

This Agreement ("Agreement") is made and entered into by and between DR. DONNA M. HARGENS ("Hargens") and the BOARD OF EDUCATION OF JEFFERSON COUNTY, KENTUCKY (the "Board") and shall be effective as of April 13, 2017.

WHEREAS, by a Contract made and entered into on February 23, 2015 (the "Contract"), the Board employed Hargens as the Superintendent of the Jefferson County, Kentucky Public Schools and the Secretary of the Board for a term of office beginning July 1, 2015 and expiring June 30, 2019 (the "Term"); and

WHEREAS, the Contract contemplates that Hargens may resign from the positions of Superintendent and Secretary before the end of the Term; and

WHEREAS, Hargens has notified the Board that she desires to resign from the positions of Superintendent and Secretary on the terms and conditions set forth in this Agreement, and the Board has agreed to accept such resignation on such terms and conditions.

NOW, THEREFORE in consideration of the premises, the mutual promises set forth in this agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Hargens and the Board, Hargens and the Board (individually, a "Party," and collectively, the "Parties") agree as follows:

1. Termination of the Contract: The Board's employment of Hargens in the positions of Superintendent of the Jefferson County, Kentucky Public Schools and Secretary of the Board shall end and the Contract shall terminate at 11:59 p.m. on July 1, 2017 due to Hargens' resignation of such positions. Hargens and the Board agree that this resignation and the resulting termination of the Contract is made pursuant to KRS 161.780(1) and not pursuant to KRS 160.350(3) and that the Board therefore is not required to show, and has not asserted any cause for the termination of the Contract. The Board hereby acknowledges its consent to the termination of the Contract by Hargens to the extent that consent is required by KRS 161.780(1).
2. Amendment of the Contract: In consideration of Hargens' decision to resign as Superintendent and Secretary before the end of the Term, the Board has offered to make and Hargens has agreed to accept the payments set forth in this Section 2. The payments set forth in this Section 2 will be made by the Board on or before July 1, 2017. The Board and Hargens agree that the payments set forth in this Section 2 will be in addition to, and not in lieu of, the payments that Hargens is entitled to receive prior to July 1, 2017 under the terms of the Contract as it existed before the effective date of this Agreement, and the provisions of this Section 2 therefore will constitute an amendment of the terms of the Contract as permitted by Section XIV (A) of the Contract. Except as amended by the terms of this Section 2, the terms of the Contract shall remain in full force and effect until the termination of the Contract at the time set forth in Section 1 above.
  - a. The Board will contribute \$60,000 to a tax-deferred annuity plan, or other investment plan, as Hargens shall select.

- b. The 30 additional days of paid vacation and 10 days of sick leave to which Hargens is entitled for the 2017-2018 Fiscal Year shall be fully vested in her as of July 1, 2017.
  - c. In accordance with Board policy, the Board will purchase from Hargens up to 90 sick leave days that Hargens has accumulated but has not used as of July 1, 2017. The accumulated unused sick days will be purchased by the Board at the rate per day equal to 30% of Hargens' annual base salary divided by 260.
  - d. In accordance with Article VII of the Contract, the Board will purchase from Hargens up to 60 vacation days that Hargens has accumulated but has not used as of July 1, 2017. The accumulated unused vacation days will be purchased by the Board at the rate per day equal to 100% of Hargens' annual base salary divided by 260.
  - e. On or before July 1, 2017, the Board will make a payment to Hargens in the amount of \$48,000, which the Parties have calculated to be the amount that will be required for Hargens to purchase health, dental and vision insurance coverage for the period from July 1, 2017 through June 30, 2019 that will be comparable to the coverage that Hargens currently has under the terms of the Contract. Taxes will not be withheld from this payment as such payment does not represent a payment of wages, and a Form 1099 will be issued to Hargens. The Board makes no representation regarding Hargens' tax consequences or liabilities arising from the payments made to Hargens pursuant to this paragraph or any other paragraph hereinabove, and assumes no responsibility for the payment of taxes associated with such payments.
3. Transition Period: Hargens agrees that during the period from the date of this Agreement through July 1, 2017 she will cooperate with the Board in developing and implementing a transition plan that will assist that the person who is appointed by the Board to serve in the position of Interim Superintendent or Superintendent beginning July 2, 2017, to be fully prepared on that date to assume the duties of such position. The transition plan may include, among other things, gathering data and information regarding the school district for use by such person in fulfilling the duties of such position, meeting with such person as he or she deems necessary or desirable to brief him or her on the operations of the school district, and keeping the members of the Board advised about the progress of the transition plan.
4. Evaluation: In view of the termination of the Contract pursuant to the terms of this Agreement on July 1, 2017, and in accordance with guidance from the Kentucky Department of Education, the evaluation process of Hargens that is currently being undertaken by both Parties shall be terminated with no further action(s) taken relative to the same.
5. Consultation Period: Hargens agrees that, as her schedule permits, she will remain reasonably accessible and available to the Board during the period from July 1, 2017 through June 30, 2018 for telephone consultations and/or personal conferences as the



Board may reasonably request from time to time regarding any business, legal or other matters in which Hargens' participation and or involvement is necessary or desirable.

6. Employment References: The Board will respond to any request by a potential employer of Hargens for an employment reference by providing a professional response.
7. Non-Disparagement: The Board, as well as its Members, Representatives and Counsel, and Hargens, as well as her Representatives and Counsel, mutually agree to refrain now and forever from disparaging each other, directly or indirectly, publicly or privately, in any way. All communications with third parties by either Party relative to the other Party shall be non-disparaging and professional.
8. Release of the Board: Hargens hereby waives, releases, discharges and covenants not to sue the Board or its current or former insurers or reinsurers, its successors and assigns, its Board members, administrators, employees, agents, officers, attorneys, managers, and all others acting in concert with them (the Board and such other entities and persons being referred to herein as the "Board Released Parties") with respect to any matters arising from Hargens' employment with, or resignation of employment from, the Board.

Further, for the purpose of implementing a full and complete release and discharge of the Board Released Parties, Hargens expressly acknowledges that this Agreement is also intended to include in its effect, without limitation, a waiver and release by Hargens of the Board Released Parties, and Hargens does hereby waive and release the Board Released Parties, with regard to all claims she may have had against the Board Released Parties, from the beginning of time until her execution of this Agreement, including, but not limited to, claims in connection with or arising from her employment with, or resignation of employment from, the Board, whether or not currently known to her or suspected to exist at the time of execution hereof, and that this Agreement contemplates the extinguishment of any such claim or claims.

This general release specifically includes, but is not limited to, a waiver and release by Hargens of the Board Released Parties for all claims arising from the beginning of time up to and including the effective date of this Agreement for any alleged violation by the Board Released Parties of any federal, state, or local statutes, ordinances, or common laws, including, but not limited to, Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq., the Equal Pay Act of 1963, 29 U.S.C. § 206, as amended, the Americans with Disabilities Act, 42 U.S.C. § 12101 et seq., the Family Medical Leave Act, 29 U.S.C. § 2600 et seq., KRS Chapter 342, KRS Chapter 216B, the Kentucky Civil Rights Act, KRS Chapter 344, Kentucky's Wage and Hour Law, KRS Chapter 337, the National Labor Relations Act, the Labor-Management Relations Act and for any claims under any other federal, state, or local statutes, common laws, acts, rules, ordinances, regulations or other laws and any other claim of discrimination by reason of race, sex, national origin, handicap, religion or age, and any claims for breach of contract, and any claims in tort or in equity, and any claims for wrongful discharge and any claims for any bonus, wage or salary payments, any claims under the Employee Retirement Income Security Act, and any claims against any of the Board Released Parties for work-related injury or illness

(whether physical in nature or manifested by psychological or emotional stress), fraud, conspiracy, breach of employment contract, interference with employment contract, interference with business relationship, wrongful discharge in violation of public policy, breach of the implied covenant of good faith and fair dealing, unjust enrichment, infliction (negligent or intentional) of emotional distress or any other claims arising out of Hargens' employment with, or resignation of employment from, the Board.

It is the intent of the Parties to give the broadest release and discharge possible under the law, and the provisions of this Section 8 should be interpreted so as to give effect to such intent.

9. Release of Hargens: The Board hereby waives, releases, discharges and covenants not to sue Hargens or her insurers or reinsurers, or her successors, predecessors, heirs, executors, administrators, and assigns, her employees, agents, attorneys and all others acting in concert with them (Hargens and such other entities and persons being referred to herein as the "Hargens Released Parties") with respect to any matters arising out of Hargens' employment with, or resignation of employment from, the Board.

Further, for the purpose of implementing a full and complete release and discharge of the Hargens Released Parties, the Board expressly acknowledges that this Agreement is also intended to include in its effect, without limitation, a waiver and release by the Board of the Hargens Released Parties, and the Board does hereby waive and release the Hargens Released Parties, with regard to all claims it may have had against the Hargens Released Parties, from the beginning of time until its execution of this Agreement, including, but not limited to, claims in connection with or arising from Hargens' employment with, or resignation of employment from, the Board, whether or not currently known to it or suspected to exist at the time of execution hereof, and that this Agreement contemplates the extinguishment of any such claim or claims.

It is the intent of the Parties to give the broadest release and discharge possible under the law, and the provisions of this Section 9 should be interpreted so as to give effect to such intent.

10. No Other Claims: Hargens and the Board represent that there are no claims pending with any local, state or federal agency or court, nor any charges, lawsuits, grievances, arbitrations, or requests for investigation seeking damages on their behalf against any Released Party, and that if any such agency or court assumes jurisdiction of any such proceeding, Hargens and the Board shall give up their right to money damages in connection with any such proceeding, and if awarded such damages, will assign their right and interest to such damages to the adverse Released Party to the extent permitted by law.

11. Consultation with Counsel: Hargens agrees that she has consulted with her attorney before executing this Agreement. As evidenced by Hargens' signature below, Hargens has had sufficient time to read and review this document and to seek legal advice, and now freely and voluntarily, without coercion, enters into this Agreement, understanding the significance and consequences of its terms.



12. Injunctive Relief: The Parties agree that in the event of any violation, or any overt threat in writing of an intention to violate the terms of this Agreement, by either Party, the other Party shall have the right and remedy to have the provisions of this Agreement specifically enforced by the Jefferson Circuit Court, it being acknowledged and agreed that any such breach or overtly threatened breach will cause irreparable injury to the other Party and that money damages will not provide the other Party with an adequate remedy. Such rights and remedies shall be in addition to, and not in lieu of, any other rights and remedies available to the Parties under law or equity. In the event of a determination by a court that any provision of this Agreement has been breached by either Party, the other Party shall be entitled to reasonable attorney fees incurred in remedying the same.
13. Waiver of ADEA Claim: Hargens agrees that, by entering into this Agreement, she is waiving any and all rights or claims that she may have arising under the Age Discrimination in Employment Act of 1967, as amended, which have arisen on or before the date of execution of this Agreement. Hargens further agrees that:
- a. In return for this Agreement, she will receive compensation beyond that which she was already entitled to receive under the terms of the Contract as it existed before the effective date of this Agreement;
  - b. She was advised by the Board and is hereby advised in writing by this Agreement to consult with her attorney before signing this Agreement;
  - c. She was given a copy of this Agreement on April 13, 2017, and informed that she had 21 days within which to consider this Agreement, and she has agreed to waive the 21-day period at the advice of her attorney; and
  - d. She was informed that she has seven (7) days following the date of execution of this Agreement in which to revoke this Agreement and that the obligations of this Agreement shall become binding only after that effective date.
14. Challenges: In the event that this Agreement, or any provision thereof is challenged by any third party as invalid, illegal, or otherwise unenforceable, the Board shall assume all costs, including reasonable attorney fees, of defending the same.
15. Revocation Period: Following the date of execution of this Agreement, Hargens shall have seven (7) days in which to revoke this Agreement. Hargens must state in writing her intention to do so and must deliver that writing on or before that seventh (7th) day following her execution of this Agreement to: Francis J. Mellen, Jr., Wyatt, Tarrant & Combs, LLP, 500 West Jefferson Street, Suite 2800, Louisville, Kentucky 40202-2898, which writing may be delivered (i) by hand delivery or (ii) by certified mail, return receipt requested, or (iii) via facsimile transmission to (502) 589-0309. Should Hargens not exercise her right to revoke this Agreement within seven (7) days after the date of execution, this Agreement shall be held in full force and effect and each Party shall be obligated to comply with its requirements henceforth and forever.
16. No Admission of Liability: The Parties agree that nothing in this Agreement, and no performance under this Agreement, shall be construed as an admission by the Board or



Hargens of the validity of any claims, causes of actions, lawsuits, liability, damages, costs, expenses, attorney's fees, amounts, rights, obligations or any other things of any nature whatsoever released under this Agreement.

17. Voluntary Agreement: The Parties agree and represent that they enter into this Agreement voluntarily, under no duress, and wholly upon their own judgment, belief and knowledge as to all matters related to this Agreement, after having received full advice from counsel of their choice with regard to this Agreement and all such matters, and without reliance on any statement, representation or promise of any person except as expressly set forth in this Agreement, and that no promise, inducement or agreement not expressly set forth in this document has been made to them. The Parties have made such investigation of matters pertaining to this Agreement as each deems necessary.
18. Binding Contract: The Parties intend the terms of this Agreement as binding contractual obligations, and not merely recitals. This Agreement contains the entire agreement between the Parties respecting the subject matter of this Agreement. All prior negotiations and understandings, verbal or written, between the Parties regarding such subject matter have been merged herein. Except by a further written agreement signed by the Parties: (a) this Agreement may not be amended, altered, modified or changed in any way; and (b) no provisions may be waived.
19. No Representation: The Parties acknowledge that there has been no promise, representation or warranty whatsoever, express or implied, not contained herein concerning the subject matter of this Agreement, to induce them, or either of them, to execute this Agreement, and acknowledge that they, and each of them, have not executed this Agreement in reliance on any such promise, representation or warranty not contained herein.
20. Inurement: This Agreement shall be binding upon, and shall inure to the benefit of the heirs, administrators, executors, representatives, successors and assigns of each of the Parties.
21. Public Statements: Each Party will not without the prior written approval of the other Party make any press release or other public announcement concerning this Agreement or the matters arising from this Agreement, and the Parties will use their best efforts to cause a mutually agreeable press release or public announcement to be made.
22. Third Party Rights: This Agreement does not create, and will not be construed as creating, any rights enforceable by any person not a Party to this Agreement.
23. Number; Gender: As used in this Agreement, unless the context clearly indicates otherwise, any singular number will include the plural, any plural number will include the singular, and any masculine personal pronoun will be construed to mean the corresponding feminine or neuter personal pronoun, or vice versa.
24. Expenses: Except as otherwise expressly provided in this Agreement, each Party to this Agreement will pay all costs, fees and expenses that the Party may incur in connection with the negotiation, execution and delivery of this Agreement.

25. Counterparts: This Agreement may be signed by each Party upon a separate copy or separate signature pages, and any combination of separate copies signed by both Parties or including signature pages so signed will constitute a single counterpart of this Agreement. This Agreement may be signed in any number of counterparts, each of which will be deemed to be an original, but all of which together will constitute one and the same agreement. It will not be necessary, in proving this Agreement in any proceeding, to produce or account for more than one counterpart of this Agreement.
26. Preparation of Agreement: Counsel for each of the Parties have participated in the preparation and/or review of this Agreement and have negotiated it. Therefore, this Agreement shall not be construed against either Party on the ground of that Party's participation in the preparation of this Agreement.
27. Severability: If any provision of this Agreement is held to be void, voidable, unlawful, or unenforceable, the remaining portions of this Agreement will remain in full force and effect.
28. Subheadings: The subheadings preceding the paragraphs of this Agreement are for convenience only and shall not be considered in any interpretation, construction or application of this Agreement.
29. Execution: Each of the undersigned individuals agrees and represents that he or she has any and all authority necessary to enter into this Agreement on behalf of himself, herself or the Party they represent.
30. Choice of Law: The Parties agree that the substantive law of Kentucky will govern to any dispute or claim arising out of or relating to this Agreement.

IN WITNESS WHEREOF, Hargens and the Board have signed this Agreement as of the day and year first written above.

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Donna M. Hargens, Ed. D.

JEFFERSON COUNTY BOARD OF EDUCATION

By: \_\_\_\_\_  
Christopher Brady, Board Chair

Approved by the Jefferson County Board  
of Education on April 13, 2017

Attest: \_\_\_\_\_  
Assistant Secretary