

**Marching Band
Office for Civil Rights
U.S. Department of Education
September 17th, 2014**

Question: If a college has a marching band, does program equity mandate that it plays for both men's and women's teams?

Answer: Each case is fact-specific and each Title IX determination is based on the particular set of facts presented. Although we do not give legal advisory opinions, we are happy to provide information on how Title IX and other applicable regulations apply generally.

OCR is responsible for the administrative enforcement of Title IX of the Education Amendments of 1972, 20 U.S.C. §§ 1681-1688, and its implementing regulations at 34 C.F.R. Part 106 (Title IX), which prohibit discrimination on the basis of sex in all education programs or activities receiving federal financial assistance from the Department. Title IX requires that female students be provided with aids, benefits and services equivalent to those provided to male students, and that female students not be limited on the basis of sex in the enjoyment of any right, privilege, advantage or opportunity provided under any educational program or activity operated by a school district. Athletics programs are specifically addressed at 34 C.F.R. § 106.41, which provides that no person shall, on the basis of sex, be denied benefits or be treated differently from another person in any interscholastic athletics program offered by a recipient. This regulatory provision also states that a school that operates or sponsors interscholastic, intercollegiate, club or intramural athletics shall provide equal athletic opportunity to its male and female athletes. 34 C.F.R. § 106.41(c). There are ten factors that are considered when determining whether a college offers its students equal athletic opportunities based on sex, one of which is publicity. 34 C.F.R. § 106.41(c)(10).

The Title IX 1979 Policy Interpretation on Intercollegiate Athletics, 45 C.F.R. Part 86 (December 11, 1979), states that the following will be considered in assessing the publicity offered to athletics teams: "(1) Availability and quality of sports information personnel; (2) Access to other publicity resources for men's and women's programs; and (3) Quantity and quality of publications and other promotional devices featuring men's and women's programs." In addition, "institutions will be in compliance if the compared program components are equivalent, that is, equal or equal in effect." "[I]dentical benefits, opportunities, or treatment are not required, provided the overall effects of any differences is negligible." Thus, the fact that the college's marching band plays for the men's teams and not for the women's teams, or vice versa, is only one of many factors that OCR would consider in determining whether a college provides equal athletic opportunities to its students.

OCR is committed to providing the public, including students and their families, school staff and administrators, and other interested persons, with information about the civil rights laws OCR enforces. In responding to correspondence, OCR provides general, publicly available information about a wide variety of civil rights issues in the education context. OCR does not, however, provide legal or other advice or issue advisory opinions to customers concerning specific factual scenarios. Correspondence issued by OCR in response to an inquiry from the public does not constitute a formal statement of OCR policy and should not be construed as creating or articulating new policy. OCR's formal policy statements are approved by a duly authorized OCR official and made available to the public.

