

**MEMORANDUM OF AGREEMENT**  
**Between**  
**Berea College (DUNS 001960566)**  
**And Breathitt County Board of Education**

This Partners for Education ("PFE") Results Planning Process Agreement (the "Agreement") is entered into as of the date last set forth below by and between BEREA COLLEGE (the "College"), a Kentucky nonprofit corporation, with its principal address at 101 Chestnut Street, Lincoln Hall, Berea, Kentucky 40404 and the Breathitt County Board of Education (the "School District"), with its principal address at 420 Court Street, PO Box 750, Jackson, KY 41339.

WHEREAS, the College is the recipient of a GEAR UP (Gaining Early Awareness and Readiness for Undergraduate Programs) ("GEAR UP") Partnership Grant, GEAR UP Promise Neighborhood Award number P334A110026, from the U. S. Department of Education with the CFDA #84.334(A) for the purpose of implementing programming for early college preparation and awareness activities for low-income students in accord with the GEAR UP Program authorized under 20 U.S.C. 1070a-21 and 2 CFR Part 200 and other pertinent federal statutes and regulations (collectively, the "GEAR UP Program Regulations"). The Performance and Budget period applicable to Gear Up funds is 9/26/2018- 6/30/2019.

WHEREAS, the College and the School District desire to implement a comprehensive array of services for eligible students, their parents, School District faculty, and eligible community members.

WHEREAS, the College and the School District desire to provide for the placement of personnel ("Staff") within the School District for the purposes of implementing certain aspects of the Grant.

WHEREAS, the School District is one of the local education agencies cooperating with the College under the terms for Grant in order to implement Grant program activities in Kentucky.

WHEREAS, the College desires to enter into an agreement with the School District to carryout services for the Grant 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 and in consideration of the foregoing and the mutual agreements and covenants contained herein, the College and the School District agree as follows:

**A. Services**

1. *DIRECT SERVICES*: Services will hereby be defined as those services provided to eligible students, their families, faculty, or community members participating in the Grant. Eligible services are described in the detailed workplan or supplemental funding request prepared by the School District and approved by the College. For more detail regarding eligible services and eligible participants, see the approved US Department of Education grant. Berea College's reimbursements to School District relative to the performance of the Direct Services described herein:

Budget for Eligible services will be determined by an approved Supplemental Funding Request prepared by the School District and approved by the College

## Memorandum of Agreement

2. **STAFF:** The School District agrees to provide support for Staff as described in Appendix A; whereas Staff will work within the School District in order to provide Program services to qualified students identified as members of the GEAR UP cohort. Berea College's reimbursements to School District relative to Staff described herein shall not exceed a total of **\$72100.00**
3. **SUPPLEMENTAL FUNDS:** Berea College may offer additional funding, hereby referred to as Supplemental Funds, to School District during the term of service to support the goals and objectives of the Grant. The School District will receive written notification describing how the Supplemental Funds may be used. The written notification will include the maximum reimbursement amount for the approved Supplemental Funds and must be signed by or emailed from an authorized representative of the College.

Any payment to School District for Supplemental Funds shall be due only upon the submission of any requested documentation clearly identified as Supplemental Funds, and on four period ending disbursement dates: December 31, March 31, June 30, and September 30 of the corresponding year.

Additional dollar for dollar MATCH will be required for Supplemental Funds.

### B. Reimbursement for Direct Services

Any payment to School District shall be due only upon the submission of any requested documentation, and on four period ending disbursement dates:

<u>Quarter</u>	<u>Submission date for expenses incurred:</u>	<u>District to PFE Submission Deadline</u>
<u>1</u>	October 1 through December 31	January 31
<u>2</u>	January 1 through March 31	April 30
<u>3</u>	April 1 through June 30	July 31
<u>4</u>	July 1 through September 30	October 31

This agreement shall not be effective and binding until approved by the Superintendent of the School District, or designee who has contract authority, and the Authorized Representative of Berea College.

Payment by Berea College to the School District shall be made only after receipt of appropriate, acceptable and timely documentation submitted by School District to Berea College and as further outlined in the attached Payment Terms document hereby referred to as Appendix B.

### C. Type of Agreement

Independent agreement with College. Except as described in the grant agreement, no partnership, joint venture or other association is created by or should be implied by this Agreement. School District shall utilize its own methods, judgment, and employees in connection with the provision of providing the Services. It is expressly understood and agreed that School District and its employees shall not be entitled to any employment benefits or payments of any kind from the College other than the reimbursements described in section B which shall be paid to School District without any provision for the withholding of any local, state and federal taxes or withholdings of any kind whatsoever. School District is and shall be responsible for the salaries and wages of its own

## Memorandum of Agreement

employees, workers' compensation, unemployment insurance, liability insurance, and any taxes or withholdings that are the obligation of 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, the College and School District, as evidenced in writing.

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

The term of this Agreement shall be for a term commencing on 9/26/2018 and ending on 6/30/2019.

### **F. Matching Funds**

The School District shall provide matching contributions of least **\$72100.00** per academic year. Documentation of all matching funds shall be provided each quarter in form and substance acceptable by the College. Matching requirements are summarized in Appendix B, "Payment and Cost Terms". Documentation of all matching funds shall be provided each quarter.

### **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 Reimbursement for Expenses to be paid hereunder to 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 10% 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 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. Indemnification, Insurance and Hold Harmless**

To the extent permitted by Kentucky state law, 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. The College will also provide evidence of its liability insurance coverage, upon request, and will have the School District endorsed as an additional insured when required.

To the extent permitted by Kentucky state law, the School District agrees that, to the full extent of its liability insurance coverage, it shall indemnify and hold harmless the College, its trustees, officers, agents and employees from and against claims, damages, actions, causes of action, losses and expenses arising out of or resulting from the performance of the School District, its agents or employees, including but not limited to the Staff described herein. The School District agrees to

## Memorandum of Agreement

provide the College with evidence of its liability insurance coverage upon request and to have the College properly endorsed as an additional insured when required.

### **J. Notices**

Notices permitted or required by this Agreement shall be sent, via certified mail or express mail through the U.S. Postal Service or by private carrier to:

For the College:

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

For School District:

Phillip Watts, Interim  
Superintendent  
420 Court Street, PO Box 750  
Jackson, KY 41339  
606-666-2491 Phone

### **K. 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.

### **L. Copyright & Authorship**

Reports produced under this agreement unless otherwise released will be the exclusive property of the College. School District will not disseminate reports produced under this contract to anyone outside of the College without permission.

Where applicable, School District acknowledges that all files, videos, records, lists, books, literature, products and other materials College owns or uses in connection with performing the Services will at all times remain the College's property, and that upon the completion of the Services, 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. 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 School District. Any materials produced by School District expressly for the Grant shall constitute a "work for hire" with the College or the US Department of Education, as the case may be, retaining ownership and rights of use and School District retaining dual ownership and rights to use as its intellectual property.

### **M. Confidentiality**

## Memorandum of Agreement

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

### **N. Right of Audit and Retention Requirements**

The US 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 School District as they pertain to the Services provided by the School District for this project and all Reimbursements and Expenses paid hereunder to School District. Unless otherwise agreed in writing, School District agrees to maintain financial records related to this agreement until 9/25/2025.

### **O. 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.

### **P. Eligibility of Consultant**

School District covenants and agrees that it will, at all times, maintain its eligibility to serve as a partner under the Grant to the extent of any rules, policies or regulations promulgated by Berea College, the Department of Education, or any other federal agency or court having jurisdiction. A criminal background check may be required by Berea College for certain employees of the School District. The School District will be notified in writing if a criminal background check is required and in cases where the College determines a criminal background check is required, the College agrees to pay for any expenses associated with obtaining the background check. If, for any reason, the School District shall become ineligible on account of any of the foregoing, this Agreement shall automatically terminate with the School District being entitled to remuneration for Services and Expenses incurred to the date of termination.

### **Q. Non-Discrimination Requirements**

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, and shall not discriminate on the basis of race, color, religion, sex, age, national origin, or disability in connection with the performance of this Agreement.

### **R. Regulatory Compliance**

In the administration and performance of this Agreement, School District agrees that it shall comply with all applicable Federal laws and regulations pertaining to the grant including the Education Department's General Administrative Regulations (EDGAR) and the Code of Federal Regulations found in 2 CFR Part 200.

**S. 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 I through S of this document shall survive termination of the Agreement.

**T. Statement of Work**

School District agrees to perform the services outlined in this agreement in compliance with federal regulations. Berea College agrees to the named services within this agreement. As duly authorized representatives of the College and School District, the signatures below indicate agreement with the aforementioned provisions. In witness whereof, the parties have executed this Agreement, as of the dates last set forth below.

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 School District:

Phillip Watts, Interim  
Superintendent  
420 Court Street, PO Box 750  
Jackson, KY 41339  
606-666-2491 Phone

**BEREA COLLEGE:**

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

**School District:**

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

**For completion by Berea College**

Account Number(s) to charge: 2117 71318 8465 450 Direct Services  
2117 71318 8446 450 Academic Specialist(s)

Project Director(s) signature: \_\_\_\_\_

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

Director of Finance: \_\_\_\_\_

AED/COO Signature: \_\_\_\_\_

**APPENDIX A: Staff**  
**School Based Staff – GEAR UP**

PURPOSE. The GEAR UP School Based Staff 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 Board of Education shall consist of any student enrolled in the identified schools and grade levels as outlined in Appendix C during the 2018 – 2019 academic year.

1. **HIRING AND SUPERVISION OF SCHOOL BASED STAFF.** The School District agrees to hire:

**1 Academic Specialist(s)**

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 SCHOOL BASED STAFF to provide information and to monitor the process. SCHOOL BASED STAFF shall be employed by the School District during the 2018– 2019 academic year and must be dedicated 100% to the GEAR UP Program and cannot hold any other position within the district. SCHOOL BASED STAFF shall not be considered an employee of the College for any purpose.

2. **QUALIFICATIONS OF SCHOOL BASED STAFF.**

Prior to offering any person employment as SCHOOL BASED STAFF, 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 as outlined in Appendix D. 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. The School District will provide a hire letter for each School Based Staff position renewed annually.

3. **BUDGET FOR SCHOOL BASED STAFF.** 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,

**\$72100.00** Academic Specialist(s) 200 days

Budget amount for each School Based Staff position includes salary and fringe pertaining to the contract length. Any additional expenditure of Program Funds for SCHOOL BASED STAFF position must be pre-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 SCHOOL BASED STAFF 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.

4. **SCHOOL DISTRICT SUPPORT.** The School District shall provide SCHOOL BASED STAFF 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 SCHOOL BASED STAFF 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.



**APPENDIX A: Staff  
School Based Staff – GEAR UP**

5. **SCHOOL BASED STAFF RESPONSIBILITIES.** SCHOOL BASED STAFF 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. SCHOOL BASED STAFF shall report to a designated GEAR UP Program Manager or assigned GEAR UP staff member and to the Principal of the School District, or the Principal'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 Principal and/or the designated GEAR UP Staff Member. SCHOOL BASED STAFF 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, participate in GEAR UP activities, document participation in GEAR UP activities, and perform all such other work as may be assigned to SCHOOL BASED STAFF consistent with the Partnership Grant.

6. **SCHOOL BASED STAFF REPORTS.** SCHOOL BASED STAFF shall submit weekly activity and program reports to the designated GEAR UP Program Manager and/or Director. Additionally, all contractual school based personnel whose wages are charged to a federal grant program must confirm the time they spend working on the grant program to verify the amount charged the federal award is reasonable, allowable, and allocable. This verification process is referred to as **TIME AND EFFORT REPORTING**. School based personnel shall document the percent of time worked on the grant during the quarterly period using the ***Time and Effort Reporting Form***. Contractual school based personnel must sign the Time and Effort reporting form, submit to the respective grant's district point of contact (POC) within 10 days after the end of each quarter. The POC must include the reporting form with the quarterly reimbursement request.

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.

7. **CONFIDENTIALITY.** The School District and SCHOOL BASED STAFF 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:  
Payment Terms/Match Requirements**

**Payment Terms**

1. Payment by Berea College to the School District shall be made only after receipt of appropriate, acceptable and timely documentation submitted by the School District to Berea College each quarter. The quarters are: January to March; April to June; July to September; and October to December. Reimbursement requests are due 30 days after the quarter ends, specifically: April 30, July 30, October 30, and January 30. Reimbursements must include only those costs incurred within the current quarter. Costs outside of the current period may be disallowed.

These funds shall be paid to School District 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.

Carry forward of funds is not permissible and any unused balances will be forfeited by the School District. The School District 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 School District.

2. Berea College agrees that payment shall be made to the School District 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.

This agreement shall not be effective and binding until approved by the Superintendent of County Schools, or his designee who has contract authority and the Authorized Representative of Berea College.

**I. Additional Payment/Cost Terms**

Any funds not covered in the initial budget shall only be paid upon the mutually agreed terms and schedule, and only if such are provided reciprocally in writing to both parties. Any additional costs incurred, beyond those in the approved budget, are the liability of the School District.

**II. Matching Requirements**

The District agrees to report a minimum amount of matching funds as detailed below for each funding source. All reported cost share and matching funds are subject to meeting federal requirements as specified in CFR §200.306 and other pertinent federal statutes and regulations including the terms and conditions of each funding source.

<b>Funding Source:</b>	<b>Annual Matching Requirement:</b>
GEARUP	<b>\$72100.00</b>

**APPENDIX C:  
Identified Schools and Grade Levels**

<u>DISTRICT / COUNTY</u>	<u>SCHOOL</u>	<u>12</u>
Breathitt County	Breathitt High School	X
Breathitt County	Highland Turner Elem	0
Breathitt County	LBJ Elementary	0
Breathitt County	Marie Roberts-Caney Elem	0
Breathitt County	Sebastian Middle School	0

**APPENDIX D:  
School Based Staff Descriptions and Qualifications**

**Academic Specialist(s)**

**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.