

**ACTION ITEM**

**Date:** September 21, 2020  
**To:** Members, Board of Education  
**From:** Dr. Kari Cremascoli, Ph.D.,  
Superintendent  
**Subject:** Approve the Contract with Right At School

**PROPOSED ACTION BY THE BOARD OF EDUCATION**

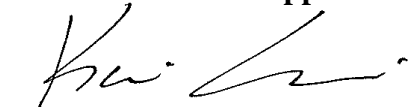
Approve the Contract with Right At School.

**BACKGROUND**

District 39 has been exploring several options to support faculty and staff whose children are participating in a remote learning programming within their home district. The Wilmette Park District developed one option through their Hybrid Homeroom Program and registration filled quickly. Thus, we are excited to announce another programming option through Right At School that has been specially designed for our District 39 faculty and staff.

The Right At School program is coming to the Wilmette Public Schools District to provide our faculty and staff with an additional option of childcare. Starting on September 28, 2020, Right At School (RAS) will offer a daily program for school-aged children of D39 employees. Our D39 Right At School Program will be conveniently located here in Wilmette at a close partner of ours, Regina Dominican High School, and will operate daily from 7:15-4:30 to meet the needs of our faculty and staff. Right At School is a nationally recognize high-quality educational provider who offers a safe and effective place for children of school district employees to help fill a critical gap in childcare during COVID-19 and remote learning.

**Recommended for approval by the Board of Education,**



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**Dr. Kari Cremascoli, Superintendent**

## **SERVICES AGREEMENT**

**By and Between:**

**RIGHT AT SCHOOL, LLC**

and

**THE BOARD OF EDUCATION OF WILMETTE PUBLIC SCHOOLS**  
**DISTRICT NO. 39**

This **SERVICES AGREEMENT** (“Agreement”) is entered into this \_\_\_ day of August 2020 (the “Effective Date”) by and between Right at School, LLC (“Provider”), and the Board of Education of Wilmette Public Schools District No. 39 (the “District”)(Provider and the District collectively shall be referred to as the “Parties”).

### **RECITALS**

- A. The state, nation, and world are in the midst of the COVID-19 (AKA the novel coronavirus) pandemic, a public health emergency unprecedented in modern times.
- B. To allow the District’s teachers to be on site and teach, the District wishes to use Regina Dominican High School’s school facilities so that Provider can provide childcare to assist the District’s teachers, essential workers and other impacted families in need of such services during this public health emergency.
- C. Regina Dominican High School also desires to utilize the services of the Provider and in exchange therefore, Regina Dominican and the Provider shall enter into an agreement permitting the Provider to utilize a portion of Regina Dominican High School’s facilities free of charge, so that Provider can provide the services hereunder to the District and Regina Dominican High School.
- D. The services provided by the Provider hereunder are necessary for the accomplishment and fulfillment of the educational objectives of the District, therefore the District wishes to contract with Provider to provide these childcare services.
- E. The District and the Provider enter into this Agreement to define their relationship and to describe the childcare services that the Provider will provide to the District.

**NOW, THEREFORE**, in consideration of the foregoing and mutual covenants contained in this Agreement, the Parties agree as follows:

Section 1. Incorporation of Recitals. The foregoing recitals are incorporated into and made a part of this Agreement.

Section 2. Term. This Agreement is for a term commencing on the Effective Date and continuing through the end of the District's 2020-21 school year, unless the Agreement is terminated sooner as provided in this Agreement.

Section 3. Scope of Services. Provider agrees to provide the following to the District (the "Services"):

- A. Childcare services at Regina Dominican High School, the specific location at Regina Dominican High School where the Services will be provided shall be agreed upon by the Provider and Regina Dominican High School (such location shall be known as the "Premises") for the children of the employees of the District and Regina Dominican High School only. Provider acknowledges and understands that the District is not the owner of Regina Dominican High School and that Provider must enter into an agreement with Regina Dominican High School to allow the Provider to provide the Services at Regina Dominican High School; the District shall have no responsibility or liability with regard to the Premises on which the Services are provided.
- B. Childcare services will be provided between 7:15 a.m. and 4:30 p.m., Monday through Friday, on those days that District teachers are working.
- C. An Area Manager to oversee all aspects of the programs, providing a direct link for all school administrators.
- D. Well-qualified and trained staff to provide childcare services. All staff are trained using Provider's innovative blended learning training model and receive extensive instruction before entering the program. Provider shall ensure that while the Services are being provided, the Premises is periodically cleaned in accordance with all applicable laws, rules, regulations, ordinances and orders to minimize the spread of COVID-19.
- E. All childcare program management and oversight.
- F. One-stop parent registration and payment through Provider's portal system.
- G. Support (through Provider's toll-free customer service call center) for any parent questions or issues.
- H. Marketing materials and other information to promote the programs to interested families.

Section 4. Statement of Work. Provider will be responsible for performing the Services; providing all materials necessary for the Services; and paying all taxes, employees' salaries or contracts, and other expenses associated with performing the Services. The Provider will be responsible to direct and control the performance of the Services on a day-to-day basis and to provide and supervise all personnel who perform the Services. The District, from time to time, may request changes to the scope of Services. Any amendments to this Agreement must be made in writing and signed by both Parties.

Section 5. Independent Contractor. The relationship between the Provider and the District shall be that of independent contractor and shall not constitute a partnership, joint venture or agency relationship.

Section 6. District Obligations. The District agrees to provide the following at each of the schools in which it wishes Provider to provide childcare services:

- A. Intentionally Omitted.
- B. An available administrator with sufficient authority to make decisions and interface with the Provider, public health department, and local and state government as necessary. This administrator does not have to be on-site.
- C. Intentionally Omitted.
- D. Intentionally Omitted.
- E. Intentionally Omitted.

Section 7. Enrollment of Students. The District and Provider will coordinate regarding whether the District wishes to prioritize providing childcare to families affected by or responding to the COVID-19 public health crisis. The Parties will cooperate to provide information regarding the District's childcare services being provided by Provider to parents and to enroll students through Provider's portal system. Provider shall not be required to start provision of Services at the Premises until 14 or more participants are registered in childcare services at the Premises. The total enrollment may not exceed either (i) any applicable cap on childcare program size imposed or recommended by any governmental or public health entity, or (ii) the enrollment that Provider's staffing ability can safely support as determined in Provider's reasonable discretion.

Section 8. Payment. Provider shall be responsible for charging and collecting tuition from the parents of enrolled students. Billing shall be based on registered students. The District agrees that Provider is providing an urgent, important, and critical service to the District.

Section 9. Staffing by Provider. The District has retained Provider to perform the Services because of its expertise and the skill and experience of its professional staff and personnel. Provider must maintain and use sufficient staff to effectively fulfill the Provider's obligations under this Agreement, and the Provider's personnel must be fully qualified and licensed to perform their respective duties. District shall have the right to request the Provider replace any employee providing Services on the Premises, and the Provider shall accommodate such request without additional charge to the District.

## Section 10. Confidential Information.

- A. Acknowledgment of Confidentiality. The Parties acknowledge that they may be exposed to confidential and proprietary information of the other party including, without limitation, student records, curriculum and instructional materials, other technical information (including functional and technical specifications, designs, analysis, research, processes, computer programs, and methods), business information (including marketing, financial, and personnel information), intellectual property, trade secrets, and other information designated as proprietary or confidential expressly or by the circumstances in which it is provided (“Confidential Information”). Confidential Information does not include (i) information already known or independently developed by the recipient, (ii) information in the public domain through no wrongful act of the recipient, (iii) information received by the recipient from a third party who was free to disclose it, or (iv) information subject to disclosure under the *Illinois Freedom of Information Act*.
- B. Covenant Not to Disclose or Misuse Confidential Information. Each party agrees that, with respect to the other party’s Confidential Information, it shall not, without the other party’s prior written approval, use, disclose to third parties, alter, or remove the Confidential Information in a manner not expressly authorized by this Agreement except as approved in advance by the owner of the information, as required by law or pursuant to a *Freedom of Information Act* request. Each party shall use at least the same degree of care in safeguarding the other party’s Confidential Information as it uses in safeguarding its own confidential information. Notwithstanding anything in this Agreement to the contrary, however, the District’s release of any information related to this Agreement, specifically including Confidential Information, pursuant to a *Freedom of Information Act* request shall not be considered a breach of this Agreement. The Provider’s obligations under this Section regarding the non-disclosure of Confidential Information shall also apply to any Confidential Information it receives from Regina Dominican High School.
- C. Ownership of Curriculum and Instructional Materials. All curriculum, instructional materials, and other documents and items of the Provider are the property of Provider and are to be treated as proprietary and confidential. Such items shall not be used by the District for any purpose without the express written consent of the Provider.
- D. Student Records. Provider will comply with the relevant requirements of the *Family Educational Rights and Privacy Act* (“FERPA”) (20 U.S.C. 1232g *et seq.*), the *Illinois Students Record Act* (105 ILCS 10/1 *et seq.*) and all other applicable federal and state laws, rules and regulations regarding the confidentiality of personally identifiable student information. Any release of information contained in student education records must be approved by the appropriate entity and or parent or guardian, unless directed by court order, subpoena, or other legal requirement. To protect the confidentiality of student education records, Provider will limit access to such records to those employees who reasonably need access to them in order to perform their responsibilities under this Agreement. The District shall have no obligation to provide the Provider with any

personally identifiable student information, or any other information that may be considered a student record, unless the District has received the proper parental consent for the release of such information or is otherwise required by law to disclose such information.

Section 11. Compliance with Laws.

A. Provider must perform the Services in compliance with all applicable federal, state, county, and local laws, rules, orders and regulations and all applicable District policies and rules in effect now or later and as amended from time to time, including the *Drug Free Workplace Act*, FERPA, the *Protection of Pupil Rights Amendment*, the *Health Insurance Portability and Accountability Act*, and all applicable non-discrimination laws. Moreover, Provider shall ensure that it and its staff providing services on the Premises maintain all required licenses and governmental approvals.

B. Without limiting anything in this Section 11, in providing the Services hereunder, the Provider shall comply with all applicable laws, rules, regulations and orders related to minimizing the spread of COVID-19, specifically including compliance with all Illinois Department of Public Health and Illinois State Board of Education rules, regulations and orders relating to providing child care services in public schools. If requested by the District, the Provider shall provide a written plan to the District, for its review and approval, which addresses the Provider's COVID-19 procedures that will be in effect during the duration of this Agreement and during the COVID-19 pandemic.

Section 12. Background Checks. Provider shall cause all staff that will provide any Services hereunder at the Premises to submit, prior to providing such Services, and at such other times as requested by the District, to the criminal history background checks set forth in Section 5/10-21.9 of the *School Code* (105 ILCS 5/10-21.9). The Provider shall be responsible for the costs associated with such criminal background checks. In the event any staff member of Provider is found to have committed a prohibited offense under Section 5/10-21.9, such member shall be prohibited from working on the Premises and shall be replaced, at the Provider's expense, with another staff member. Additionally, to the extent required by 105 ILCS 5/24-5 or any other law, rule or regulation, Provider shall require all staff that will provide any Services hereunder on the Premises to provide proof of physical fitness to perform their duties and freedom from communicable disease. Provider shall provide such evidence to the District prior to any staff member commencing services hereunder and upon demand.

Section 13. Insurance. Provider, at its own expense, shall procure and maintain the following insurance policies in at least the following minimum amounts:

A. **Workers' Compensation and Employers' Liability Insurance.** Workers Compensation insurance affording workers' compensation benefits for all employees as required by law and Employers' Liability Insurance covering all employees who are to provide Services under this Agreement with limits of not less than Five Hundred Thousand Dollars (\$500,000.00) each accident for bodily injury by accident and each employee for bodily injury by disease.

- B. Commercial General Liability Insurance. Commercial General Liability Insurance with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence and Three Million Dollars (\$3,000,000.00) in the aggregate for bodily injury, personal injury and property damage liability.
- C. Automobile Liability Insurance. Automobile Liability Insurance when any motor vehicle (whether owned, non-owned or hired) is used in connection with Services to be performed, with limits of not less than One Million Dollars (\$1,000,000.00) per occurrence for bodily injury and property damage.
- D. Umbrella/Excess Liability Insurance. Umbrella or Excess Liability Insurance with limits not less than Five Million Dollars (\$5,000,000.00) per occurrence, which will provide additional limits for employer's general and automobile liability insurance, and Professional Liability and Sexual Abuse and Molestation insurance. The Umbrella and or Excess Liability Insurance shall follow the form of the underlying insurance in all respects.
- E. Professional Liability Insurance. Professional Liability insurance with limits not less than One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$1,000,000.00) in the aggregate.
- F. Sexual Abuse and Molestation Insurance. Sexual Abuse and Molestation Insurance with limits not less than One Million Dollars (\$1,000,000.00) per occurrence and One Million Dollars (\$1,000,000.00) in the aggregate.
- G. The Provider shall include the District, its individual Board members, employees and agents as additional insureds on a primary and non-contributory basis to the insurance policies described above (excluding the Worker's Compensation Insurance Policy and the Professional Liability Insurance Policy).
- H. To the fullest extent permitted under the applicable insurance policy, the Provider waives any right of subrogation it and its insurers may have against the District, its individual Board members, employees and agents.

#### Section 14. Termination.

- A. Termination by Government or Public Health Order. If any government or public health entity issues an order, directive, or guidance that would prohibit the Services as contemplated in this Agreement or otherwise render any party unable to comply with the terms of this Agreement, then this Agreement shall terminate on the date the order, directive, or guidance so states or goes into effect and without penalty.
- B. Termination for Default. Either party may terminate this Agreement if the other party materially fails to observe or perform any covenant, obligation, or provision of this Agreement, and the party's material failure continues for a period of 20 days after it receives a written notice of default from the other party. Provided, however, that failure to observe or perform any covenant, obligation, or provision in this Agreement related

to protecting the health and safety of childcare participants, families, or staff from COVID-19 is agreed to be a material failure, and the other party may terminate this Agreement if such a material failure continues for a period of 48 hours after the defaulting party receives a written notice of default from the other party.

- C. Termination for Convenience. Either party may terminate this agreement for convenience upon 30 days written notice to the other party. If the Parties mutually agree, this Agreement may be terminated at any time.
- D. Payment for Services Rendered. In the event of any termination, Provider may charge tuition and fees in accordance with this Agreement up to the date the Agreement is terminated. In the event that this Agreement is terminated for any reason whatsoever, the Provider shall refund to the parents all pre-paid, but unearned tuition.
- E. Force Majeure. In the event a party to this Agreement is unable to perform due to Acts of God, which shall include, but are not limited to, epidemics, pandemics, plague, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions, civil disturbances, labor disputes, strikes, governmental acts, regulations or executive order or other causes that are beyond the reasonable control of the affected party (collectively, a “Force Majeure Event”), such party shall not be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement. The affected party shall give notice as soon as practicable to the other party upon the occurrence of a Force Majeure Event, stating the period of time the occurrence is expected to continue. To the extent possible, the affected party shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. The affected party shall resume the performance of its obligations as soon as reasonably practicable after the end of the Force Majeure Event. If the Force Majeure Event continues for a period of thirty days following the earlier of the commencement of the Force Majeure Event or receipt of the notice required hereunder, either party may thereafter terminate this contract upon seven days’ written notice to the other party. The failure to provide the initial notice required hereunder shall not affect a party’s right to invoke the rights and privileges set forth herein.

Section 15. Cooperation. Each party agrees to cooperate with the other party with respect to the performance of the Services in an effort to provide quality programming for childcare participants.



Section 16. Indemnification.

- A. Provider agrees to indemnify, defend and hold harmless District, its individual Board Members, employees, and agents from and against all claims, liabilities, damages, losses, costs and expenses (including attorneys' fees), to the extent arising out of or resulting from the negligent actions or omissions of the Provider as well as any intentional or willful misconduct of Provider and for any breach of this Agreement by the Provider. The indemnification provided for in this section shall survive any termination or expiration of this Agreement. Provider waives its immunity and limits on liability under any applicable state industrial insurance or worker compensation laws.
- B. Intentionally Omitted.

Section 17. General Provisions.

- A. Notices. All notices, billings, and other correspondence required to be given to either party pursuant to this Agreement shall be sent by email, facsimile, personal delivery, overnight delivery or mailed to the following addresses:

If to the District:

Wilmette Public Schools District No. 39  
615 Locust, Wilmette, IL 60091  
Email: [cremasck@wilmett39.org](mailto:cremasck@wilmett39.org)  
Attention: Kari Cremascoli

If to Provider:

Right at School, LLC  
909 Davis Street, Suite 500, Chicago, IL 60201  
Email: [dawn.bridges@rightatschool.com](mailto:dawn.bridges@rightatschool.com)  
Attention: Dawn Bridges

- B. Recordkeeping. Provider shall maintain books and records relating to the performance of the Services, including records of the enrollment of students and collection of tuition and fees. The District shall have a right to inspect such records upon notice to the Provider at a time that is mutually convenient for the Parties.
- C. Entirety. This Agreement constitutes the entire Agreement between the Parties with respect to the subject matter hereof and supersedes any other negotiations, agreements or communications, whether written or oral, that have been made by either party.
- D. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois notwithstanding its choice of law provisions. Any action to enforce the terms and conditions of this Agreement shall be brought in the Cook County, Illinois, Circuit Court or the U.S. District Court, Northern District of Illinois, Eastern Division, as the case may be.

- E. Severability. In case any provision in this Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected.
- F. Authority to Execute. Each party represents and warrants to the other that this Agreement has been duly authorized and that the person who executed this Agreement is authorized to do so on behalf of the party. This Agreement may be executed in two or more counterparts.
- G. Assignment or Subcontracting. Neither party may assign this Agreement in whole or in part without the prior written approval of the other party. Additionally, Provider shall not subcontract any of its duties hereunder without the prior written consent of the District, which it may withhold in its sole and absolute discretion.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the day and year written above.

BOARD OF EDUCATION OF  
WILMETTE PUBLIC SCHOOLS  
DISTRICT NO. 39

RIGHT AT SCHOOL, LLC

By: \_\_\_\_\_

By: \_\_\_\_\_

Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

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