

Effective 7/1/2022

Part 10
Student Eligibility in Interscholastic Activities

53G-6-1001 Definitions.

As used in this part:

- (1) "Athletic association" means an association, as that term is defined in Section 53G-7-1101.
- (2) "Birth certificate" means an official record of an individual's date of birth, place of birth, sex, and parentage, including a supplementary certificate of birth or birth certificate amendment and amendment history as provided in Sections 26B-8-110 and 26B-8-111.
- (3) "Commission" means the School Activity Eligibility Commission created in Section 53G-6-1003.
- (4) "Does not correspond with the sex designation" means that a student's sex designation for an interscholastic activity in which a student seeks participation does not correspond with the sex designation on the student's birth certificate or an amendment, including the amendment history, to the student's birth certificate that the Division of Vital Records and Statistics provides.
- (5) "Female-designated" means that an interscholastic activity is designated specifically for female students.
- (6) "Gender-designated" means that an interscholastic activity or facility is designated specifically for female or male students.
- (7) "Gender identity" means the same as that term is defined in Section 34A-5-102.
- (8) "Interscholastic activity" means an activity in which a student represents the student's school in the activity in competition against another school.
- (9) "Male-designated" means that an interscholastic activity is designated specifically for male students.
- (10) "Student" means a student who is enrolled in a public school that participates in interscholastic activities.

Amended by Chapter 340, 2023 General Session

53G-6-1002 Effect contingent on court ruling.

This part becomes effective if a court of competent jurisdiction invalidates or enjoins Title 53G, Chapter 6, Part 9, Participation in Female Sports.

Enacted by Chapter 478, 2022 General Session

53G-6-1003 School Activity Eligibility Commission -- Baseline range.

- (1) There is created the School Activity Eligibility Commission.
- (2)
 - (a) The commission shall consist of the following members:
 - (i) the following two members whom the president of the Senate appoints:
 - (A) a mental health professional; and
 - (B) a statistician with expertise in the analysis of medical data;
 - (ii) the following two members whom the speaker of the House of Representatives appoints:
 - (A) a board-certified physician with expertise in gender identity healthcare; and
 - (B) a sports physiologist;
 - (iii) the following two members whom the governor appoints:

- (A) a representative of an athletic association; and
- (B) an athletic trainer who serves student athletes on the collegiate level; and
- (iv) one ad hoc member, serving on a case-by-case basis, who is:
 - (A) appointed by the athletic association in which the relevant student's school competes; and
 - (B) a certified high school coach or official who coaches or officiates in a separate region or classification from the relevant student's school and in the sport in which the relevant student seeks eligibility.
- (b) An athletic association may prepare and communicate the association's sport-specific appointments described in Subsection (2)(a)(iv) in preparation for student requests in a given sport.
- (3)
 - (a) A member of the commission described in Subsections (2)(a)(i) through (iii) shall serve an initial term of one year, subject to reappointment for subsequent terms of two years.
 - (b) If a vacancy occurs in the membership of the commission, the individual responsible for the appointment of the vacant seat as described in Subsection (2) shall fill the vacancy in the same manner as the original appointment.
- (4)
 - (a)
 - (i) Except as provided in Subsection (4)(a)(ii), all members of the commission constitute a quorum of the commission for a meeting to determine the eligibility of a student.
 - (ii) All members of the commission described in Subsections (2)(a)(i) through (iii) constitute a quorum for any meeting other than the meeting described in Subsection (4)(a)(i).
 - (b) An action of a majority of a quorum constitutes an action of the commission.
- (5) A majority of the commission members described in Subsections (2)(a)(i) through (iii) shall elect a chair from among the members described in Subsections (2)(a)(i) through (iii) to:
 - (a) schedule meetings of the commission;
 - (b) set the agenda of commission meetings; and
 - (c) facilitate discussion among the commission's members.
- (6) A commission member:
 - (a) may not receive compensation or benefits for the member's service on the commission; and
 - (b) may receive per diem and reimbursement for travel expenses that the commission member incurs as a commission member at the rates that the Division of Finance establishes under:
 - (i) Sections 63A-3-106 and 63A-3-107; and
 - (ii) rules that the Division of Finance makes under Sections 63A-3-106 and 63A-3-107.
- (7) The commission may enter into an agreement with an athletic association to provide staff support to the commission.
- (8)
 - (a) The commission shall establish a baseline range of physical characteristics for students participating in a specific gender-designated activity at a specific age to provide the context for the evaluation of an individual student's eligibility for a given gender-designated interscholastic activity under Section 53G-6-1004.
 - (b) In creating the baseline ranges described in Subsection (8)(a), the commission shall include the physical characteristics for the age and gender group in a given gender-designated interscholastic activity that are relevant to the specific interscholastic activity.
 - (c) The physical characteristics described in Subsection (8)(b) may include height, weight, physical characteristics relevant to the application of the standard described in Subsection 53G-6-1004(3), or the extent of physical characteristics affected by puberty, giving

consideration to the practicability of considering the physical characteristic when making an assessment of an individual student's eligibility under Section 53G-6-1004.

- (9) Any record of the commission, including any communication between an athletic association and the commission, that relates to a specific student shall be classified as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act.
- (10) Members of the commission are immune from suit with respect to all acts done and actions taken in good faith in carrying out the purposes of this part.
- (11) The commission has no authority in relation to eligibility questions other than participation in a gender-designated interscholastic activity under this part.

Enacted by Chapter 478, 2022 General Session

53G-6-1004 Eligibility for interscholastic activities.

- (1)
 - (a) Notwithstanding any state board rule or policy of an athletic association, and except as provided in Subsections (1)(b) and (c):
 - (i) once a student has obtained the eligibility approval of the commission under Subsection (2), the student may participate in a gender-designated interscholastic activity that does not correspond with the sex designation on the student's birth certificate; and
 - (ii) if a student does not obtain the eligibility approval of the commission under Subsection (2), the student may not participate in a gender-designated interscholastic activity that does not correspond with the sex designation on the student's birth certificate.
 - (b) A student who has undergone or is undergoing a gender transition shall obtain the eligibility approval of the commission under Subsection (2) to participate in a gender-designated interscholastic activity that corresponds with the student's gender identity.
 - (c) Nothing in this subsection prohibits a student from participating in a gender-designated interscholastic activity in accordance with 34 C.F.R. Sec. 106.41(b).
- (2)
 - (a) When a student registers with an athletic association to participate in a gender-designated interscholastic activity:
 - (i) a student who has undergone or is undergoing a gender transition shall notify the athletic association of the student's transition and the need for the commission's eligibility approval as described in Subsection (1)(b);
 - (ii) the athletic association shall notify the commission of:
 - (A) a student for whom an eligibility determination of the commission is required due to the sex designation on the student's birth certificate not corresponding with the gender designation of the gender-designated interscholastic activity in which the student seeks to participate or the student's notice of a gender transition under Subsection (1)(a)(ii); and
 - (B) the association's ad hoc appointment to the commission described in Subsection 53G-6-1003(2)(a)(iv); and
 - (iii) the commission shall notify the student described in Subsection (2)(a) regarding the process for determining the student's eligibility for the activity under this section.
 - (b) The commission shall:
 - (i) schedule a closed meeting to consider a student's eligibility to be held within 30 days after the day on which the commission receives the notification described in Subsection (2)(a); and
 - (ii) notify the relevant athletic association and the student's parents or legal guardians of the scheduled meeting.

- (c) Before the meeting described in Subsection (2)(b):
 - (i) the student for whom the commission has scheduled the meeting or the student's parent or guardian is not required but may submit to the commission any information the student wishes to disclose to the commission that may be relevant to the commission's eligibility determination, including information regarding:
 - (A) the gender-designated interscholastic activities for which the student seeks eligibility;
 - (B) the gender-designated interscholastic activities in which the student has previously participated; and
 - (C) the student's physical characteristics or medical treatments that support the student's eligibility for the specific gender-designated interscholastic activity;
 - (ii) the commission may request additional evidence from the student that is:
 - (A) limited to the extent possible to protect the student's privacy; and
 - (B) only directly relevant to the commission's eligibility determination; and
 - (iii) the commission may offer the student a voucher to cover the cost of a diagnostic assessment if the commission makes a request for medical information under Subsection (2)(c)(ii) for which the student's insurance does not provide coverage or reimbursement for the diagnostic that:
 - (A) would provide the requested information; and
 - (B) is not free or otherwise readily available to the student.
- (d) During the meeting described in Subsection (2)(b):
 - (i) only the following individuals may be present or participate electronically:
 - (A) the student for whom the commission is meeting to make an eligibility determination;
 - (B) the student's parents or guardians;
 - (C) the members and necessary staff of the commission; and
 - (D) any medical professionals or other witnesses the student chooses to include to support the student's eligibility;
 - (ii) attendees may participate in person or electronically; and
 - (iii) the commission shall:
 - (A) hear the information that supports the student's eligibility;
 - (B) deliberate the facts relevant to the student's physical characteristics and eligibility in camera or otherwise after temporarily excusing from the meeting the student, the student's parents or legal guardians, and any medical professionals or other witnesses whom the student includes; and
 - (C) render the commission's eligibility determination in accordance with Subsection (3) or request additional information and schedule an additional commission meeting to be held within 30 days of the meeting and in accordance with this Subsection (2)(d) to discuss the additional information and render the commission's eligibility determination.
- (3) In making an eligibility determination, the commission, after considering whether the student's assertion of a gender identity is consistent with the statutory definition of gender identity as that term is defined in Section 34A-5-102, including the implications for the student's mental health of participating in the gender-designated interscholastic activity, shall:
 - (a) make a determination regarding whether, when measured against the relevant baseline range described in Subsection 53G-6-1003(8), granting the student's eligibility would:
 - (i) present a substantial safety risk to the student or others that is significantly greater than the inherent risks of the given activity; or
 - (ii) likely give the student a material competitive advantage when compared to students of the same age competing in the relevant gender-designated activity, including consideration of

the student's previous history of participation in gender-designated interscholastic activities;
and

- (b) record the commission's decision and rationale in writing and provide the written decision to the student within 30 days after the day on which the commission renders an eligibility decision under Subsection (3)(a) in a meeting described in Subsection (2)(b).
- (4)
- (a) Notwithstanding any other provision of law and except as provided in Subsections (3)(b) and (4)(b), the commission may not disclose:
 - (i) the name of a student whose eligibility the commission will consider, is considering, or has considered; or
 - (ii) the commission's determination regarding a student's eligibility.
 - (b) The commission shall disclose the commission's determination of a student's eligibility for a given gender-designated interscholastic activity to the relevant athletic association, only for the purpose of confirming whether the student is eligible for the interscholastic activity.
 - (c)
 - (i) Notwithstanding any other provision of law, an athletic association may not disclose the information described in Subsections (4)(a)(i) and (ii).
 - (ii) Nothing in this Subsection (4) prohibits an athletic association from affirming that a student is eligible if the eligibility of a student is questioned.

Enacted by Chapter 478, 2022 General Session

53G-6-1005 Reasonable accommodations.

Nothing in this part prohibits an athletic association, LEA, or school from adopting reasonable safety and privacy rules and policies that designate facilities, including restrooms, shower facilities, and dressing facilities, provided that the rules and policies described in this section afford reasonable accommodations based on gender identity to all students.

Enacted by Chapter 478, 2022 General Session

53G-6-1006 Severability.

- (1) If any provision of this part or the application of any provision of this part to any person or circumstance is held invalid by a final decision of a court of competent jurisdiction, the remainder of this part shall be given effect without the invalidated provision or application.
- (2) The provisions of this part are severable.

Enacted by Chapter 478, 2022 General Session

53G-6-1007 Indemnification -- Enforcement.

- (1) The state shall defend, indemnify, and hold harmless a person acting under color of state law to enforce this part for any claims or damages, including court costs and attorney fees, that:
 - (a) are brought or incurred as a result of this part; and
 - (b) are not covered by the person's insurance policies or by any coverage agreement issued by the State Risk Management Fund.
- (2) An LEA or school within the public education system with a team that competes in an interscholastic athletic activity is responsible for the enforcement of this part in relation to the LEA's or school's teams.

Enacted by Chapter 1, 2022 Special Session 3