

HIGH-SCHOOL

OSSAA tables public-private school issue after attorney general issues cease-and-desist



Hallie Hart

Oklahoman

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As the competitive balance deliberations continue, Oklahoma's attorney general is calling to halt the consideration of separate playoff brackets for private high schools.

Attorney General Gentner Drummond issued a cease-and-desist letter March 10 to the Oklahoma Secondary School Activities Association and executive director David Jackson in response to recent discussion of Rule 14. The OSSAA Board of Directors has been weighing two options: tweaking the existing rule, which bumps private schools to larger classifications based on athletic success, or forming a new postseason bracket for private schools.

Drummond aimed to shut down the second option.

With knowledge of the cease-and-desist letter looming over Wednesday's board meeting, the board entered executive session and then voted to table a Rule 14 decision for April's meeting.

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What does AG Gentner Drummond's letter say?

Wednesday afternoon, The Oklahoman received a copy of Drummond's letter.

“This office has been informed that the Oklahoma Secondary Schools Activities Association (“OSSAA”) intends to send ballots to its member schools to determine whether member nonpublic schools will be prohibited from competing against similarly situated member public schools in the OSSAA football playoffs,” Drummond said in the letter. “As the Chief Law Officer of the State, for the reasons set forth below, I demand that OSSAA cease and desist any action in furtherance of this proposal.”

In the OSSAA's February board meeting, Jackson reported the results of a survey that had been sent to member schools. He said about 75% of the membership responded, and 85% of those

voters favored separate playoff brackets for private and public schools in all athletic activities.

In his letter, Drummond said the proposal of separate brackets would infringe upon the Fourteenth Amendment's Equal Protection Clause, which is intended to prevent discrimination.

Drummond acknowledged that nonpublic schools do not fall into one of the "suspect classifications" that have historically faced discrimination – this proposal isn't related to race, national origin, gender or fundamental rights. Instead, he pointed to the rational basis test, saying "government action must be 'rationally related to a legitimate government purpose or end,'" and cited the 2007 court case *Christian Heritage Academy v. Oklahoma Secondary School Activities Assoc.*

This case arose when private school Christian Heritage filed a federal lawsuit after twice being denied OSSAA membership, and a U.S. court of appeals ruled in favor of CHA, not finding a rational basis for barring the school from the OSSAA.

Drummond referenced that opinion, saying the Tenth Circuit did recognize several legitimate government reasons for treating private and public schools differently, including "preserving equitable competitive opportunities."

Although Rule 14 pertains to competitive equity, Drummond said the proposal for a separate bracket and its basis “are completely disconnected from any conceivable state interest and not based in fact.” He noted that the proposal pertains only to the postseason and not the regular season, calling this “a tacit admission that the OSSAA’s goal is not really about ‘preserving equitable competitive opportunities.’”

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What’s next for the OSSAA?

Wednesday’s agenda included Rule 14 as an item for the public portion of the meeting.

But the board elected to discuss it behind closed doors in conjunction with the listed executive session item about staff contracts.

While board members deliberated in the meeting room, the lobby was full of high school administrators, many from private schools, who were waiting to hear a decision on Rule 14. The group included Bishop McGuinness principal David Morton, who had voiced concerns in February about an Oklahoma House of Representatives bill intended to create separate playoff brackets for private schools.

After about two-and-a-half hours, the board reopened the room and voted to table the topic.

“I can’t get into specific discussion (from) executive session,” Jackson said. “We just felt like we want to gain some more information and discuss it further at another board meeting, so it’s just a matter of gaining more information to make the best decision we can make.”

Jackson added that the cease-and-desist letter will be publicized to member schools.

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Other notes from Wednesday’s OSSAA board meeting

The OSSAA Board approved the hire of Trinity Johnson as an assistant director. Johnson, assistant superintendent at Piedmont Public Schools, will keep the number of OSSAA directors balanced after associate director Mike Whaley retires July 31.

Whaley’s OSSAA career will end with a national honor. He has been selected to receive a National Federation of State High School Associations Citation award this summer.

The board voted to elevate Dr. Stacey Butterfield of Jenks from vice president to president for the 2023-24 school year. She will succeed Rex Trent of Binger-Oney. The board then voted to appoint Mike Jinkens of Okeene as the 2023-24 vice president.