

Board Office Use: Legislative File Info.	
File ID Number	20-2002
Introduction Date	10-14-2020
Enactment Number	20-1526
Enactment Date	10-14-2020 er



# Memo

**To** Board of Education

**From** Kyla Johnson-Trammell, Superintendent  
Joshua R. Daniels, General Counsel

**Board Meeting Date** October 14, 2020

**Subject** Agreement with Bleacher Report, Inc.

**Action Requested and Recommendation** Ratification by the Board of Education of an Agreement between the Oakland Unified School District and NFL Productions LLC and NFL Enterprises LLC (together, “NFL”) for the NFL to use certain facilities at Oakland Technical High School (“Premises”) to film an episode of “Peyton’s Place” with Marshawn Lynch on October 1, 2020 and to conduct a site walk of the facilities on September 30, 2020.

**Discussion** This Agreement allows the NFL to use the Premises for the purpose of filming, photographing, and/or other recording of the Premises. The NFL agreed to leave the Premises in as good order and condition as when received by it, reasonable wear and tear and use excepted.

**Fiscal Impact** No fiscal impact.

**Attachment(s)** Agreement between the Oakland Unified School District and and NFL Productions LLC and NFL Enterprises LLC.

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**OAKLAND UNIFIED  
SCHOOL DISTRICT**  
Community Schools, Thriving Students

## **LEGAL AGREEMENT**

This Legal Agreement (“Agreement”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD”) and NFL Productions LLC and NFL Enterprises LLC (both, “NFL,” together with OUSD, “PARTIES”).

The PARTIES hereby agree as follows:

1. **Term.**
  - a. This Agreement shall start on the below date (“Start Date”):  
**September 30, 2020**
  - b. The work shall be completed no later than the below date (“End Date”):  
**October 1, 2020**
  
2. **Activities.** NFL may use the following facilities at Oakland Technical High School: football field and associated facilities; two restrooms as determined by OUSD, two classroom rooms as determined by OUSD, sufficient electrical outlets, and additional facilities as approved in writing by OUSD (collectively, “Premises”). NFL may conduct a site walk on September 30, 2020 with staff from OUSD. NFL may use the Premises on October 1, 2020 to film an episode of “Peyton's Place” with Marshawn Lynch. OUSD will provide the necessary security and janitorial services connected to these Activities.

In light of the COVID-19 pandemic, NFL will immediately communicate to OUSD if crowds, bystanders, or other unsafe behavior by members of the public develop prior to or during filming. If such crowds, bystanders, or other unsafe behavior by members of the public does develop, OUSD—at its exclusive discretion—by deem it necessary to stop filming and reschedule on an alternate date or cancel entirely the filming; OUSD shall not bear all of the costs and financial implications

of such rescheduling or cancellation.

3. **Location Release.** OUSD hereby grant NFL and each of their parents, subsidiaries, affiliates, successors, licensees and assigns (collectively, with the NFL, the “Authorized Users”) permission to utilize the Premises, as defined in Paragraph 2, and for clarity, inclusive of any marks and logos present, for the purpose of filming, photographing, and/or other recording of the Premises and for inclusion in one or more audiovisual works (“Works”) in all media, worldwide, in perpetuity, without any limitations or restrictions.

The NFL shall have the right to film, photograph and/or otherwise record in and around the Premises for one (1) day, October 1, 2020. The NFL agrees to leave the Premises in as good order and condition as when received by it, reasonable wear and tear and use excepted.

OUSD acknowledges that any broadcast identification of the Premises included in any Works shall not exceed that which is reasonably related to program content.

OUSD will not assert or maintain against any Authorized User any claim of any kind or nature whatsoever, including, but not limited to, those based upon invasion of privacy or other civil rights defamation, libel or slander, in connection with the reasonable exercise of the permission or rights herein granted.

4. **Equipment and Materials.** NFL shall provide all equipment, materials, and supplies necessary for the performance of this Agreement.
5. **Termination.**
  - a. Due to COVID-19. Notwithstanding Paragraph 11 (Coronavirus/ COVID-19) or any other language of this Agreement, if a shelter-in-place (or similar) order due to COVID-19 is issued or is in effect during the term of this Agreement that would prohibit or limit, at the sole discretion of OUSD, the ability of NFL to perform the Activities, OUSD may terminate this Agreement immediately upon written notice to NFL. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD

Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or seven (7) days after the notice was provided, whichever is later.

- b. For Cause. Either PARTY may terminate this Agreement by giving written notice of its intention to terminate for cause to the other PARTY. Written notice shall contain the reasons for such intention to terminate. Cause shall include (i) material violation of this Agreement or (ii) if either PARTY is adjudged bankrupt, makes a general assignment for the benefit of creditors, or a receiver is appointed on account of its insolvency. Upon approval by OUSD legal counsel, the OUSD Superintendent or an OUSD Chief or Deputy may issue the termination notice without approval by the OUSD Governing Board, in which case this Agreement would terminate upon ratification of the termination by the OUSD Governing Board or three (3) days after the notice was provided, whichever is later, unless the condition or violation ceases or satisfactory arrangements for the correction are made.

6. **Legal Notices.** All legal notices provided for under this Agreement shall be sent via email to the email address set forth below and shall be either (i) personally delivered during normal business hours or (ii) sent by U.S. Mail (certified, return receipt requested) with postage prepaid to the other PARTY at the address set forth below.

### **OUSD**

Name: Joshua R. Daniels  
Site/Dept: Office of General Counsel  
Address: 1000 Broadway, Suite 300  
City, ST Zip: Oakland, CA 94607  
Phone: 510-879-8535  
Email: [ousdlegal@ousd.org](mailto:ousdlegal@ousd.org)

### **NFL**

Name: Claudio Kuhn

Address: One Sabol Way  
City, ST Zip: Mount Laurel, NJ 08054  
Phone: 215-668-3001  
Email: Claudio.Kuhn@nfl.com

Notice shall be effective when received if personally served or emailed or, if mailed, three days after mailing. Either PARTY must give written notice of a change of mailing address or email.

**7. Qualifications and Training.**

- a. NFL represents and warrants that NFL has the qualifications and ability to perform the Activities in a professional manner, without the advice, control or supervision of OUSD. NFL will performed the Activities in accordance with generally and currently accepted principles and practices of its profession for Activities to California school districts and in accordance with applicable law, code, rule, regulation, and/or ordinance. All NFL employees and agents shall have sufficient skill and experience to perform the work assigned to them.
- b. NFL represents and warrants that its employees and agents are specially trained, experienced, competent and fully licensed to provide the Activities identified in this Agreement in conformity with the laws and regulations of the State of California, the United States of America, and all local laws, ordinances and/or regulations, as they may apply, if NFL was selected, at least in part, on such representations and warrants.

**8. Certificates/Permits/Licenses/Registration.** NFL's employees or agents shall secure and maintain in force such certificates, permits, licenses and registration as are required by law in connection with the furnishing of Activities pursuant to this Agreement.

**9. Insurance.**

- a. Commercial General Liability Insurance. Unless specifically waived by OUSD as noted in Paragraph 2, NFL shall maintain Commercial General Liability Insurance, including automobile coverage, with limits of at least one million dollars (\$1,000,000) per occurrence for corporal punishment, sexual misconduct,

harassment, bodily injury and property damage. The coverage shall be primary as to OUSD and shall name OUSD as an additional insured with the additional insured endorsement provided to OUSD within 15 days of effective date of this Agreement (and within 15 days of each new policy year thereafter during the term of this Agreement). Evidence of insurance shall be attached to this Agreement or otherwise provided to OUSD upon request. Endorsement of OUSD as an additional insured shall not affect OUSD's rights to any claim, demand, suit or judgment made, brought or recovered against NFL. The policy shall protect NFL and OUSD in the same manner as though each were separately issued. Nothing in said policy shall operate to increase the Insurer's liability as set forth in the policy beyond the amount or amounts shown or to which the Insurer would have been liable if only one interest were named as an insured.

- b. **Workers' Compensation Insurance.** NFL shall procure and maintain at all times during the performance of such work, Workers' Compensation Insurance in conformance with the laws of the State of California (including, but not limited to, Labor Code section 3700) and Federal laws when applicable. Employers' Liability Insurance shall not be less than one million dollars (\$1,000,000) per accident or disease.

**10. Incident/Accident/Mandated Reporting.**

- a. NFL shall notify OUSD, via email pursuant to Paragraph 6 (Legal Notices), within twelve (12) hours of learning of any significant accident or incident. Examples of a significant accident or incident include, without limitation, an accident or incident that involves law enforcement, possible or alleged criminal activity, or possible or actual exposure to a communicable disease such as COVID-19. NFL shall properly submit required accident or incident reports within one business day pursuant to the procedures specified by OUSD. NFL shall bear all costs of compliance with this Paragraph.
- b. To the extent that an employee, subcontractor, agent, or representative of NFL is included on the list of mandated reporters found in Penal Code section 11165.7, NFL agrees to inform the individual, in writing that they are a mandated reporter, and describing the associated obligations to report suspected

cases of abuse and neglect pursuant to Penal Code section 11166.5.

11. **Coronavirus/COVID-19.**

- a. Through its execution of this Agreement, NFL declares that it is able to meet its obligations and perform the Activities required pursuant to this Agreement in accordance with any shelter-in-place (or similar) order or curfew (or similar) order (“Orders”) issued by local or state authorities and with any social distancing/hygiene (or similar) requirements.
- b. Consistent with the requirements of Paragraph 10 (Incident/Accident/Mandated Reporting), NFL agrees to notify OUSD, via email pursuant to Paragraph 6 (Legal Notices), within twelve (12) hours if NFL or any employee, subcontractor, agent, or representative of NFL tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to NFL possible COVID-19 exposure.
- c. NFL agrees to immediately adhere to and follow any OUSD directives regards health and safety protocols including, but not limited to, providing OUSD with information regarding possible exposure of OUSD employees to NFL or any employee, subcontractor, agent, or representative of NFL and information necessary to perform contact tracing.
- d. NFL shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.

12. **Assignment.** The obligations of NFL under this Agreement shall not be assigned by NFL without the express prior written consent of OUSD and any assignment without the express prior written consent of OUSD shall be null and void.

13. **Non-Discrimination.** It is the policy of OUSD that in connection with all work performed under Contracts there be no discrimination because of race, color, ancestry, national origin, religious creed, physical disability, medical condition, marital status, sexual orientation, gender, or age; therefore, NFL agrees to comply with applicable Federal and California laws including, but not limited to, the California Fair Employment and Housing Act beginning with Government Code section 12900 and Labor Code section 1735 and OUSD policy. In addition, NFL agrees to require like compliance by all its subcontractor



(s). NFL shall not engage in unlawful discrimination in employment on the basis of actual or perceived; race, color, national origin, ancestry, religion, age, marital status, pregnancy, physical or mental disability, medical condition, veteran status, gender, sex, sexual orientation, or other legally protected class.

14. **Drug-Free/Smoke Free Policy.** No drugs, alcohol, and/or smoking are allowed at any time in any buildings and/or grounds on OUSD property. No students, staff, visitors, NFLS, or subcontractors are to use controlled substances, alcohol or tobacco on these sites.
15. **Waiver.** No delay or omission by either PARTY in exercising any right under this Agreement shall operate as a waiver of that or any other right or prevent a similar subsequent act from constituting a violation of this Agreement.
16. **No Rights in Third Parties.** This Agreement does not create any rights in, or inure to the benefit of, any third party except as expressly provided herein.
17. **Conflict of Interest.**
  - a. NFL shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. NFL shall not hire any officer or employee of OUSD to perform any service by this Agreement without the prior approval of OUSD Human Resources.
  - b. NFL affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between NFL's family, business or financial interest and the Activities provided under this Agreement, and in the event of change in either private interest or Activities under this Agreement, any question regarding possible conflict of interest which may arise as a result of such change will be brought to OUSD's attention in writing.
  - c. Through its execution of this Agreement, NFL acknowledges that it is familiar with the provisions of section 1090 *et seq.* and section 87100 *et seq.* of the Government Code, and certifies that it does not know of any facts which constitute a violation of said provisions. In the event NFL receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, NFL agrees it shall notify



OUSD in writing.

18. **Limitation of OUSD Liability.** OUSD shall have no financial obligations under this Agreement other than as provided in this Agreement. Notwithstanding any other provision of this Agreement, in no event shall OUSD be liable, regardless of whether any claim is based on contract or tort, for any special, consequential, indirect or incidental damages, including, but not limited to, lost profits or revenue, arising out of, or in connection with, this Agreement for the Activities performed in connection with this Agreement.
19. **Indemnification.** To the furthest extent permitted by California law, NFL shall indemnify, defend and hold harmless OUSD, its Governing Board, agents, representatives, officers, consultants, employees, trustees, and volunteers (“OUSD Indemnified Parties”) from any and all claims or losses accruing or resulting from injury, damage, or death of any person or entity arising out of NFL’s performance of this Agreement. NFL also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier, NFL, or subcontractor furnishing work, Activities, or materials to NFL arising out of the performance of this Agreement. NFL shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at NFL’s own expense, including attorneys’ fees and costs, and OUSD shall have the right to accept or reject any legal representation that NFL proposes to defend OUSD Indemnified Parties.
20. **Litigation.** This Agreement shall be deemed to be performed in Oakland, California and is governed by the laws of the State of California, but without resort to California’s principles and laws regarding conflict of laws. The Alameda County Superior Court shall have jurisdiction over any litigation initiated to enforce or interpret this Agreement.
21. **Incorporation of Recitals and Exhibits.** Any recitals and exhibits attached to this Agreement are incorporated herein by reference. NFL agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Professional Activities Contract, the terms and provisions of this Professional Activities Contract shall govern.

22. **Integration/Entire Agreement of Parties.** This Agreement constitutes the entire agreement between the PARTIES and supersedes all prior discussions, negotiations, and agreements, whether oral or written. This Agreement may be amended or modified only by a written instrument executed by both PARTIES.
23. **Severability.** If any term, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect, and shall not be affected, impaired or invalidated in any way.
24. **Provisions Required By Law Deemed Inserted.** Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and this Agreement shall be read and enforced as though it were included therein.
25. **Captions and Interpretations.** Section and paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement. No provision of this Agreement shall be interpreted for or against a PARTY because that PARTY or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the PARTIES.
26. **Calculation of Time.** For the purposes of this Agreement, “days” refers to calendar days unless otherwise specified and “hours” refers to hours regardless of whether it is a work day, weekend, or holiday.
27. **Counterparts and Electronic Signature.** This Agreement, and all amendments, addenda, and supplements to this Agreement, may be executed in one or more counterparts, all of which shall constitute one and the same amendment. Any counterpart may be executed and delivered by facsimile or other electronic signature (including portable document format) by either PARTY and, notwithstanding any statute or regulations to the contrary (including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom), the counterpart shall legally bind the signing PARTY and the receiving PARTY may rely on the receipt of such document so executed and delivered electronically or by facsimile as if the original had been

received. Through its execution of this Agreement, each PARTY waives the requirements and constraints on electronic signatures found in statute and regulations including, but not limited to, Government Code section 16.5 and the regulations promulgated therefrom.

28. **Agreement Publicly Posted.** This Agreement, its contents, and all incorporated documents are public documents and will be made available by OUSD to the public online via the Internet.
  
29. **Signature Authority.**
  - a. Each PARTY has the full power and authority to enter into and perform this Agreement, and the person(s) signing this Agreement on behalf of each PARTY has been given the proper authority and empowered to enter into this Agreement.
  - b. Notwithstanding subparagraph (a), only the Superintendent, Chiefs, Deputy Chiefs, and the General Counsel has authority to sign contracts for OUSD and only under limited circumstances, which required ratification by the OUSD Governing Board. NFL agrees not to accept the signature of another other OUSD employee as having the proper authority and empowered to enter into this Agreement or as legally binding in any way.

REST OF PAGE IS INTENTIONALLY LEFT BLACK

IN WITNESS WHEREOF, the PARTIES hereto agree and execute this Agreement and to be bound by its terms and conditions:

**NFL**

Jared Hilbert  
Name: Click or tap here to enter text. Signature: Jared Hilbert  
Project Manager  
Position: Click or tap here to enter text. Date: 9/24/20

**OUSD**

Name: Joshua R. Daniels Signature: Joshua R. Daniels  
Position: General Counsel Date: 9/28/20

- Board President
- Superintendent
- Chief/Deputy Chief

Name: Kyla Johnson-Trammell Signature: Kyla Johnson-Trammell  
Position: Secretary, Board of Education Date: 10/15/2020

Approved as to form on September 28, 2020

Joshua R. Daniels