

Hi Jan,

Thank you for attending the Title IX presentations and for sending me your follow up questions. My apologies for the delay in responding – I've been out of the office and am still catching up.

I think these are all excellent questions, and I would like to discuss them in a little more detail before providing any definitive responses. It is important to note that all OCR determinations are made on a case-by-case basis. However, in general, any time there is a different treatment based on gender, there is a potential for a Title IX Athletics complaint. If the official season of sport is winter, then OCR would expect both boys and girls to compete in that season. If one gender competes out of season, then OCR would need to understand the legitimate non-discriminatory reasons for the difference. Thus, here, we would need to hear more about why the girls' teams do not want to move to the winter. If I am reading this right, the league is currently having both boys and girls compete out of season (in the fall) and are considering moving only the boys to in-season (winter). Based on those facts, yes, OCR would accept a complaint for investigation. However, there is no way to anticipate what the result of the investigation would be, because we would have to conduct an analysis of the practice and competition schedules of all teams.

As to your other questions:

- **Boys' baseball teams play a post season tournament; girls' softball teams do not.**

This would be part of a full analysis of all practice and competitive scheduling. Title IX requires that the athletic program provides equal opportunity for boys and girls to participate in post-season competition.

- **Both girls' and boys' basketball teams play in an NBL championship event. They are run equally, with the exception of the championship times. At their request, the girls' play the first game and the boys' play the second game. The girls want to play first because they don't like to play when people walk out.**

As with all "prime time" scheduling issues, Title IX requires that the best times be shared equally. In an investigation, we would determine if a legitimate non-discriminatory reason existed for the different treatment. In previous cases, we have required a District to schedule equally, regardless of spectator reaction. Civil rights enforcement cannot be subjected to a popularity referendum.

- **There is an NBL boys' golf tournament in the spring; there is no NBL girls' golf tournament in the fall. Note: the girls' coaches don't want a tournament.**

This would be part of a full analysis of all practice and competitive scheduling. Title IX requires that the athletic program provides equal opportunity for boys and girls to participate in post-season competition. OCR determinations are made by analyzing the treatment, benefits, and opportunities provided to the students.

- **Girls' soccer is played on Wednesday and Friday; boys' soccer on Tuesday and Thursday.**

If a complaint was filed, OCR would investigate to determine whether or not there was a negative impact based on this scheduling.

- **If a tournament determines the automatic seed for one gender in a like sport, does that same tournament have to determine the automatic seed for the other gender as well?**

Again, if there is different treatment, OCR would have to determine if there was a negative impact on one gender. If so, the District would have to articulate a legitimate non-discriminatory reason for their action.

- **Finally, in our league some teams have special pre-season events. For example, the girls' soccer program at one school has an exchange with schools in Utah. They go there one year and the Utah team comes here. The boys' teams do not do such an exchange. Some schools do not have preseason events in girls' tennis or girls' golf, but do in boys' tennis and boys' golf. Based on what you said at the NIAAA conference, these inequities could trigger an OCR inquiry. Right or wrong?**

Yes, any different treatment based on gender can be the basis for a Title IX Athletics complaint. Only when we receive and evaluate complaint, can we determine if the complaint will be opened for investigation. That is, all OCR determinations are made on a case-by-case basis.

I'm happy to discuss all of these issues with you, and members of your conference, at your convenience.

Thanks,

Zach

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