

## Opponent Testimony for Kansas House Education Committee re SB 13

March 13, 2023

David Rudolph; NFHS Network Board Member and PlayOn Sports CEO

Chairman Thomas and Members of the Committee, thank you for the opportunity to provide testimony in opposition of Senate Bill 13. The following information is intended to provide additional evidence and context for the Committee's consideration of SB 13.

### Overview

- The NFHS Network ("Network") is an independent business entity that has an exclusive media rights and broadcast agreement with the Kansas State High School Activities Association ("KSHSAA"). This agreement has been in place since **2018** and both parties are legally competent to enter into the agreement.
- The legality of exclusive media rights and broadcast agreements has been litigated up to the Seventh District Court in *Wis. Interscholastic Athletic Ass'n v. Gannett Co., Inc. (2011)*. That case found that entities like KSHSAA have the right to enter into exclusive agreements with their service providers.
- The current agreement has **five years remaining**, with an end date of July 2028, along with an extension of up to five additional years if specific performance metrics are achieved.
- The NFHS Network has invested significant time, effort, and money into the current agreement with KSHSAA.
- In exchange for the exclusivity contained in the agreement, the KSHSAA receives an annual guaranteed rights fee, guaranteed coverage of all sports, activities, and levels of championship events, plus adherence to KSHSAA's mission and values in all broadcasts. Since the start of the agreement, the NFHS Network has broadcast **2,946 KSHSAA post-season events**. All costs associated with the production and distribution of the events are assumed by the NFHS Network. KSHSAA and its member schools have no costs associated with this agreement.
- The agreement is consistent with the NFHS Network's other agreements with 46 state associations across the country and is consistent with the NFHS Network's mission: to make every high school event available to all consumers across all viewing platforms.
- The NFHS Network was created to ensure alignment with its partners: state associations and their member schools. The Network promotes and supports the mission of education-based athletics and the underlying educational institutions, by ensuring **all sports and activities are covered, both genders are covered, and all schools are covered regardless of size, location, or popularity**.
- The NFHS Network also works with **186 KSHSAA member high schools** who have chosen to broadcast their regular season events on the Network. During the pandemic, the NFHS Network offered every high school in Kansas the opportunity to receive two free automated sports production solutions (Pixellot) to broadcast every athletic event at their school. This investment is approximately \$11,000 per school. There are currently 422 Pixellot cameras installed in Kansas high schools, of which 80% were provided by the NFHS Network at no cost to the schools. This equipment investment alone that the NFHS Network has made in KSHSAA member high schools exceeds **\$1.8 million**. KSHSAA member high schools have

broadcast **34,494 of their regular season events** on the NFHS Network to-date, including more than 900 non-sports activities (music, speech & debate, etc.)

- SB 13, as written, would create a **breach of an agreement between two private entities by the state government**. This breach would create material damages to all parties, including the NFHS Network, the KSHSAA, and its member schools.
- SB 13, as written, would also create significant operational, logistical, and financial burdens for the KSHSAA and Kansas high schools. Under this bill, there could be 3 or more entities who are allowed to produce any single post-season game. The administrative and logistical responsibilities that this would place on local school administrators is significant, and the facilities at most high school venues are inadequate to accommodate multiple broadcast crews. This bill would **take control away from the local decision makers** who know what is best for their school and facilities.
- The NFHS Network has worked with numerous local broadcast entities across the country to accommodate specific requests, both on a one-off basis and through ongoing long-term partnerships. **NFHS Network is prepared to continue to work with local broadcasters in Kansas on a case-by-case basis to accommodate specific circumstances, but passage of SB 13 will not result in any such relief.**

#### About the NFHS Network

The NFHS Network is a joint venture between the National Federation of State High School Associations (NFHS), its membership of 51 state associations, and PlayOn Sports. The NFHS is based in Indianapolis and is the national organizing body for high school sports. To use a simple analogy, the NFHS is the “NCAA for high school sports”. Its mission is to serve its members by providing leadership for the administration of education-based high school athletics and activities through the writing of playing rules that emphasize health and safety, educational programs that develop leaders, and administrative support to increase opportunities and promote sportsmanship.

The KSHSAA is one of the 51 members of the NFHS. PlayOn Sports is based in Atlanta and has been broadcasting high school sports since 2009 through partnerships with state associations and individual schools.

The NFHS Network is a direct-to-consumer streaming platform that annually broadcasts nearly one million live high school sporting events from across the nation via its website, mobile apps, and OTT apps. Since its founding in 2013, the NFHS Network has broadcast millions of high school games and contributed over \$65 million in new revenue streams to state associations and individual schools. While the revenue impact from the NFHS Network has been significant for high school sports, the bigger impact has been on the individual student-athletes who benefit from having their games broadcast to family, friends, and fans who can’t be there in person, as well as having those memories preserved forever.

### NFHS Network / KSHSAA Commercial Agreement

The Network has had a commercial agreement in place with the KSHSAA since 2018. That agreement provides the NFHS Network with exclusive rights to broadcast the post-season events where the KSHSAA is the rightsholder. The media rights agreement between KSHSAA and the NFHS Network is similar to ESPN (or other broadcasters) having exclusive rights to broadcast Big XII college football or basketball events.

The exclusive post season rights in Kansas are crucial to the viability of the overall NFHS Network mission and business model. The agreement between the KSHSAA and the NFHS Network provides equal opportunity across gender (boys and girls), classifications (1A to 6A) and level (9<sup>th</sup>, JV, Varsity) to promote and support participation in KSHSAA interscholastic programs and student academic achievement. Allowing local broadcast entities to “cherry pick” coverage of high-profile events and teams would jeopardize the viability of the existing NFHS Network agreement as well as the overall mission of the KSHSAA.

The rights to any KSHSAA post-season game that the NFHS Network does not broadcast reverts to the KSHSAA, who can then license those events out to other local broadcast entities. To date, the NFHS Network has broadcast 2,946 KSHSAA post-season events.

The NFHS Network also works with 186 Kansas high schools who have chosen to broadcast their regular season events on the Network. These are separate agreements with each school and are outside of the scope of the KSHSAA agreement for post-season. All Kansas high schools are free to make their own choice about broadcasting their regular season games – whether to broadcast or not, and if so who to broadcast with. Many of the Kansas high schools who have elected to broadcast with the NFHS Network use the Pixellot automated production solution.

Starting in July 2020, the NFHS Network offered every high school in Kansas the opportunity to receive **two free automated sports production hardware (cameras) and software** to broadcast every athletic event at their school. This upfront investment is approximately \$11,000 per school. During the pandemic, this provided schools with a solution that would assure students, families, and community members would have access to view events while their ability to attend in person may have been limited. There are currently 422 Pixellot cameras installed in Kansas high schools, of which ~80% were provided by the NFHS Network at no cost to the schools. This equipment investment alone that the NFHS Network has made in Kansas high schools exceeds \$1.8 million. Kansas high schools have broadcast 34,494 of their regular season events on the NFHS Network to-date, including more than 900 non-sports activities.

Over the past five years of the commercial agreement, KSHSAA events have generated more than 1.9 million views. The majority of the viewership comes from within Kansas, but there is meaningful viewership from outside the state and outside the US, as displaced family members have an outlet to watch the broadcasts. Football and basketball represent the most popular viewership sports among KSHSAA events, but there is a long tail of sports and activities that drive meaningful viewership and engagement.

Summary

To continue equitable promotion of interscholastic athletics in Kansas for the betterment of the student educational experience, the NFHS Network strongly encourages the Kansas House of Representatives to not pass SB 13. The NFHS Network and the KSHSAA have a binding agreement in which both parties have the legal rights to contract. The NFHS Network is prepared to litigate any interference with the agreement. The NFHS Network will continue to work with local Kansas broadcasters on a case-by-case basis to accommodate specific circumstances, but passage of SB 13 is not the appropriate remedy.

Sincerely,

A handwritten signature in black ink, appearing to read 'David Rudolph', written in a cursive style.

David Rudolph  
NFHS Network, Board of Directors  
PlayOn Sports, CEO