



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

Issue Paper

DATE:

08/28/23

AGENDA ITEM (ACTION ITEM):

Consider/Approve: the agreement of a 12-month renewable SMARTS subscription for use by special education students and staff within the Kenton County School District.

APPLICABLE BOARD POLICY:

01.1 Legal Status of the Board

HISTORY/BACKGROUND:

The Kenton County School District has consistently purchased a 12-month renewable subscription for students and staff from SMARTS in order to provide supplemental and differentiated instruction for students receiving special education services. This program offers instructional resources focusing on executive functioning as well as data collection tools to determine student progress.

FISCAL/BUDGETARY IMPACT:

\$1,457 with annual renewal paid out of Special Education: IDEA B funds

RECOMMENDATION:

Approval to: the agreement of a 12-month renewable SMARTS subscription for use by special education students and staff within the Kenton County School District.

CONTACT PERSON:

Danielle Rice, Director of Special Education

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.



RESEARCH INSTITUTE FOR
LEARNING & DEVELOPMENT

Company Address 4 Militia Drive, Suite 20
Lexington, Massachusetts 02421
United States

Created Date 8/28/2023
Expiration Date 10/31/2023
Quote Number 00001749

Prepared By Lorissa Gomez
Email lgomez@researchchild.org

Contact Name Tracy Adkins

Bill To Name Kenton County School District
Bill To 1055 Eaton Drive
Fl. Wright, Kentucky 41017
United States

Ship To Name Kenton County School District
Ship To United States

Description Premium license includes access to MetaCOG
Surveys & Toolkit. Licenses will continue through
10/31/24.

Product	List Price	Quantity	Sales Price	Total Price
SMARTS Elementary-Renewal	\$595.00	1.00	\$399.00	\$399.00
SMARTS Premium Secondary Renewal	\$729.00	2.00	\$529.00	\$1,058.00
Grand Total				\$1,457.00

This quote is subject to the attached Terms and Conditions.

**EACH TEACHER/PROFESSIONAL WHO USES THE SMARTS CURRICULUM MUST HAVE THEIR OWN LICENSE
ASSIGNED BY RESEARCHCHILD. LICENSES MAY NOT BE SHARED OR USED BY MORE THAN ONE EDUCATOR.**

SMARTS licenses are effective for one year from the date of issue and must be renewed annually.

ResearchILD is a 501(c)(3) not-for-profit organization that relies on license fees from the SMARTS curriculum to help support the ongoing costs of developing programs/materials to help students with executive function challenges succeed.

ResearchILD offers special packages for schools that purchase 5 or more licenses, which include: savings on annual license fees; discounts for workshops and conferences; and access to professional development training, coaching; and other resources.

***This quote reflects current pricing and is valid for 30 days from the date of issue.
Prices subject to change.***

TERMS AND CONDITIONS

I. Scheduling, Materials and Set-up.

- A. Customer agrees to work in good faith with ResearchILD to schedule dates for professional development, trainings, coaching and/or other consulting services ("Professional Development") within 30 days of the execution of this Agreement. Unless specifically agreed to in writing, all Professional Development services must be completed within the 12 months following the execution date of this Agreement.
- B. If applicable, Customer is responsible for duplication of hand-outs and providing room set-up as requested by ResearchILD, including projector, easel/whiteboard, etc.

II. Payment.

- A. Unless otherwise specified in writing, payment for SMARTS Licenses and Professional Development (the "Services") are due upon execution of this Agreement (e.g., purchase order due upon signing).
- B. If applicable, travel expenses shall be submitted for reimbursement upon return from each on-Customer-site training session delivered.
- C. Delivery of online curriculum licenses is complete upon issuance of log-in credentials to Customer.

Terms and Conditions cont'd

- C. Delivery of online curriculum licenses is complete upon issuance of log-in credentials to Customer.
- D. All payments are due within 30 days of receipt of invoice.
- E. ResearchILD reserves the right to charge interest on any overdue payments of fees and other amounts required to be paid by Customer. Such interest shall accrue at a rate of one and one-half percent (1½%) per month and Customer shall pay ResearchILD's costs of collection including ResearchILD's reasonable attorney fees and court costs.

III. **Ownership.** Customer acknowledges and agrees that the SMARTS Executive Function Curriculum and the contents of Professional Development trainings, including but not limited to the slides, hand-outs, publications, SMARTS curriculum materials, explanations and worksheets ("Training Materials") are the exclusive property of ResearchILD.

- A. The Training Materials may be used solely for distribution to the participants of the Professional Development program and coaching/consultation activities. The Training Materials are provided for instructional purposes only and Customer acknowledges and agrees that neither Customer nor training participants shall have any rights to use, distribute, or grant others the right to use the Training Materials for any other purpose or in any other form without the express written permission of ResearchILD.
- B. Customer acknowledges and agrees that the SMARTS Executive Function Curriculum and/or Training Materials may only be used by someone who has an up-to-date, fully paid SMARTS license as described in and subject to the Terms of Use in Attachment A, which is hereby attached and incorporated into these Terms and Conditions.
- C. Customer agrees that Professional Development training sessions may not be videotaped and/or recorded without the express written permission of ResearchILD.

IV. **Termination.** Either Party may terminate the Services if the other party materially defaults in its obligations hereunder and fails to cure such default within fifteen (15) days after receiving written notice of the default. In the event of termination for any reason the Customer agrees that ResearchILD shall be paid its fees and expenses for the completed Services and any expenses associated with the cancellation of training dates. The following provisions survive termination of the Services for any reason: Section III (Ownership), and Section V (Limitation of Liability; Exclusion of Damages), Attachment A (SMARTS Executive Function Curriculum Terms of Use).

V. **Limitation of Liability; Exclusion of Damages.** In no event will ResearchILD be liable to Customer or any third party for any direct, incidental, consequential, special, indirect, punitive, or exemplary damages including damages for loss of business, loss of profits, loss of goodwill or business reputation, business interruption, loss of data, loss of business information and damages that result from the provision of Services, even if ResearchILD has been advised of the possibility of such damages or losses. In any event, regardless of the form of the action, arising in any way in connection with this agreement, for any cause whatsoever is limited to payment of direct damages in an amount not to exceed \$250.

VI. **Applicable Law.** These Terms and Conditions will be governed by and construed according to the laws of the State of Kentucky, exclusive of its conflicts of laws statute, and any dispute shall be resolved in the proper state or federal court in the State of Kentucky.

Attachment A- SMARTS Executive Function Curriculum Terms of Use

The SMARTS program, including the SMARTS Secondary, SMARTS Elementary, and MetaCOG curriculum products: and all related training, lectures, presentations, research findings, publications, concepts, ideas, exercises, graphics, explanations, and/or all materials available via ResearchILD's Websites and any and all other formats are the exclusive property of ResearchILD. Hereinafter all such materials will be referred to as the "SMARTS Curriculum or "SMARTS".

1. Only an authorized individual(s) may utilize the SMARTS Curriculum, an authorized individual ("LICENSEE") is someone who has an up-to-date, fully paid individual, clinic, or school license to use the specified curriculum product(s), (i.e., SMARTS Secondary, SMART Elementary and/or MetaCOG). All licenses must be renewed on an annual basis.
2. To access the specified SMARTS Curriculum product, each LICENSEE must have an individual license assigned by ResearchILD via a unique LICENSEE name and password. If the license is purchased by a school or other organization on behalf of a LICENSEE, the license may be reassigned to another LICENSEE during the license term by contacting ResearchILD to cancel access and request a new LICENSEE name and password.
3. SMARTS Curriculum licenses may not be shared or used by more than one LICENSEE. The SMARTS Curriculum may be used solely for LICENSEE'S students and/or clients. SMARTS may not be distributed, shared, copied or made available for use by anyone other than the authorized LICENSEE. If the LICENSEE has a license assigned by LICENSEE'S school or other organization, SMARTS may be utilized solely for such school's/organization's students. The school/organization that purchased the license(s) is responsible for ensuring all LICENSEES are made aware of and comply with these Intellectual Property terms.
4. LICENSEE may not utilize the SMARTS Curriculum in the following manner without specific written permission from ResearchILD:
 - With students and/or clients as part of an on-line education program, virtual school, or any other remote access program or service with the following exception. Subject to the other Terms of Use included herein, a LICENSEE may upload SMARTS Materials to their own electronic classroom for use with their students.
 - As part of a training program or course for teachers, psychologists, educational therapists and/or any other professions.
 - Any other manner not expressly permitted under these Terms of Use.
5. Use of the SMARTS materials is subject to the Terms of Use described herein. By using any or all of the SMARTS materials, LICENSEE is acknowledging that LICENSEE has read, understood and agreed to be bound by these Terms of Use. If LICENSEE does not agree to these Terms of Use, LICENSEE should not utilize the materials.
6. SMARTS materials may only be utilized in their original form with all trademarks, logos and intellectual property language intact. Any permitted use of SMARTS content not in its original form must be clearly identified and have the following reference language included in a visible location: "**©2014-2023 ResearchILD. All rights reserved. Use is by permission only.**"
7. LICENSEE may not: a) modify, b) make improvements, and/or c) create derivative works or adjusted versions of SMARTS (hereinafter referred to as "Modifications") without written permission from ResearchILD. In the event that LICENSEE makes Modifications to SMARTS, LICENSEE hereby acknowledges and agrees that such Modifications: a) must immediately be provided to ResearchILD and b) shall become the exclusive property of ResearchILD. LICENSEE does not retain any ownership or other rights in the Modifications except for the limited, non-transferable license to use the Modifications in accordance with these Terms of Use. Notwithstanding the foregoing, LICENSEE may customize individual handouts or slides for use with LICENSEE'S students/clients only.

Any questions about these Terms of Use or requests for further information should be directed to ResearchILD 4 Militia Drive, Suite 20, Lexington, MA 02421, telephone: 781-861-3711.



Kenton County School District | It's about ALL kids

THE KENTON COUNTY BOARD OF EDUCATION

1055 EATON DRIVE, FORT WRIGHT, KENTUCKY 41017

TELEPHONE: (859) 344-8888 / FAX: (859) 344-1531

WEBSITE: www.kenton.kyschools.us

Dr. Henry Webb, Superintendent of Schools

VENDOR ASSURANCES REGARDING PROTECTION OF PERSONAL AND CONFIDENTIAL INFORMATION

Data Security and Breach Protocols

Vendors that receive Personal Information from Kenton County Board of Education (herein referred to as "KCBOE") as defined by and in accordance with Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, KRS 61.931, et seq., (the "Act"), shall secure and protect the Personal Information by, without limitation, complying with all requirements applicable to non-affiliated third parties set forth in the Act.

"Personal Information" is defined in accordance with KRS 61.931(6) as "an individual's first name or first initial and last name; personal mark; or unique biometric or genetic print or image, in combination with one (1) or more of the following data elements:

- a) An account number, credit card number, or debit card number that, in combination with any required security code, access code or password, would permit access to an account;
- b) A Social Security number;
- c) A taxpayer identification number that incorporates a Social Security number;
- d) A driver's license number, state identification card number or other individual identification number issued by any agency as defined under the Act;
- e) A passport number or other identification number issued by the United States government; or
- f) Individually Identifiable Information as defined in 45 C.F.R. sec. 160.013 (of the Health Insurance Portability and Accountability Act), except for education records covered by the Family Education Rights and Privacy Act, as amended 20 U.S.C. sec 1232g."

As provided in KRS 61.931(5), a "non-affiliated third party" includes any person or entity that has a contract or agreement with the KCBOE and receives (accesses, collects or maintains) personal information from the KCBOE pursuant to the contract or agreement.

The vendor hereby agrees to cooperate with the KCBOE in complying with the response, mitigation, correction, investigation, and notification requirements of the Act.

The vendor shall notify as soon as possible, but not to exceed seventy-two (72) hours, KCBOE, the Commissioner of the Kentucky State Police, the Kentucky Auditor of Public Accounts, the Commonwealth (Kentucky) Office of Technology, and the Commissioner of the Kentucky Department of Education of a determination of or knowledge of a breach, unless the exception set forth in KRS 61.932(2)(b)(2) applies and the vendor abides by the requirements set forth in that exception. Notification shall be in writing on a form developed by the Commonwealth (Kentucky) Office of Technology.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor hereby agrees that the KCBOE may withhold payment(s) owed to the vendor for any violation of the Act's notification requirements.

The vendor hereby agrees to undertake a prompt and reasonable investigation of any security breach as defined under the Act in accordance with KRS 61.933.

Upon conclusion of an investigation of a security breach as defined under the Act as required by KRS 61.933, the vendor hereby agrees to an apportionment of the costs of the notification, investigation, and mitigation of the security breach.

In accordance with KRS 61.932(2)(a), the vendor shall implement, maintain, and update security and breach investigation procedures that are appropriate to the nature of the information disclosed, that are at least as stringent as the security and breach investigation procedures and practices established by the Commonwealth (Kentucky) Office of Technology and that are reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation, or destruction.

Student Data Security

Pursuant to KRS 365.734, if the vendor is a cloud computing service provider (which is defined pursuant to KRS 365.734(1)(b) as any person or entity other than an educational institution that operates cloud computing services) or, through service to the KCBOE, becomes the equivalent of a cloud computing service provider, the vendor further hereby agrees that:

- The vendor shall not process student data as defined pursuant to KRS 365.734 for any purpose other than providing, improving, developing, or maintaining the integrity of its cloud computing services, unless the vendor receives express permission from the student's parent. The vendor shall work with the KCBOE to determine the best method of collecting parental permission.
- With a written agreement for educational research, the vendor may assist the KCBOE to conduct educational research as permitted by the Family Education Rights and Privacy Act of 1974, as amended, 20 U.S.C. sec. 1232g.
- Pursuant to KRS 365.734, the vendor shall not in any case process student data to advertise or facilitate advertising or to create or correct an individual or household profile for any advertisement purposes.
- Pursuant to KRS 365.734, the vendor shall not sell, disclose, or otherwise process student data for any commercial purpose.
- Pursuant to KRS 365.734, the vendor shall certify in writing to the agency that it will comply with KRS 365.734(2).

Family Educational Rights and Privacy Act, National School Lunch Act and Child Nutrition Act

If during the course of this agreement, the KCBOE discloses to the vendor any data protected by the Family Educational Rights and Privacy Act of 1974 (FERPA), as amended (20 U.S.C. sec. 1232g, *et seq.*), and its regulations, and data protected by the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. sec. 1751 *et seq.*, and the Child Nutrition Act of 1966 (CNA) (42 U.S.C. sec. 1771 *et seq.*), the vendor agrees that it is bound by and will comply with the confidentiality, security and redisclosure requirements and restrictions stated in FERPA, NSLA and CNA.

The vendor hereby agrees to report to the KCBOE, immediately and within twenty-four (24) hours, any known reasonably believed instances of missing data, data that has been inappropriately shared, or data taken off site.

The vendor agrees that FERPA-protected information is confidential information. FERPA-protected information includes, but is not limited to the student's name, the name of the student's parent or other family members, the address of the student or student's family, a personal identifier, such as the student's social security number, student number, or biometric record, other indirect identifiers, such as the student's date of birth, place of birth, and mother's maiden name, and other information that, alone or in combination, is linked or linkable to a specific

student that would allow a reasonable person in the school community, who does not have personal knowledge of the relevant circumstances, to identify the student with reasonable certainty.

The vendor understands and acknowledges that any unauthorized disclosure of confidential information is illegal as provided in FERPA and in the implementing federal regulations found in 34 CFR, Part 99. The penalty for unlawful disclosure is a fine of not more than \$250,000 (under 18 U.S.C. sec. 3571) or imprisonment for not more than five years (under 18 U.S.C. sec. 3559), or both.

The vendor understands and acknowledges that children's free and reduced price meal and free milk eligibility information or information from the family's application for eligibility, obtained under provisions of the NSLA or the CNA is confidential information and that any unauthorized disclosure of confidential free and reduced price lunch information or information from an application for this benefit is illegal. The penalty for unlawful disclosure is a fine of not more than \$1,000.00 (under 7 C.F.R. 245.6) or imprisonment for up to one year (under 7 C.F.R. 245.6), or both.

In the event there is a conflict between this agreement and any other agreement between KCBOE and Vendor, the terms of this agreement shall apply.

Research Institute for Learning and Development

Vendor Name

4 Militia Drive, Lexington, MA 02421

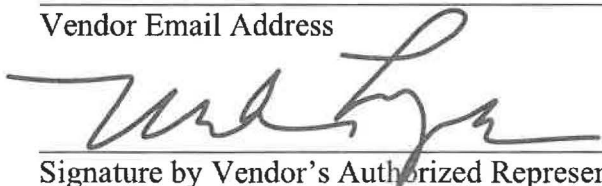
Vendor Address

781-681-3711

Vendor Telephone

jpeluso@researchchild.org

Vendor Email Address



Signature by Vendor's Authorized Representative

Mark Logan

Print Name

July 21, 2023

Date