

# CONSULTING AGREEMENT

This Agreement is made effective as of May 28, 2015 by and between Warren County School District and Dr. Gertrude A. Barber Center, Inc. dba Barber National Institute 100 Barber Place, Erie, PA 16507.

In this Agreement, the party who is contracting to receive services shall be referred to as the "School District" and the party who will be providing the services shall be referred to as "INSTITUTE" or "GABC."

Therefore, the parties agree as follows:

**1. DESCRIPTION OF INSTITUTE SERVICES** (July 13, 2015 – July 31, 2015) The INSTITUTE will provide the following services:

- Behavior Specialist Consultation services up to 30 hours for the duration
- Mobile Therapy services up to 30 hours for the duration

**2. PERFORMANCE OF SERVICES.** The manner in which the Services are to be performed and the specific hours to be worked by the INSTITUTE shall be jointly determined by INSTITUTE and the School District.

**3. PAYMENT OF SERVICES.** The School District will pay a charge of \$68 per hour of service rendered for professional Behavioral Specialist Consultation and Mobile Therapy time provided by the INSTITUTE under the terms of this contract.

The School District will remit payment within 30 days of receipt of the INSTITUTE's monthly invoice for services.

**4. SUPPORT SERVICES.** INSTITUTE will provide all necessary support services.

**5. RELATIONSHIP OF PARTIES.** It is understood by the parties that INSTITUTE employees are independent contractors with respect to the School District, and not employees of School District. The School District will not provide fringe benefits, including health Insurance benefits, paid vacation, or any other employee benefit, for the benefit of INSTITUTE employees.

## **6. OBLIGATIONS.**

To the fullest extent permitted by law, INSTITUTE shall defend, indemnify, hold free and save harmless the School District, its agents, employees, officers, School Board Members, and representatives from any loss, actions, demands, suits, judgments and claims of any kind (and regardless of when any claims are asserted), including any expense, reasonable attorneys' fees or costs incident hereto, filed or presented by any person or entity in connection with, arising from or in relation to the acts or omissions of the INSTITUTE, its officers, employees, or agents during the performance of this Agreement; (ii) the violation of any local, state, or federal law, regulation, or ordinance by the Institute or one of its officers, employees or agents; or (iii) the violation of any term of this Agreement by the Institute or one of its officers, employees or agents. INSTITUTE's obligations in accordance with this provision shall survive the termination of this agreement.

**7. INJURIES/ INSURANCE.** INSTITUTE acknowledges INSTITUTE's obligation to obtain appropriate insurance coverage for the benefit of INSTITUTE (and INSTITUTE employees, if any). INSTITUTE waives any rights to recovery from the School District for any injuries that INSTITUTE (and for INSTITUTE's employees) may sustain while performing services under this agreement and that are a result of the negligence of INSTITUTE or INSTITUTE's employees.

**8. CONFIDENTIALITY.** Both parties (Institute and School District) recognize that they may have proprietary information (collectively, "Information") which are valuable, special and unique assets of each other and need to be protected from improper disclosure. In consideration for this disclosure of the Information, both parties agree that they will not at any time or in any manner, either directly or indirectly, use any Information or provide to any third party without the prior written consent of the other. Both parties will protect the Information and treat it as strictly confidential. A violation of this paragraph shall be a material violation of this agreement.

Both parties shall execute a separate Confidentiality Agreement and shall cooperate fully to protect the confidentiality of educational records, personally identifiable information, and other information as dictated by the Family Educational Rights and Privacy Act (FERPA). A violation of this paragraph or the Confidentially Agreement shall be a material violation of this agreement.

**9. CONFIDENTIALITY AFTER TERMINATION.** The confidentiality-provisions of this agreement shall remain in force and effect for one year after the termination of this agreement.

**10. RETURN OF RECORDS.** Upon termination of this Agreement, INSTITUTE shall deliver all records, notes, data, memoranda, models, and equipment of any nature that are in INSTITUTE's possession or under INSTITUTE's control and that are the School District's property or relate to the School District's business.

**11.NOTICES.** All notices required or permitted under this Agreement shall be in writing and shall be deemed delivered when delivered in person or deposited in the United States mail, postage prepaid, addressed as follows:

**IF FOR THE SCHOOL DISTRICT:**

*WARREN COUNTY SCHOOL DISTRICT  
Amy Stewart  
Executive Director  
6820 Market Street  
Russell, PA 16345-3406*

**IF for INSTITUTE:**

*DR. GERTRUDE A. BARBER NATIONAL INSTITUTE  
John J. Barber  
President/Chief Executive Officer  
100 Barber Place  
Erie, PA 16507*

Such address may be changed from time to time by either party by providing written notice to the other in the manner set forth above.

**12. DIRECT CONTACT WITH CHILDREN.** For any employee that will have direct contact with children, Dr. Gertrude A. Barber Center, Inc. (GABC) agrees to be solely responsible, financially and otherwise, for ensuring compliance with 24 PS 1-111.1 (pertaining to employment history reviews); for ensuring compliance with all applicable criminal background check requirements (state and federal, with updates every 3 year as required by law) and ongoing reporting requirements relative to arrests or convictions; for ensuring compliance with all applicable child abuse clearance requirements (with updates every 3 years as required by law) and ongoing reporting requirements relative to alleged child abuse; and for ensuring compliance with all applicable child abuse training and reporting requirements. GABC acknowledges and agrees that any employee of GABC that will have direct contact with children is a mandated reporter of child abuse pursuant to 23 Pa.C.S.A. 6301, *et seq.* GABC shall be responsible for complying with School District Policies 7020 and 5002, which can be accessed on the School District's website (<http://www.wcsdpa.org>) or provided to GABC upon request.

GABC shall maintain records documenting employment history reviews, criminal background checks, and child abuse clearances for all employees that have direct contact with children and shall provide the School District with proof of compliance before any individual is permitted to have contact with students of the School District. GABC shall also maintain records that document child abuse training and ongoing reports received relative to arrests, convictions, or alleged child abuse. Upon receiving any such report relative to arrests, convictions, or alleged child abuse, GABC shall immediately notify the School District's Superintendent in writing. The School District may at any time request access to any or all of the records identified in this paragraph and , upon receipt of such request, GABC shall provide the School District with access within 24 hours.

For purposes these provisions, the term "direct contact with children" shall mean, "the possibility of care, supervision, guidance or control of children or routine interaction with children."

GABC agrees that any violation of this provision by the GABC shall constitute a material breach of this Agreement and shall be grounds for the School District's termination of this Agreement. Additionally, GABC understands that a violation of this provision may legally bar the School District from being able to contract with GABC in the future.

To the fullest extent permitted by law, GABC agrees to indemnify, defend, and hold harmless the School District and the School District's officers, agents, Board Members, directors, employees, and representatives from and against any and all losses, claims, actions, injuries, damages, liability, and/or expenses (including litigation and reasonable counsel fees) that arise out of, or that are in any way associated with GABC's or GABC's employee's failure to adhere to any of the requirements of this provision. GABC's obligations to the School District in this respect shall survive the termination of the Agreement and shall cover all claims regardless of when the claim is asserted.

**13. ASSIGNMENT.** Neither this Agreement nor any of INSTITUTE'S rights or obligations hereunder, may be assigned to any other party without the prior written consent of the School District's Board of School Directors.

**14. WAIVER.** The failure of either party to exercise any right or remedy provided for herein or to insist upon strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any right, remedy, or entitlement to strict performance provided for herein and shall in no way effect the right of such party enforce such right, remedy, or entitlement to strict performance at a later time. Additionally, the waiver of the breach of any provision of this Agreement shall not be construed as a waiver of any subsequent breach of the same or similar nature.

**15. DRAFTSMANSHIP.** The parties acknowledge that this Agreement is the joint work product of the parties. Accordingly, in the event of any ambiguity in this Agreement, the parties mutually desire that no inferences be drawn against either party and that the ambiguity not be interpreted against either party on

the basis of authorship of this Agreement

**16. ENTIRE AGREEMENT.** This Agreement contains the entire agreement of the parties and there are no other promises or conditions in any other agreement whether oral or written. This Agreement supersedes any prior written or oral agreements between the parties.

**17. AMENDMENT.** This Agreement may be modified or amended if the amendment is made in writing and is signed by both parties.

**18. TERM & TERMINATION.** This Agreement shall commence on July 13, 2015 and shall terminate on July 31, 2015. This Agreement may be terminated for convenience by either party prior to the preceding termination date.

**19. SEVERABILITY.** All sections, sentences, and provisions contained in this Agreement are severable. Should any section, sentence, or provision of this Agreement be rendered void, invalid, or unenforceable by any court of law (or arbitrator), for any reason, such a determination shall not render void, invalid, or unenforceable any other section, sentence, or provision of this Agreement, and the remainder of this Agreement shall remain in full force and effect and binding on the parties hereto.

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Donna Zariczny

President, Warren County School District

Warren County School District

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Date

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John J. Barber

President and CEO

Dr. Gertrude A. Barber Center, Inc.

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Date

ATTEST:

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Ruth Huck

Secretary, Warren County School Board

Warren County School District