracting party representative (Signature)

5/29/2024  
Date

  
5/30/24    6/4/24