

**AGREEMENT  
Between  
Berea College and  
Breathitt County Board of Education**

THIS AGREEMENT is made by and between Berea College, a Kentucky non-profit corporation, with its address at CPO 2185, Berea College, Berea, Kentucky 40404 ("College"), and the Breathitt County Board of Education, with its principal address at 420 Court Street, PO Box 750, Jackson, Kentucky (the "School District").

WHEREAS, the College is the recipient of a GEAR UP grant from the United States Department of Education (the "Grant") which is intended to increase college readiness and build a college-going culture in our service area.

WHEREAS, the School District will engage in activities ("Services") designed for GEAR UP students, their parents and their teachers with the School District.

WHEREAS, the College desires to contract for the services of the School District for the GEAR UP program as described in this Agreement.

The School District is familiar with the objectives and terms of the Grant obtained by the College, including the grant materials submitted by the College and the pertinent program rules, policies and regulations of the United States Department of Education ("Department of Education") pertaining to the grant. In consideration of the foregoing recitals and the agreements contained herein, the College and School District agree as follows:

**A. Services**

1. ***DIRECT SERVICES:*** Services will hereby be defined as those services provided to students, and their parents/guardians within the Berea College GEAR UP cohort.

For more detail see the approved US Department of Education grant.

Berea College will sub-contract certain services and operations of the GEAR UP project to Breathitt County Schools pursuant to the US Department of Education grant and agreement effective October 1, 2014. Berea College will collaborate with the Breathitt County School System to ensure that the results assist the Breathitt County School System in achieving the objectives of the GEAR UP program.

Berea College's reimbursements to Breathitt County Schools relative to the performance of the Direct Services described herein shall not exceed a total of \$127,500 and the period within the current fiscal year in which the subject services are to be performed is from October 1, 2014, to September 30, 2015. Any payment to Breathitt County Schools shall be due only upon the submission of any requested documentation, and on four disbursement dates: December 31, 2014, March 31, 2015, June 30, 2015 and September 30, 2015. This agreement shall not

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be effective and binding until approved by the Superintendent of Breathitt County Schools, or his designee who has contract authority and the Authorized Representative of Berea College.

2. *PROFESSIONAL DEVELOPMENT* will hereby be defined as trainings provided to all current and future teachers of GEAR UP students.

Berea College's reimbursements to Breathitt County Schools relative to the performance of the Professional Development described herein shall not exceed a total of \$150,000 and the period in which the subject services are to be performed is three years beginning July 1, 2012, to June 30, 2015. Any payment to Breathitt County Schools shall be due only upon the submission of any requested documentation, and on quarterly disbursement dates: September 30, December 31, March 31, and June 30 of each year. This agreement shall not be effective and binding until approved by the Superintendent of Breathitt County Schools, or his designee who has contract authority and the Authorized Representative of Berea College.

3. *ACADEMIC SPECIALIST*: see Appendix A.
4. *COLLEGE AND CAREER READINESS TEACHER*: see Appendix B.

#### **B. Rates and Compensation**

Payment by Berea College to Breathitt County School System shall be made only after receipt of appropriate, acceptable and timely documentation submitted by Breathitt County School System to Berea College. These funds shall be paid to Breathitt County School System based upon the received budget paperwork within 30 days and according to the disbursement date specified in this contract, and only if the expenditures are in accordance with approved activities by the federal grant and by Berea College. If at any time an unused balance results from payments, any such balance must be returned. Breathitt County Schools agrees to provide an exact detail of funds expended and receipts of expenditures. Any funds expended in variance with the original invoice, or as approved items by Berea College, are the liability of the Breathitt County School System.

Berea College agrees that payment shall be made to Breathitt County School System as billed, unless such is at variance with the performance of any function described herein before, and/or is variant with any federal, state, or college statute or regulation, and the Breathitt County School System agrees that documentation of performance will be provided to Berea College.

#### **C. Type of Contract**

Independent consulting contract with BERE A COLLEGE. No partnership, joint venture or other association is created by or should be implied by this Agreement. The School District shall utilize its own methods, judgment and employees in connection with the provision of the Services. It is expressly understood and agreed that the School District and its employees shall not be entitled to any employment benefits or payments of any kind from the College other than the Compensation which shall be paid to the School District without any provision for the withholding of any local, state and federal taxes or withholdings of any kind whatsoever. The School District is and shall be responsible for the salaries and wages of its own employees, workers' compensation, unemployment insurance, liability insurance, and any taxes or withholdings that are the obligation

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of the School District.

### **D. Contract Limits**

Expansion of the scope or extent of this agreement beyond the efforts contained herein may be made only through mutual agreement by both parties, BEREA COLLEGE and the School District, as evidenced in writing.

### **E. Term of Service**

This agreement shall be for a term commencing on October 1, 2014 and ending on September 30, 2015.

### **F. Hold Harmless**

The School District agrees to indemnify and hold BEREA COLLEGE harmless from any damages, expenses and costs incurred from any property damages or bodily injury with respect to this contract.

BEREA COLLEGE agrees to indemnify and hold the School District harmless from any damages, expenses and costs incurred from any property damages or bodily injury with respect to this contract.

### **G. Source of Funding; Cancellation Due to Grant Termination or Reduction**

The parties acknowledge and agree that the sole source of funding for the Grant, including the Compensation and Expenses to be paid hereunder to the School District is from the funding provided to the College from the Department of Education. If, for any reason, funding for the Grant is withdrawn, terminated or reduced by more than 5% annually by the Department of Education, this Agreement shall automatically terminate with the School District being entitled to remuneration for Services and Expenses incurred to the date of termination.

### **H. Contract Termination**

Either party may terminate the contract, or any portion thereof, at any time with a 30-day express written notice of the contract termination. Such notice shall be provided to parties via written notice to the undersigned authorized representatives. The terminating party is responsible for any costs or obligations entered into by the other party that the other party reasonably incurred prior to the date of termination.

### **I. Breach**

In event of either party committing a breach of any provisions of this agreement ("defaulting party"), then the party which is not so in breach ("aggrieved party") shall be entitled to give the defaulting party written notice to remedy the breach. If the defaulting party fails to comply with the written notice of breach within 14 (fourteen) days of receipt thereof, the aggrieved party shall be entitled to cancel this agreement and/or to claim specific performance. Aforesaid is without prejudice to such other rights as aggrieved party may have at law.

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### **J. Copyright & Authorship**

Reports produced under this contract unless otherwise released will be the exclusive property of BERE A COLLEGE. The School District will not disseminate reports to anyone outside of-BERE A COLLEGE.

Where applicable, the School District acknowledges that all files, videos, records, lists, books, literature, products and other materials College owns or uses in connection with conducting the Program will at all times remain the College's property, and that upon the completion of the Program, the School District will surrender to College all such company property, including but not limited to files, videos, records, lists, books, literature, products and other materials. The School District shall retain the ownership of instructional and course materials and any personal property or equipment used for providing the Services that are owned by the School District. Any materials produced by the School District expressly for the Grant shall constitute a "work for hire" with the College or Department of Education, as the case may be, retaining ownership and rights of use and the School District retaining dual ownership and rights to use as its intellectual property.

### **K. Confidentiality**

The School District agrees not to disclose any information gathered in the course of fulfilling the scope of work associated with this contract to anyone not associated with this contract without express permission from BERE A COLLEGE. Confidentiality includes non-disclosure of information observed directly or viewed from data collection instruments. At no time will the School District reveal the identity of any person participating in this project without permission.

### **L. Right of Audit**

The Department of Education and the College, as recipient and fiscal agent of the Grant, shall have the right to examine and audit all books and financial records of the School District as they pertain to the Services provided by the School District for this project and all Compensation and Expenses paid hereunder to the School District.

### **M. Dispute Resolution**

Any dispute between and among the parties to this Agreement shall be resolved by binding arbitration administered according to the Commercial Arbitration Rules of the American Arbitration Association. Any arbitration proceedings shall be held before a single arbitrator appointed by the Chief Judge of the Madison County Circuit Court. Any hearing shall be held in Lexington, Fayette County, Kentucky. Any arbitration award may be enforced by any court of competent jurisdiction.

### **N. Eligibility of Consultant**

The School District covenants and agrees that it will, at all times, maintain its eligibility to serve as a vendor under the Grant to the extent of any rules, policies or regulations promulgated by the Department of Education or any other federal agency or court having jurisdiction. If, for any reason, the School District shall become ineligible on account of any of the foregoing, this Agreement shall

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automatically terminate with the School District being entitled to remuneration for Services and Expenses incurred to the date of termination.

**O. Non-Discrimination Requirements**

The School District represents and warrants that it is and, at all times during the term of this Agreement, will be in compliance with Title VI of the Civil Rights Act of 1964, as amended and other applicable regulations, statutes and orders, shall not discriminate on the basis of race, color, religion, sex, age, national origin, or disability in connection with the performance of this Agreement.

**P. Regulatory Compliance**

In the administration and performance of this Agreement, the School District agrees that it shall comply with all applicable Federal laws and regulations.

**Q. Entire Agreement**

The Agreement embodies the entire understanding between and among the parties. It supersedes any prior agreement, whether written or oral, and it is the final and complete expression of the parties' intent on the matters in this Agreement. Any changes, additions, revisions, or modifications shall only be effective if accomplished via a written instrument signed by the parties. No failure or delay by either party in exercising any right, power or remedy will operate as a waiver of such right, power, or remedy, and no waiver will be effective unless it is in writing and signed by the parties to be charged thereby. This Agreement may, however, be executed in counterpart originals, each of which shall constitute one and the same agreement. If an arbitrator or court of competent jurisdiction holds that any part, term or provision of this Agreement to be illegal or invalid (in whole or in part), the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Agreement did not have the particular provision held to be illegal or invalid. Neither party may assign, sublicense or otherwise transfer or delegate any right or obligation in this Agreement without the written consent of the other party. This Agreement is governed by and shall be construed in all respects in accordance with the laws of the Commonwealth of Kentucky. Sections J through R of this document shall survive termination of the Agreement.

**R. Statement of Work**

The School District agrees to perform the activities outlined in this agreement. BERE A COLLEGE agrees to the named activities within this agreement.

As duly authorized representatives of BERE A COLLEGE and the School District, the signatures below indicate agreement with the aforementioned provisions. In witness whereof, the parties have executed this Agreement, effective as of October 1, 2014, but actually made and delivered as of the date last set forth below.

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Memorandum of Agreement

For the College:

Ms. Dreama Gentry  
Executive Director of Partners for Education  
Berea College  
CPO 2185  
Berea, Kentucky 40404  
859.985.3853 (Phone)  
859.985.2818 (Fax)

For Organization:

Larry Hammond  
Breathitt County Public Schools  
420 Court Street  
Jackson, KY 41339  
606-666-2491

Mailing address : PO Box 750

**BEREA COLLEGE:**

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

\_\_\_\_\_ **COUNTY SCHOOL DISTRICT:**

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

**For completion by Berea College**

Account Number(s) to charge: \_\_\_\_\_

Approval signature: \_\_\_\_\_

Director(s) Signature: \_\_\_\_\_

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**APPENDIX A:  
Academic Specialist**

1. **PURPOSE.** The GEAR UP Academic Specialist provides GEAR UP program services to qualified students identified as members of the GEAR UP cohort. Members of the GEAR UP Cohort in Breathitt County shall consist of any student enrolled in the 4<sup>th</sup> - 10<sup>th</sup> grades in the School District during the 2014 – 2015 academic year.
2. **HIRING AND SUPERVISION OF THE ACADEMIC SPECIALIST.** The School District agrees to hire an Academic Specialist who shall be an employee of the School District under the supervision of the GEAR UP Project Director and the Superintendent of the School District, or the Superintendent's designee, subject to the provisions of this Agreement, the Partnership Grant and the GEAR UP Program Regulations. A Berea College representative shall be present during the interview and selection process of the Academic Specialist to provide information and to monitor the process. The Academic Specialist shall be employed by the School District for a 200-day term from the date of July 1, 2014 - June 30, 2015 and must be dedicated 100% to the GEAR UP Program and cannot hold any other position within the district. The Academic Specialist shall not be considered an employee of the College for any purpose.
3. **QUALIFICATIONS OF THE ACADEMIC SPECIALIST.** The Academic Specialist must have a minimum of a Bachelor's degree in education or counseling, three (3) years experience working in Kentucky schools, experience working with low-income youth, and must be a certified employee of the School District. Prior to offering any person employment as the Academic Specialist, the Superintendent must first receive written verification from Berea College that the candidate meets all qualifications under this Agreement and the GEAR UP Program Regulations. In addition, the School District shall confirm that the candidate meets such other eligibility and background check requirements for school employees as may be required by applicable state statutes or regulations.
4. **BUDGET FOR ACADEMIC SPECIALIST.** As fiscal agent of the federal GEAR UP Program awarded by the U. S. Department of Education under the Partnership Grant ("Program Funds"), the College has budgeted Program Funds in the amounts of, up to but not exceeding, \$70,000 for each Academic Specialist position being created under this Agreement (the "Academic Specialist Budget"). This amount includes compensation for salary and all fringe benefits for a 200 day contract. Any additional expenditure of Program Funds for the Academic Specialist position must be approved, in writing and in advance, by the College in the manner otherwise provided for the amendment of this Agreement. The allocation of Program Funds for the Academic Specialist position is a matter determined by the College acting in its sole discretion under the terms of the Partnership Grant and in accordance with the GEAR UP Program Regulations.
5. **SCHOOL DISTRICT SUPPORT.** The School District shall provide the Academic Specialist with an office in the School District together with reasonable administrative support (computer, printer, access to student records, phone with long distance access) and infrastructure as provided in the School District's Partnership Identification Form and Cost Share Worksheet which is attached to and forms a part of the Partnership Grant documentation. In addition, the School District will provide the Academic Specialist with direct access to the GEAR UP cohort in all schools located within the School District and otherwise fulfill the obligations of a cooperating local educational agency under the Partnership Grant, the GEAR UP Program Regulations and this Agreement. The School District shall provide matching contributions as detailed in the Partnership Identification Form and Cost Share Worksheet. Documentation of all matching funds shall be provided each quarter.

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6. **ACADEMIC SPECIALIST RESPONSIBILITIES.** The Academic Specialist shall work on a full-time basis, consistent with the schedule for all faculty personnel within the School District and devote his or her professional time exclusively to the implementation of the GEAR UP Program in the School District. The Academic Specialist shall report to the GEAR UP Project Director and to the Superintendent of the School District, or the Superintendent's designee, and shall regularly attend and participate in all GEAR UP Program training, orientation, instructional and program meetings and activities as scheduled by the Superintendent and/or the GEAR UP Project Director. The Academic Specialist shall provide direct services to GEAR UP students - including academic counseling, guidance counseling and tutoring - recruit students for GEAR UP activities, maintain files on GEAR UP students, conduct home visits to GEAR UP students, participate in GEAR UP activities, document participation in GEAR UP activities, and perform all such other work as may be assigned to the Academic Specialist consistent with the Partnership Grant.

7. **ACADEMIC SPECIALIST REPORTS.** The Academic Specialist shall submit weekly activity and program reports to the GEAR UP Program Director in the form as may be prescribed by the GEAR UP Program Director.

Reports produced under this contract unless otherwise released will be the exclusive property of the College. The School District will not disseminate reports to anyone outside of the College without permission. Where applicable, the School District acknowledges that all files, videos, records, lists, books, literature, products and other materials used in connection with conducting GEAR UP activities will at remain the College's property, and the School District shall dispose of said property without prior approval from the College.

8. **CONFIDENTIALITY.** The School District and the Academic Specialist will be responsible for insuring that proper procedures are followed to maintain the confidentiality of all education records of GEAR UP students, including all services provided under this Agreement consistent with state and federal law. It is agreed, however, that data may be collected and shared with the College for the sole purpose of compiling required reports, on a collective basis without personally identifying information, as provided in the Partnership Grant and the GEAR UP Program Regulations. The College agrees to cooperate with the School District to maintain the confidentiality of students' education records consistent with the foregoing.

### **APPENDIX B: College and Career Readiness Teacher**

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1. **PURPOSE.** The College and Career Readiness (CCR) Teacher will provide direct services and interventions to GEAR UP students by teaching a highly differentiated course to prepare students for college and career readiness, including PLAN, ACT, WorkKeys and ILP preparation and completion. Members of the CCR class in Breathitt County shall consist of any student enrolled in the 9<sup>th</sup> and 10<sup>th</sup> grades in the School District during the 2014 – 2015 academic year.

2. **HIRING AND SUPERVISION OF THE COLLEGE AND CAREER READINESS TEACHER.** The School District agrees to hire a College and Career Readiness Teacher who shall be an employee of the School District under the supervision of the GEAR UP Project Director and the Superintendent of the School District, or the Superintendent's designee, subject to the provisions of this Agreement, the Partnership Grant and the GEAR UP Program Regulations. A Berea College representative shall be present during the interview and selection process of the College and Career Readiness Teacher to provide information and to monitor the process. The College and Career Readiness Teacher shall be employed by the School District for a 192-day term from the date of July 1, 2014 - June 30, 2015 and must be dedicated 100% to the GEAR UP Program and cannot hold any other position within the district. The College and Career Readiness Teacher shall not be considered an employee of the College for any purpose.

3. **QUALIFICATIONS OF THE COLLEGE AND CAREER READINESS TEACHER.** The College and Career Readiness Teacher must have a minimum of a Bachelor's degree and a high school teaching Certification is required. In addition, the School District shall confirm that the candidate meets such other eligibility and background check requirements for school employees as may be required by applicable state statutes or regulations.

4. **BUDGET FOR COLLEGE AND CAREER READINESS TEACHER.** As fiscal agent of the federal GEAR UP Program awarded by the U. S. Department of Education under the Partnership Grant ("Program Funds"), the College has budgeted Program Funds in the amounts of \$55,000 for each College and Career Readiness Teacher position being created under this Agreement (the "College and Career Readiness Teacher Budget"). This amount includes compensation for salary and all fringe benefits for a 192 day contract. Any additional expenditure of Program Funds for the College and Career Readiness Teacher position must be approved, in writing and in advance, by the College in the manner otherwise provided for the amendment of this Agreement. The allocation of Program Funds for the College and Career Readiness Teacher position is a matter determined by the College acting in its sole discretion under the terms of the Partnership Grant and in accordance with the GEAR UP Program Regulations.

5. **SCHOOL DISTRICT SUPPORT.** The School District shall provide the College and Career Readiness Teacher with a classroom in the high school together with reasonable administrative support (computer, printer, access to student records, phone with long distance access) and infrastructure as provided in the School District's Partnership Identification Form and Cost Share Worksheet which is attached to and forms a part of the Partnership Grant documentation.

6. **COLLEGE AND CAREER READINESS TEACHER RESPONSIBILITIES.** The College and Career Readiness Teacher shall work on a full-time basis, consistent with the schedule for all

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faculty personnel within the School District and devote his or her professional time exclusively to teaching the College and Career Readiness Course. The primary responsibilities are as follows;

1. Provide direct services and interventions to 9<sup>th</sup> grade GEAR UP students;
2. Differentiate instruction to meet individual learner needs;
3. Meet with students, individually and collectively, to provide academic interventions and referrals to services necessary to success;
4. Work with students to ensure that they are college and career ready;
5. Prepare students to meet PLAN and ACT benchmarks; and
6. Monitor individual student data using the GEAR UP Early Warning System.

7. COLLEGE AND CAREER READINESS TEACHER REPORTS. The College and Career Readiness Teacher shall submit activity and program reports to the GEAR UP Program Director in the form as may be prescribed by the GEAR UP Program Director.

Reports produced under this contract unless otherwise released will be the exclusive property of the College. The School District will not disseminate reports to anyone outside of the College without permission. Where applicable, the School District acknowledges that all files, videos, records, lists, books, literature, products and other materials used in connection with conducting GEAR UP activities will at remain the College's property, and the School District shall dispose of said property without prior approval from the College.

8. CONFIDENTIALITY. The School District and the College and Career Readiness Teacher will be responsible for insuring that proper procedures are followed to maintain the confidentiality of all education records of GEAR UP students, including all services provided under this Agreement consistent with state and federal law. It is agreed, however, that data may be collected and shared with the College for the sole purpose of compiling required reports, on a collective basis without personally identifying information, as provided in the Partnership Grant and the GEAR UP Program Regulations. The College agrees to cooperate with the School District to maintain the confidentiality of students' education records consistent with the foregoing.

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