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Enactment Date	6/26/13



Memo

To Board of Education

From Jacqueline Minor, General Counsel 

Board Meeting Date June 26, 2013

Subject **AGREEMENT WITH OAL AND PLAYON! SPORTS**

Action Requested Approval of Agreement Between OAL and PLAYON! Sports

Background OAL, a division of California Interscholastic Federation seeks to enter into an agreement with PLAYON Sports to videotape and distribute certain OAL sponsored athletic events.

Discussion The term of the Agreement is from the date approved by the Board of Education through July 31, 2017. Under the Agreement, PlayON! Sports will videotape and distribute. KDOL retains the right to broadcast, stream and rebroadcast events. PlayOn! will pay OAL a modest fee. The District retains the right to provide DVDs of games to students who may need such for college admission purposes.

Recommendation Approval of Between OAL and PLAYON! Sports

Fiscal Impact Funds Due the District: Between \$3,350 and \$15,000 per year during the term of the Agreement

Attachments Agreement Between OAL and PLAYON! Sports

**CALIFORNIA INTERSCHOLASTIC FEDERATION-OAKLAND SECTION
EVENT LICENSE AGREEMENT
With
2080 MEDIA D/B/A PLAYON! SPORTS**

This Agreement (hereinafter referred to as "**Agreement**") is entered into by and between the **California Interscholastic Federation-Oakland Section** (hereinafter referred to as "**CIF-OS**"), and **2080 Media d/b/a PlayON! Sports** (hereinafter referred to as "**PlayON**") hereinafter (PlayON and CIF-OS, shall each be referred to as "Party" and collectively as, the "Parties").

RECITALS

WHEREAS, PlayON and the CIF-OS desire to develop a strategic partnership through a multi-year, multi-platform, production and distribution strategy for CIF-OS post-season high school events for all CIF-OS sanctioned sports and activities ("CIF-OS Network Partnership");

WHEREAS, the CIF sponsors interscholastic high school athletic events within the geographical boundaries of the CIF-OS;

WHEREAS, PlayON desires to increase its involvement in the high school sports media market;

WHEREAS, the CIF-OS and PlayON share a common interest in the development, maintenance and enhancement of vigorous, healthy and fit youth, families and communities in California;

WHEREAS, CIF-OS desires to give PlayON certain broadcast rights to CIF-OS events (as defined below) in accordance with the terms and conditions of this Agreement;

WHEREAS, to obtain the above described purposes and goals both PlayON and the CIF-OS desire to form a cooperative multi-media relationship between their respective organizations as more specifically set forth below.

NOW THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and other good and valuable consideration, it is agreed by the Parties hereto as follows:

I. DEFINITIONS

- A. "Events" refers to those interscholastic athletic events, over which the CIF-OS exercises direct management and control, excluding pre-season, regular season, league play-off contests and activities.
- B. "Section" refers to the geographical description as identified in the CIF- OS Constitution and Bylaws.
- C. "Market Area" refers to all or part of the counties within the geographical boundaries of the CIF-OS, as identified in the CIF-OS Constitution and Bylaws.
- D. "CIF-OS Marks" refers to the trademarks and/or service marks listed in Exhibit "B," attached hereto and which is hereby incorporated into this Agreement.

II. TERM

Term. The term of this Agreement shall begin on the date of execution (the "Effective Date") through July 31, 2017.

III. EXCLUSIVE NEGOTIATION

PlayON shall have the exclusive right to negotiate with the CIF-OS to extend the term of this Agreement or for a new contract for a period of 90 (days) (the "Negotiation Period"), beginning November 1, 2016. If no Agreement is reached between the Parties by the end of the exclusive Negotiation Period, the CIF-OS shall be free to negotiate with any other entity/party regarding the rights contained in this Agreement.

IV. PlayON RIGHTS and OBLIGATIONS

A. Production

Except as provided herein, during the term of this Agreement, PlayON shall be granted the exclusive video production and distribution rights as follows:

1. All CIF-OS playoff and CIF-OS Events for all sponsored sports and activities both boys and girls.
2. Event selections must be made a minimum of 48-hours prior to the event competition dates as long as a 48-hour window exists between the upcoming event and the prior event date. Section championship event selections must be made a minimum of 30 days prior to the event competition.

3. All CIF-OS video Events produced by a third party where CIF-OS owns or controls the copyright.
4. PlayON will retain the exclusive rights of live, tape-delayed, and archival video production for distribution across all forms of technology and media for all CIF-OS Events either produced by PlayON or acquired under the term of this Agreement. The forms of distribution include, but are not limited to, live and tape-delayed linear television productions, live or tape-delayed digital productions including all forms of video web streaming, video-on-demand ("VOD"), mobile delivery, and DVD (or other physical media) sales.
5. PlayON will be granted the right to market the CIF-OS Network Partnership and use the CIF-OS trademark, logo, and name to promote these efforts.

B. Distribution

1. PlayON agrees to design, develop, and manage the CIF-OS brand direct to consumer website ("Portal") designated as CIFOAKLAND.TV (or other agreed-to and available URL) as approved by CIF-OS. The primary purpose of the portal is to provide consumer access to professionally produce live, on-demand, and professionally produced archival CIF-OS events, and other internal CIF-OS produced digital content. CIF-OS will retain all intellectual property rights to the URL CIFOAKLAND.TV, or other designated name of the portal.
2. PlayON agrees to engage in and use commercially reasonable efforts to establish contractual relationships with potential third party distribution partners ("Video Distribution Agreement") including, but not limited to, over-the-air networks, cable networks, satellite providers, broadband providers, telecommunication networks, and by any future-developed means of transmitting both analog and digital video signals. The CIF-OS reserves the right to review, modify, or reject the terms of any distribution agreement that do not support either the mission of the CIF-OS as chartered, or the mutual interests of the CIF-OS as chartered, or the mutual interests of the CIF-OS Network Partnership.
3. All CIF-OS Events that are either produced or acquired by PlayON under the terms of this Agreement, at a minimum, will be distributed through the CIFOAKLAND.TV Portal. It is the intent of this Agreement that all CIF-OS Events will be available via live streaming through the portal, when possible. Certain distribution agreements, however, may require a window of

exclusivity for some of the CIF-OS Events to appear on television first, but all content will be available in the CIF-OS portal after any exclusivity window expires. CIF-OS retains rebroadcast right.

4. As of the effective date of this Agreement, PlayON, or its agents, shall maintain the exclusive sales and distribution rights for CIF-OS Event DVDs produced under this Agreement and all CIF-OS archived content for which the CIF-OS owns or controls the copyright.

C. Production and Content

1. PlayON shall bear all costs of video production for all CIF-OS Events produced during the term of this Agreement. PlayON agrees to produce a minimum number of CIF-OS Events as outlined in Exhibit A.
2. PlayON will produce all events to an approved CIF-OS standard of video quality, production graphics, and audio effects, performed in a manner consistent with the philosophy and integrity of the CIF-OS as well as in compliance with any and all provisions of the CIF-OS Handbook, Administrative Procedures, Guidelines, and Policies.
3. PlayON reserves the right to produce events directly or to authorize qualified affiliate production partners for the production of any CIF-OS Event under the same standards as set forth in Sections C.1 and 2 above.
4. PlayON agrees to make available, to the CIF-OS, the School Digital Broadcast Program. The School Broadcast Program allows individual high schools to self-produce, and distribute, their regular season sports events and other school related content, on the CIF-OS branded Portal. This Program will be endorsed and supported by the CIF-OS. Specific terms of this program will be outlined in a separate agreement.
5. The CIF-OS agrees to provide PlayON with preferred production locations at all venues, deemed necessary to provide the highest level of production quality, where possible and with no cost to CIF-OS.
6. The CIF-OS agrees to ensure best efforts to provide a dedicated internet circuit accessible to PlayON, at no cost, with a minimum of a 1.5 Mbps upstream per each individually offered stream.

V. TERM Third Party Producers and Rights

1. For any CIF-OS Event that PlayON is the rights holder and declines to produce ("Declined Event"), CIF-OS will retain the rights to contract with reputable media entities ("Third Party ") for the production and distribution of that declined CIF-OS Event. [deleted subparagraphs 2 and 3]

VI. Revenue Sharing

In accordance with this Agreement, PlayON agrees to pay the CIF-OS as follows:

A. Rights Fe

Contract Signing to July 2013	\$3,350
August 1, 2013 to July 31, 2014	\$7,000
August 1, 2014 to July 31, 2015	\$9,000
August 1, 2015 to July 31, 2016	\$12,000
<u>August 1, 2016 to July 31, 2017</u>	<u>\$15,000</u>

B. DVD Sales

- a. 100 percent of all gross DVD sales revenue shall remain with PlayON except as provided in Section C. (b).
- b. Once a specific DVD title reaches 100 units or more in sales, PlayON will then share 50 percent of the gross sales revenue with CIF-SFS on all sales above 100 units of that particular title.
- c. PlayON will produce and offer for sale a DVD of all events produced by the Network Partnership.
- d. CIF-OS retains the right to provide a DVD of a specific game to a student who qualifies for free and reduced lunch for purposes of applying to two and four year colleges and universities.

C. Payments

Annual payment will be made no later the July 31st of the current year.

VII. Indemnification

Indemnification by CIF-OS. CIF-OS shall defend, indemnify and hold harmless PlayON and its parent company and their respective officers, directors, and employees from and against, without limitation, any and all claims, costs, liabilities, obligations, judgments, fines, penalties, expenses or damages (including reasonable attorneys' fees and court costs) arising from or related to:

- (i) the CIF-OS Marks; and/or
- (ii) any breach by CIF-OS of any of CIF-OS's representations, obligations or warranties set forth in this Agreement.

Indemnification by PlayON.

PlayON shall defend, indemnify and hold harmless CIF-OS and its respective governing board, officers, directors, and employees from and against, without limitation, any and all claims, costs, liabilities, obligations, judgments, fines, penalties, expenses, or damages (including reasonable attorneys' fees and court costs) arising from or related to: (i) the CIF-OS Marks; and/or (ii) any breach by PlayON of any of PlayON's representations, obligations or warranties set forth in this Agreement.

VIII. Insurance

PlayON shall maintain in force at all times during the Term of this Agreement and at its sole cost and expense insurance including, but not limited to, policies of property, advertisers' liability and commercial general liability insurance, having coverage with limits not less than One Million Dollars (\$1,000,000.00), each. All such policies of insurance shall be primary and non-contributory, and shall include contractual liability coverage, and shall be written with a financially responsible carrier, licensed to do business in the State of California. PlayON shall submit to CIF-OS a Certificate of Insurance effective April 1, 2013, and on each 1 year anniversary date thereafter, naming CIF-OS as an Additional Insured. CIF-OS's failure to request and/or obtain a Certificate of Insurance from PlayON shall not constitute a waiver of its right to enforce this provision.

IX. Binding Agreement

This Agreement, once executed, shall constitute a binding and enforceable agreement between the Parties. In addition, all previous agreements, verbal or otherwise, or letters of understanding and intent shall be deemed null and void. CIF-OS grants PlayON the right to pursue all legal and equitable remedies against any third party in connection with an alleged or actual violation of the rights granted to it by the CIF-OS under this Agreement. Neither party shall assign this Agreement to a

third party without the prior consent of the other party.

XI. EXCLUSIVE ASSOCIATION & TRADEMARKS LICENSE

A. License

CIF-OS Marks. CIF-OS hereby grants to PlayON, during the Term, a nonexclusive, limited, royalty free, worldwide right and license to use the CIF-OS Marks trademarks and logos solely for the purposes set forth in this Agreement, subject to the obligations set forth in Section XI below, and in compliance with CIF-OS's current trademark and logo usage guidelines as disclosed to PlayON upon execution of this Agreement or as may be updated from time to time during the Term. CIF-OS reserves the right to require changes in any of PlayON uses of the CIF-OS Marks, and PlayON agrees to comply with CIF-OS's requirements within five (5) days of receiving written notice from CIF-OS. PlayON acknowledges that nothing contained in this Agreement shall be construed to vest in PlayON any right, title or interest in or to the CIF-OS Marks or in the goodwill now or hereafter associated therewith. Any and all goodwill associated with or identified by the CIF-OS Marks shall inure directly and exclusively to the benefit of CIF-OS. PlayON shall not take any action that could be detrimental to the goodwill associated with the CIF-OS Marks or with CIF-OS. Upon expiration or earlier termination of this Agreement, PlayON will immediately cease all use of the CIF-OS Marks. All rights not expressly granted herein are reserved to CIF-OS.

PlayON Marks. PlayON hereby grants to CIF-OS, during the Term, a non-exclusive, limited, royalty free, worldwide right and license to use the PlayON name, trademarks and logos ("PlayON"), for the purposes set forth in this Agreement, subject to the obligations set forth in Section XIII below, and in compliance with PlayON's current trademark and logo usage guidelines as disclosed to Service Provider upon execution of this Agreement or as may be updated from time to time during the Term. PlayON reserves the right to require changes in any of CIF-OS uses of the PlayON, and CIF-OS agrees to comply with PlayON's requirements within five (5) days of receiving written notice from PlayON. CIF-OS acknowledges that nothing contained in this Agreement shall be construed to vest in CIF-OS any right, title or interest in or to the PlayON or in the goodwill now or hereafter associated therewith. Any and all goodwill associated with or identified by the PlayON Marks shall inure directly and exclusively to the benefit of PlayON. CIF-OS shall not take any action that could be detrimental to the goodwill associated with the PlayON or with PlayON. Upon expiration or earlier termination of this Agreement, CIF-OS will immediately cease all use of the PlayON. All rights not expressly granted herein are reserved to PlayON.

XI. ADDITIONAL PROVISIONS

- A. Mutual Rights of Approval. Prior to production or distribution in accordance with this Agreement, each Party shall have the right to reasonably approve and contribute to the content of any written materials, public address announcements, video broadcast or other information utilizing the name, trademark or logo of the other Party to be developed or publicized or otherwise disseminated pursuant to this Agreement. Any objections or corrections by a Party must be communicated within five days after the materials have been received or any such objections or corrections will be deemed waived. All objections will be mutually discussed and reasonable efforts will be made by both Parties to reach a prompt and satisfactory agreement. In no event may materials be used which, in the opinion of the CIF-OS are inconsistent with the overall image of the CIF-OS, or will jeopardize any of the CIF-OS's proprietary rights. In no event may materials be used which, in the opinion of PlayON are inconsistent with the overall image of PlayON, or will jeopardize any of PlayON proprietary rights.
- B. Restrictions. Neither Party shall utilize the relationship provided herein, or their name, trademark or logo in any way which violates federal, state, local laws or ordinances, or to advertise or otherwise promote the use of tobacco products, alcoholic beverages or performance enhancing drugs.
- C. Use of Marks. The license to use a Party's mark, as granted in Section X herein, shall inure to the benefit of such Party and the provisions of this Section X do not convey any right, title or ownership interest in the trademarks of one Party to the other. Neither Party will utilize the name of the other Party in connection with any merchandising or marketing program not contemplated or expressly recognized in this Agreement, nor permit the use of the other Party's name with any product, service, trade name, trademark or logo in any manner other than as contemplated by this Agreement, without the prior written consent of the other Party.

XII. BREACH AND TERMINATION

- A. Breach. Either party may terminate this Agreement if the other party is in material breach of the Agreement and fails to cure such breach at within sixty (60) days of its receipt of written notice from the terminating party detailing the breach.
- B. Mediation. If a dispute arises out of or relates to this Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the Parties agree first to try in good faith to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Rules before resorting to arbitration, litigation, or some other dispute resolution procedure. Each Party agrees to bear its own costs at mediation.

- C. Termination of Rights. Upon the expiration or early termination of this Agreement all rights granted pursuant to this Agreement shall immediately cease. After such expiration or early termination neither Party shall make any statement or reference regarding any ongoing relationship between the Parties.

XIII. WARRANTIES, INDEMNIFICATION, INSURANCE AND LIMITATION OF LIABILITY

A. Warranties

1. CIF-OS Warranties. CIF-OS represents and warrants that it has title to and right to license the CIF-OS Marks and that said CIF-OS Marks are not subject to any rights of any third parties whose consent is required to the use thereof by PlayON. CIF-OS warrants that it has full power and authority to enter into and perform its commitments under this Agreement and that the execution, delivery, and performance of this Agreement constitutes the legal, valid, and binding obligations of the CIF-OS, enforceable against it in accordance with these terms. The CIF-OS warrants that the exercise of any right herein granted to PlayON will not violate or infringe upon the trademark, trade name, copyright, patent, literary, dramatic, music, artistic, personal, private, contract, civil or property right, right of privacy or publicity, or any other right of any person or entity and/or constitute libel, defamation or slander of any person or entity.
2. PlayON Warranties. PlayON warrants that it has title to and right to license the PlayON Marks and that said PlayON Marks are not subject to any rights of any third parties whose consent is required to the use thereof by the CIF-OS. PlayON warrants that it has full power and authority to enter into and perform its commitments under this Agreement and that the execution, delivery and performance of this Agreement constitutes the legal, valid and binding obligations of PlayON, enforceable against it in accordance with these terms. PlayON warrants that the exercise of any right herein granted to CIF-OS will not violate or infringe upon the trademark, trade name, copyright, patent, literary, dramatic, music, artistic, personal, private, contract, civil or property right, right of privacy or publicity, or any other right of any person or entity and/or constitute libel, defamation or slander of any person or entity.

- B. Limitation of Liability. Except for the indemnification obligations (set forth in Sections VIII and IX herein), neither Party will be liable to the other Party for any punitive, incidental, indirect, special, reliance or consequential damages including lost business, revenue, or anticipated profits, whether based on breach of contract, tort (including without limitation negligence), or otherwise, and whether or not either Party was

advised of the possibility of such loss or damage. In addition to the foregoing, except for the indemnification obligations (set forth in Sections VIII and IX herein), the Parties shall not be liable to either Party its employees, contractors, agents or invitees for any injury to or death of either Parties employees, contractors, agents or invitees, whether based on tort (including without limitation negligence), or otherwise, unless prohibited by law, as currently interpreted and enforced.

XIV. GENERAL TERMS AND CONDITIONS

Force Majeure. Neither Party hereto shall be liable for its failure to perform hereunder due to occurrences beyond its control including, but not limited to, war, riots or civil unrest, strikes, labor stoppages or other labor actions, acts of God, fire or other casualty, accidents or act of sabotage, or acts of governmental agencies.

- A. Notices. Whenever under this Agreement provision is made for any payment, demand, notice or declaration of any kind, or where it is deemed desirable or necessary by either Party to give it shall be in writing and served either personally, delivered to Federal Express or another reliable courier service which provides written evidence of delivery, or sent by United States mail, certified, return receipt requested, postage and any other fees prepaid, addressed to the Party(ies) at the addresses set forth below or at such address as either Party may advise the other in writing from time to time.

To PlayON:
Tim Eichorst, President, PlayOn!
Sports 501 Moravian Valley Road
Waunakee, WI 53597
(608) 849-3200 ext 223
tim.eichorst@playonsports.com

To the CIF-OS:
Russell White, Commissioner
900 High Street Oakland, CA 94601-4405 Phone:
(510) 434-3341 • Fax: (510) 434-3351
Email: russell.white@ousd.k12.ca.us

Notices given hereunder shall be deemed to have been given on the date of personal delivery or the date of the certified mail receipt signed by the recipient.

- B. Prior Agreements Superseded. This Agreement contains the entire agreement between the Parties and supersedes all prior understanding between them with respect to the subject matter of this Agreement. There are no promises, terms, conditions, or obligations, oral or written, between or among the Parties relating to the subject matter of this Agreement that

is not fully expressed in this Agreement.


- C. **Form and Construction.** The headings used in this Agreement are for convenience of reference only and do not constitute substantive matter to be considered in construing the terms of the Agreement. As used in this Agreement the masculine gender shall include the feminine and the singular form of words shall include the plural, or vice versa, as necessary in order that this Agreement may be interpreted so as to conform with the subject matter actually existing.
- D. **Binding Effect.** This Agreement is binding on and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.
- E. **Severability.** In the event that any portion of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such provision shall be deemed void and the remainder of this Agreement shall continue in full force and effect.
- F. **Counterparts.** This Agreement may be executed in any number of counterparts and each counterpart shall be deemed an original and all of which together shall constitute one and the same Agreement. A faxed copy of the executed signature page shall be sufficient to cause the terms of this Agreement to become fully operative.
- G. **Amendments.** This Agreement may be modified only by a written instrument executed by all of the Parties.
- H. **No Partnership.** Nothing contained in this Agreement shall be deemed or construed by the Parties or by any third party to create the relationship of principal and agent, partnership or joint venture, employer-employee or to create any association between the CIF-OS and PlayON except as described herein. Neither Party shall have the power to obligate or bind the other Party in any manner whatsoever.
- I. **No Third Party Beneficiary.** Nothing contained in this Agreement, whether express or implied, is intended to confer any right or remedy upon any person or entity other than the Parties to this Agreement and their permitted successors and assigns; nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third person or any Party to this Agreement; and no provision shall give any third party any right to subrogation or action over or against any Party to this Agreement.
- J. **Assignment.** Neither Party may assign or transfer this Agreement, in whole or in part, or any rights, responsibilities, obligations, or licenses hereunder, without the prior, written consent of the other Party.

- K. Waiver. A waiver or indulgence of any breach of any term, condition, covenant or warranty contained in this Agreement shall not be deemed or construed as a waiver of other provisions, affect the validity of the remainder of this Agreement or constitute a waiver of any preceding or succeeding breach of the same or any other provision hereof.
- L. Cumulative Remedies. No remedy or election hereunder shall be deemed exclusive, but shall, wherever possible, be cumulative with all other remedies at law or in equity
- M. Compliance with Laws. Each Party will comply with any and all applicable local, city, county, state and federal laws, regulations and orders now in effect or which may hereafter be enacted pertaining to or affecting the subject matter of this Agreement.
- N. Corporate Authority. The Parties to this Agreement represent that the signatories herein below are fully authorized and empowered by valid corporate resolution to execute this Agreement and bind the Parties on whose behalf they sign same.
- O. No Publicity. Except as provided for herein, each Party agrees that it will not, without the prior written consent of the other Party in each instance: (a) use in advertising, publicity or otherwise the other Party's domain name, any trademark, trade name, symbol or any abbreviation or contraction thereof owned by or referring to the other Party; (b) represent, directly or indirectly, that any product or service offered by each Party has been approved by or endorsed by the other Party; or (c) issue a press release or make any public statement in connection with this Agreement.
- P. Governing Law. This Agreement will be governed by and interpreted in accordance with the laws of the State of California. The Parties hereby agree to the exclusive jurisdiction and venue of the courts of the State of California.
- Q. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: The Oakland Unified School District on behalf of CIT-OS certifies to the best of its knowledge and belief, that it and its principals: Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency according to Federal Acquisition Regulation Subpart 9.4, and by signing this contract, certifies that this PlayON does not appear on the Excluded Parties List. (<https://www.epls.gov/epls/search.do>)

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date indicated above.

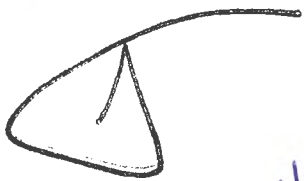
PlayON

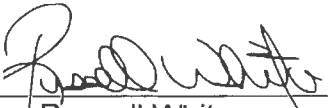
DATED 5-20-13


By: 
Name: Tim Eichorst
Title: President, PlayOn! Sports

**CALIFORNIA INTERSCHOLASTIC FEDERATION—
OAKLAND SECTION**

DATED: 5/20/2013



By: 
Name: Russell White
Title: Commissioner CIF-OS

 4/27/13
David Kakishiba
President of the Board of Education

Secretary, Board of Education

File ID Number: 13-1118
Introduction Date: 6/26/13
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By: EA

Approved as to Form

Jacqueline Minor, General Counsel

EXHIBIT A – SPORTS (either live or highlights)

Football
Cross Country
Golf
Tennis
Bowling
Volleyball
Baseball
Basketball
Soccer
Badminton
Track and Field
Wrestling
Cheerleading
Softball
Swimming

EXHIBIT B