

Board Office Use: Legislative File Info.	
File ID Number	20-1830
Introduction Date	10-14-2020
Enactment Number	20-1525
Enactment Date	10/14/2020 er



OAKLAND UNIFIED  
SCHOOL DISTRICT  
Community Schools, Thriving Students

# 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 Bleacher Report, Inc. (“Contractor”) for the latter to use the football field at McClymonds High School (“Premises”) in connection to the “Underrated” Program, on July 24, 2020.

**Discussion** This Agreement allows Contractor to enter, remain on, and occupy the Premises for any recording, filming, taping and/or photographing in connection to the “Underrated” program. The Contractor is also permitted to edit, broadcast and/or transmit such recordings to any degree desired. Contractor is permitted to use without limitation any trademarks, trade names and logos owned or controlled by OUSD. Note that there is a typo with “End Date” - it reads July 23, 2020 when it should read July 24, 2020.

**Fiscal Impact** No fiscal impact.

**Attachment(s)** Agreement between the Oakland Unified School District and Bleacher Report, Inc.

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**OAKLAND UNIFIED  
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## AGREEMENT

This Agreement (“Agreement”) is a legally binding contract entered into between the Oakland Unified School District (“OUSD”) and the below named entity or individual (“PRODUCER,” together with OUSD, “PARTIES”): **Bleacher Report, Inc.**

The PARTIES hereby agree as follows:

1. **Term.**
  - a. This Agreement shall start on the below date (“Start Date”): July 24, 2020.
  - b. The work shall be completed no later than the below date (“End Date”): July 23, 2020
  
2. **Work.** PRODUCER is permitted to use the football field at McClymonds High School (“Property”) in connection the “Underrated” program. OUSD hereby represents and warrants that it is the owner of the Property and has the authority to grant PRODUCER the rights herein granted, and that no one else’s permission is required.
  
3. **Copyright/Trademark/Patent/Ownership.** OUSD hereby grants to PRODUCER and its parent, subsidiary and affiliated entities, and its and their respective employees, directors, officers, agents, assigns and licensees, the right: (1) to enter, remain on and occupy the Property for the Term with personnel and equipment for the purpose of recording, filming, taping and/or photographing in connection with the Project and undertaking related activities; (2) to make audio and video recordings (including without limitation photographs) on and of the Property (including, without limitation, any trademarks, trade names and logos owned or controlled by OUSD); and (3) irrevocably, to edit, broadcast and/or transmit such recordings in all manners, formats and media now known or hereafter devised throughout the universe in perpetuity in such manner and to such extent as PRODUCER may desire, whether or not in connection with the Project. All rights of every kind in such recordings in all manners, formats and media now known or hereafter devised (including without limitation all copyrights therein and all renewals, extensions and restorations of said copyrights) shall be solely owned throughout the universe in perpetuity by PRODUCER. The rights herein granted include without limitation the right to record all structures and signs located on the Property, the right to record any and all activities, conduct, and conditions occurring or existing on the Property, and the right to refer to the

Property by its correct name or any fictitious name. PRODUCER shall not be obligated to produce the Project, to make any actual use of recordings made on or of the Property or to use any name connected with the Property in connection with the Project or any other program. OUSD shall not be entitled to enjoin, restrain or otherwise impair PRODUCER's property or assets or the development, production, exhibition and/or exploitation of the Project or any advertising, publicity or promotion in connection therewith. PRODUCER may transfer and assign this Agreement or all or any of its rights or privileges hereunder to any entity or individual without restriction. This Agreement shall be binding on all of OUSD's successors-in-interest and heirs.

4. **Equipment and Materials.** PRODUCER shall provide all equipment, materials, and supplies necessary for the performance of this Agreement.
5. **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

**PRODUCER**

Name: Silvia Soto-Gleaton  
Address: 10555-C Jefferson Blvd.  
City, ST Zip: Culver City, CA 90232  
Phone: 818-915-3309  
Email: silvias@dgwestinc.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.

6. **Insurance.** Commercial General Liability Insurance. PRODUCER 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 PRODUCER. The policy shall protect PRODUCER 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.

**7. Coronavirus/COVID-19.**

- a. Through its execution of this Agreement, PRODUCER declares that it is able to meet its obligations and perform the Work 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 18 (Incident/Accident/Mandated Reporting), PRODUCER agrees to notify OUSD immediately via email pursuant to Paragraph 12 (Legal Notices) if PRODUCER or any employee, subcontractor, agent, or representative of PRODUCER tests positive for COVID-19, shows or reports symptoms consistent with COVID-19, or reports to PRODUCER possible COVID-19 exposure.
- c. PRODUCER 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 PRODUCER or any employee, subcontractor, agent, or representative of PRODUCER and information necessary to perform contact tracing.
- d. PRODUCER shall bear all costs of compliance with this Paragraph, including but not limited to those imposed by this Agreement.

**8. 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, PRODUCER 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, PRODUCER agrees to require like compliance by all its subcontractor (s). PRODUCER 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.

**9. 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, PRODUCERS,

or subcontractors are to use controlled substances, alcohol or tobacco on these sites.

10. **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.
11. **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.
12. **Conflict of Interest.**
  - a. PRODUCER shall abide by and be subject to all applicable, regulations, statutes, or other laws regarding conflict of interest. PRODUCER 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. PRODUCER affirms to the best of his/her/its knowledge, there exists no actual or potential conflict of interest between PRODUCER's family, business or financial interest and the Work provided under this Agreement, and in the event of change in either private interest or Work 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, PRODUCER 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 PRODUCER receives any information subsequent to execution of this Agreement which might constitute a violation of said provisions, PRODUCER agrees it shall notify OUSD in writing.
13. **Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion.** Through its execution of this Agreement, PRODUCER 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 PRODUCER does not appear on the Excluded Parties List (<https://www.sam.gov/>).
14. **Limitation of OUSD Liability.** OUSD shall have no financial obligations under 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 Work performed in connection with this Agreement.
15. **Indemnification.** To the furthest extent permitted by California law, PRODUCER 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 PRODUCER’s performance of this Agreement. PRODUCER also agrees to hold harmless, indemnify, and defend OUSD Indemnified Parties from any and all claims or losses incurred by any supplier, PRODUCER, or subcontractor furnishing work, services, or materials to PRODUCER arising out of the performance of this Agreement. PRODUCER shall, to the fullest extent permitted by California law, defend OUSD Indemnified Parties at PRODUCER’s own expense, including attorneys’ fees and costs, and OUSD shall have the right to accept or reject any legal representation that PRODUCER proposes to defend OUSD Indemnified Parties.

16. **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.
17. **Incorporation of Recitals and Exhibits.** Any recitals and exhibits attached to this Agreement are incorporated herein by reference. PRODUCER agrees that to the extent any recital or document incorporated herein conflicts with any term or provision of this Agreement, the terms and provisions of this Agreement shall govern.
18. **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.
19. **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.
20. **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.
21. **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.
22. **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.


23. **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.
24. **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. PRODUCER 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.
25. **Contract Contingent on Governing Board Approval.** OUSD shall not be bound by the terms of this Agreement unless and until it has been (i) formally approved by OUSD’s Governing Board or (ii) validly and properly executed by the OUSD Superintendent, the General Counsel, or a Chief or Deputy Chief authorized by the Education Code or Board Policy, and no payment shall be owed or made to PRODUCER absent such formal approval or valid and proper execution.

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:

PRODUCER

Name: Silvia Soto-Gleaton Date: 08/24/20

Signature: 

OUSD

Name: Joshua R. Daniels Signature: 

Position: General Counsel Date: August 16, 2020

- Board President
- Superintendent
- Chief/Deputy Chief

Name: Kyla Johnson-Trammell Signature: 

Position: Secretary, Board of Education Date: 10/15/2020