

**MEMORANDUM OF
AGREEMENT
BETWEEN
JEFFERSON COUNTY BOARD OF
EDUCATION AND
SMILE ACADEMY OF
KENTUCKY, LLC
LOUISVILLE, KENTUCKY**

This Memorandum of Agreement ("Agreement") is entered as of June 28, 2017 between the Jefferson County Board of Education ("JCBE"), having its office at 3332 Newburg Road, Louisville, Kentucky 40218, and, Smile Academy of Kentucky, LLC ("Provider") having its office at 2776 Campion Road, Floyds Knobs, Indiana 47119.

WHEREAS, Provider desires to use certain school facilities of the Jefferson County Public Schools ("JCPS") to provide certain dental procedures to students (the "Program"); and

WHEREAS, Provider will be ultimately responsible for the diagnostic and preventive services that will be provided to JCPS students in the Program, and has the capability of staff/volunteers performing at JCPS school facilities all procedures that are normally done in a standard dental office setting.

NOW, THEREFORE, in consideration of the premises and the mutual covenants set forth in this Agreement, and intending to be legally bound, JCBE and Provider agree as follows:

A. GENERAL TERMS OF AGREEMENT:

1. The terms of the Agreement shall be reviewed annually, or as the need arises, by the respective administrative officers of Provider and JCBE.

2. This Agreement shall be effective beginning on June 28, 2017 and ending on June 28, 2022. This Agreement may be terminated immediately by mutual consent of the Parties or by either Party upon ninety (90) days written notice to the other Party. If JCBE gives notice of termination of this Agreement, Provider will be permitted to complete any services for students that had been scheduled to be performed on any date or dates prior to the effective date of termination.

3. Provider shall defend, indemnify, and hold harmless JCBE and its agents, employees and Board members from and against claims, damages, losses, and expenses (including, but not limited to attorney's fees and costs including fees of consultants) arising out of or resulting from the performance of this Agreement by Provider, including, but not limited to, Provider's use of JCPS facilities; Provider's completion of the duties under this Agreement; and injury to or death of persons or damage to property or delay or damage to JCBE, its agents, employees and Board members, for any act, omission, negligence, or willful misconduct of Provider or its respective agents, subcontractors, employees, material or equipment suppliers, invitees, or licensees. The obligation of Provider under this paragraph shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity which would otherwise exist as to a party, person, or entity described in this paragraph.

4. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. Any legal action or claim arising from or under this Agreement shall be brought only in the courts, state or federal, within Jefferson County, Kentucky, and the parties expressly waive the right to bring any legal action or claims in any other courts.

5. This Agreement contains the entire agreement between JCBE and Provider with regard to the subject matter herein and supersedes any and all prior agreements, either written or oral, and may be modified or amended only by a writing signed by both parties. Either party to this Agreement may in writing [i] extend the time for the performance of any obligations of the other party; [ii] waive any inaccuracies in representations and warranties by the other party; [iii] waive performance of any obligations by the other party; and [iv] waive the fulfillment of any condition that is precedent to the performance by the party of any of its obligations under this Agreement. No such waiver will be deemed to be continuing or to apply to any other instance or to constitute the waiver of any other term or condition of this Agreement in that or any other instance. The failure of a party to insist upon strict compliance with any provision of this Agreement on one or more occasions will not be considered a waiver and will not prevent that party from insisting upon strict compliance with that provision or any other provision of this Agreement.

6. This Agreement will not be construed to constitute either party as an agent, partner or joint venturer of the other party; to authorize or empower either party to assume or create any obligation or responsibility, express or implied, on behalf of the other party; or to authorize or empower either party to bind in any manner or make any representation, warranty, covenant, agreement or commitment on behalf of the other party.

7. This Agreement does not create, and will not be construed as creating, any rights enforceable by any person not a party to this Agreement.

8. The invalidity, illegality or unenforceability of any provision of this Agreement will not affect the validity, legality or enforceability of the remaining provisions. If any provision of this Agreement is inapplicable to any person or circumstance, it will nevertheless remain applicable to all other persons and circumstances.

9. There shall be no discrimination by either party because of race, color, national origin, age, religion, marital or parental status, political affiliations or beliefs, sex, sexual orientation, gender identity, gender expression, veteran status, genetic information, or disability.

B. SMILE ACADEMY OF KENTUCKY, LLC AGREES TO:

1. Work in collaboration with the Coordinator of JCPS Health Services and/or his/her designee to create schedules and assignments for dental care. Consent forms will be provided to JCBE by Provider.

2. Meet at appropriate times with the Coordinator of JCPS Health Services and/or his/her designee to evaluate the experience of the dental procedures and to review contractual agreements.

3. Inform Provider staff/volunteers they are not entitled to wages from JCBE for their activities during the period of use of JCPS school facilities and that they are not employees of the

JCBE when they are assigned to use the JCPS school facilities. Each individual performing services at JCPS school facilities shall sign a statement acknowledging that they are not employed by JCBE.

4. Require and verify that all Provider staff/volunteers are covered by professional liability insurance in amounts no less than \$1,000,000 per claim/\$3,000,000 aggregate per policy year and provide JCBE with a certificate of insurance upon request.

5. In addition to the insurance required by paragraph B.4, and without limiting Provider's indemnification obligations under paragraph A.3, secure and maintain in force during the term of this Agreement a Commercial General Liability insurance policy (Contractual Liability included) utilizing an occurrence policy form, with limits of not less than one million (\$1,000,000) dollars per occurrence. Each such insurance policy shall provide that it is primary such that insurance maintained by JCBE, if any, shall be excess and not co-primary. Provider shall produce a copy of each such insurance policy for JCBE, upon request. Provider further agrees to provide all necessary worker's compensation insurance for Provider's employees, if any, at Provider's own cost and expense and in accordance with Commonwealth of Kentucky statutory limits.

6. Require all staff/volunteers to complete a Criminal Records Check per JCBE requirements. Staff/volunteers convicted of or pleading guilty to sexual or drug offenses or any felony offense shall not be permitted to provide services at JCPS school facilities.

7. Obtain approval from parents or guardian for each JCPS student to see a dentist at JCPS school facilities prior to providing any dental services, using the consent forms described in paragraph B.1, and make copies of such signed consent forms available to JCBE upon request.

8. Provide to JCBE upon request the names of dentists and other staff who will serve the JCPS students, and copies of relevant diplomas, certifications and/or licenses.

9. Notify the JCPS Health Services Coordinator of variations in the schedule due to illness, inclement weather, etc.

10. At a date to be mutually agreed upon, provide preventive and dental services, including; exam, cleanings, fluoride treatments, sealants where applicable. Such care shall be offered to the children ages one to 18 years with parental/guardian signed consent as indicated on the consent forms described in paragraph B.1.

11. Require each site to be served by licensed Kentucky dentist(s), hygienists and assistants with coronal polishing certification.

12. Provide the Program as described in this Agreement at no cost or expense to any individual JCPS school or to JCBE.

13. Process any Medicaid claims to cover 100% of treatment. All insurances are accepted. Insurance co-pays and deductibles that apply will be covered by Provider's grants.

14. No child is turned away based on his/her ability to pay.

15. Provide to all JCPS students a "report card" for their parents; make available copies of x-rays to the family and dental offices; and provide a toll free number to contact Provider regarding any questions they have

16. Adhere to all applicable laws, Dental Board regulations, and policies, including but not limited to HIPAA and the federal and state Family Educational Rights and Privacy Acts; make available to JCBE upon request a copy of the Program's HIPAA notification form; and provide the HIPAA notification to all parents along with the consent form.

C. JEFFERSON COUNTY BOARD OF EDUCATION AGREES TO:

1. Provide the use of JCPS facilities to the dental professionals of Provider. Such school facilities shall be mutually agreed upon by JCBE administrative personnel and Provider administrative personnel. Such school facilities shall be available during the school year, however, the use of such school facilities shall not interfere with the instructional program of JCPS.

2. Provide the opportunity for the dental professionals of Provider to perform dental diagnostic and preventive services to JCPS students as described in this Agreement.

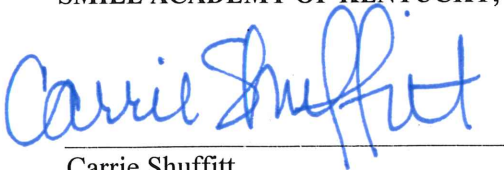
3. Attempt to provide a minimum of 25 children per site to be treated. If the minimum number is not reached, the visit may be revised or cancelled.

4. Assist Provider staff with the interpretation of JCBE policies and procedures.

5. Distribute and collect Provider consent forms via designated school staff.

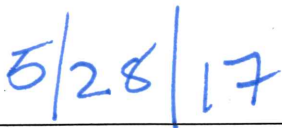
SMILE ACADEMY OF KENTUCKY, LLC

JEFFERSON COUNTY BOARD OF EDUCATION



Carrie Shuffitt
Managing Member

Donna M. Hargens, Ed.D
Superintendent



Date
61295307.1

Date