

**MEMORANDUM OF AGREEMENT**  
**Between**  
**Jefferson County Board of Education**  
**And**  
**Isaac W. Bernheim Foundation**

This Memorandum of Agreement (hereinafter "Agreement") is entered into between the Jefferson County Board of Education (hereinafter "JCPS"), a political subdivision of the Commonwealth of Kentucky, with its principal place of business at 3332 Newburg Road, Louisville, Kentucky 40218 and Isaac W. Bernheim Foundation, doing business as Bernheim Arboretum and Research Forest (hereinafter "Bernheim"), a Kentucky 501(c)(3) nonprofit corporation located at 2075 Clermont Road, Clermont, Kentucky 40110.

WHEREAS Bernheim desires to implement, Restoring Nature's Classroom, a nature-based educational program aligned with Next Generation Science standards. The program is administered by Bernheim educators and is funded by a grant. The Program provides hands-on, nature-based science learning experiences through a series of in-class visits by educators and field trips to Bernheim (hereinafter "Program").

WHEREAS Hazelwood Elementary (hereinafter "Hazelwood") and Frederick Law Olmsted Academy South (hereinafter "OAS") desire to work with Bernheim to implement the Program.

THEREFORE, in consideration of the terms, conditions, premises, and mutual agreements set forth herein, JCPS and Bernheim agree as follows:

**1. Duties of JCPS/Participating Schools:**

- a. Host Bernheim educators for three in-class visits to each of the two schools on dates mutually agreed upon throughout the 2022-23 school year.
- b. Review science syllabus with Bernheim educators so Program aligns with in-class learning.
- c. Organize field trips for students and teachers to Bernheim at agreed upon dates throughout the school year, including arranging bus transportation.
- d. Communicate field trip plans with parents in a timely manner including recommended clothing and securing parental permission.

**2. Duties of Bernheim:**

- a. Provide three in-class presentations and field trip experiences at Bernheim aligned with Next Generation Science standards to all fourth-grade students at Hazelwood and all sixth-grade students at Olmsted Academy South.
- b. Cover program costs including district school bus transportation, learning materials, admission to Bernheim, and staff transportation to the school.

- c. Communicate all Program plans with teachers and school leaders in a timely manner and adjust as needed per school request.
- d. Create and provide grade-appropriate journal for all students to use throughout the Program.
- e. Not use the name or logo of JCPS or individual JCPS schools in printed materials, websites, videos, or social media without prior approval from JCPS.
- f. For any projects involving program evaluation, monitoring activities, or data collection or research of any kind, JCPS student or staff participation is voluntary. As a federally authorized Institutional Review Board (IRB), JCPS complies with the federal definition for research, which includes sharing of Personally Identifiable Information (PII) for the purpose of answering a question or evaluating activities for effectiveness beyond standard educational or operational procedures. Thus, all research, program evaluation and data collection activities must be approved by the JCPS IRB and shall not begin before approval is secured from the JCPS IRB.
- g. If the performance of this Agreement involves the transfer by JCPS to Bernheim of any data regarding any student that is subject to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g as amended, ("FERPA"), Bernheim agrees to:
- h. In all respects, comply with the provisions of FERPA, including any requirements of Chapter 99 of Title 34 of the Code of Federal Regulations and any other applicable state or federal law.
  - i. Use any such data for no purpose other than to fulfill the purposes of this Agreement, and not share any such data with any person or entity other than Bernheim and its employees, contractors, volunteers, and agents, without prior approval of JCPS. Disclosure shall be limited to only those employees, contractors, volunteers, or agents who are necessary for the fulfillment of this Agreement.
  - ii. Require all employees, contractors, volunteers, and agents of Bernheim to comply with all applicable provisions of FERPA with respect to any such data. Bernheim shall require and maintain confidentiality Agreements with each employee, contractor, volunteer, or agent with access to data pursuant to this Agreement.
  - iii. Maintain any such data in a secure environment, whether physical or electronic, and not copy, reproduce, or transmit any such data except as necessary to fulfill the purposes of this Agreement. Bernheim shall notify JCPS within 24 hours in the event of any data breach or disclosure of data to any person or entity other than the parties listed in this agreement.

- iv. Collect, store, and maintain data in a manner that does not permit the identification of an individual student by anyone other than employees, contractors, or agents of Bernheim necessary for the fulfillment of this Agreement and having a legitimate interest related to the purposes of this Agreement in knowing such personal identification, and not disclose any such data in a manner that would permit the identification of an individual student in any form, including, but not limited to, published results of studies.
- v. Destroy or return to JCPS any such data obtained under this Agreement within thirty days (30) after the date by which Bernheim no longer needs it for the purposes of this Agreement. Bernheim will require all employees, contractors, volunteers, or agents of any kind to comply with this provision.
- i. JCPS retains the right to audit Bernheim's compliance with the confidentiality requirements of this provision. If the performance of this Agreement involves the transfer by JCPS to Bernheim of any data regarding any student that is subject to the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. 1232g as amended, ("FERPA"), Bernheim agrees to:
- j. Bernheim acknowledges that any violation of this Agreement and/or the provisions of FERPA or accompanying regulations related to the nondisclosure of protected student information constitutes just cause for JCPS to immediately terminate this Agreement pursuant to Article V of this Agreement.
- k. Maintain an all-risk property and casualty insurance policy with respect to the facilities and a policy of commercial general liability in amounts no less than \$1,000,000/\$2,000,000 per policy and provide JCPS with a certificate of insurance upon request.
- l. Require all employees, volunteers and contractors (including employees of contractors) of YMCA performing services on JCPS school premises during JCPS school hours under this Agreement submit per KRS 160.380 to a national and state criminal history background check by department of Kentucky State Police and the Federal Bureau of Investigation and have a letter, provided by the individual, from the Cabinet for Health and Family Services stating no administrative findings of child abuse and neglect records maintained by the Cabinet for Health and Family Services.
- m. Require all Bernheim employees/volunteers/contractors performing services under this Agreement to have on file a Criminal Records Check, per Kentucky law and JCPS requirements, completed no more than five years ago. Employees/contractors convicted of any of the following, per JCPS Board Policy 03.6, shall not be considered:
  - i. Any conviction for sex-related offenses.

- ii. Any conviction for offenses against minors.
  - iii. Any conviction for felony offenses, except as provided below.
  - iv. Any conviction for deadly weapon-related offenses.
  - v. Any conviction for drug-related offenses, including felony drug offenses, within the past seven years.
  - vi. Any conviction for violent, abusive, threatening or harassment related offenses.
  - vii. Other convictions determined by the Superintendent/designee to bear a reasonable relationship to the ability to perform services under this Agreement.
- m. Bernheim staff and volunteers will comply with all current JCPS health safety guidelines including rules related to COVID-19 mitigation.
  - n. To the extent that JCPS facilities are closed to students, those facilities will also be unavailable to Bernheim. During any periods of the Non-Traditional Instruction (NTI) or remote learning, JCPS facilities will not be available to Bernheim.

### 3. **Mutual Duties:**

- a. Each party shall not discriminate based on 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, disability, or limitations related to pregnancy, childbirth, or related medical conditions.
  - b. Each party shall comply with all federal and state laws and regulations and all JCPS policies applicable to the provision of the services described in this Agreement, including without limitation the Federal Family Educational Rights and Privacy Act (FERPA), the Kentucky Educational Rights and Privacy Act (KFERPA), the federal Health Insurance Portability and Accountability Act (HIPAA) and JCPS policies and procedures for volunteers and visitors entering JCPS facilities.
  - c. The respective administrative offices of JCPS and Bernheim who have responsibility for the implementation of this Agreement shall meet periodically during the term of this Agreement to evaluate the program and discuss issues of mutual concern.
4. **Term:** This Agreement shall be effective commencing September 14, 2022 and shall terminate on June 30, 2023. The Agreement may be extended by mutual written agreement of JCPS and Bernheim.

5. **Termination**: Either party may terminate this Agreement prior to the end of its term by giving sixty (60) days prior written notice to the other party. If JCPS terminates the Agreement, Bernheim will be permitted in their discretion to continue to provide services during the period in which the sixty (60) day notice becomes effective.
6. **Amendment**: This Agreement may be modified or amended only by a written agreement signed by JCPS and Bernheim.
7. **Independent Parties**: JCPS and Bernheim are independent parties, and neither shall be construed to be an agent or representative of the other, and therefore neither shall be liable for the acts or omissions of the other. Each party shall, however, be liable for any negligent or wrongful acts of its own employees, students, and invitees.
8. **Captions**: Section titles or captions in this Agreement are inserted as a matter of convenience and reference, and in no way define, limit, extend, or describe the scope of this Agreement.
9. **Entire Agreement**: This Agreement contains the entire agreement between JCPS and Bernheim concerning the CSP and supersedes all prior agreements, either written or oral, regarding the same subject matter.
10. **Severability**: If a court of competent jurisdiction holds any provision of this Agreement unenforceable, such provision shall be modified to the extent required to make it enforceable, consistent with the spirit and intent of this Agreement. If such a provision cannot be so modified, the provision shall be deemed separable from the remaining provisions of this Agreement and shall not affect any other provision.
11. **Counterparts**: This Agreement may be executed in counterparts, in which case each executed counterpart shall be deemed an original, and all executed counterparts shall constitute one and the same instrument.
12. **Applicable Law**: This Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed.

Jefferson County Public Schools:

Bernheim Arboretum and Research Forest:

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Dr. Marty Pollio, Superintendent

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MARK K. WORMS

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

Date: 25 Aug 2022