

1 **STUDENT ELIGIBILITY IN INTERSCHOLASTIC ACTIVITIES**

2 2022 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Kera Birkeland**

5 Senate Sponsor: Curtis S. Bramble

6	Cosponsors:	Karianne Lisonbee	Christine F. Watkins
7	Cheryl K. Acton	Candice B. Pierucci	
8	Melissa G. Ballard	Susan Pulsipher	
9	Marsha Judkins	Judy Weeks Rohner	

11 **LONG TITLE**

12 **General Description:**

13 This bill addresses student athlete participation in gender-designated sports in the
14 public education system.

15 **Highlighted Provisions:**

16 This bill:

- 17 ▶ defines terms;
- 18 ▶ imposes limits on participation in female sports, by:
 - 19 • requiring schools and local education agencies to designate athletic activities by
 - 20 sex;
 - 21 • prohibiting a student of the male sex from competing against another school on
 - 22 a team designated for female students;
 - 23 • prohibiting certain complaints or investigations based on a school or local
 - 24 education agency maintaining separate athletic activities for female students;
 - 25 and
 - 26 • providing for severability;
 - 27 ▶ in the alternative if a court invalidates the above policy:
 - 28 • conditions student athlete participation in gender-designated sports in the public

- 29 education system on the student's birth certificate;
- 30 • establishes the School Activity Eligibility Commission (commission) and
- 31 provides the commission's membership and duties;
- 32 • requires the commission to establish a baseline range of students in a given
- 33 gender-designated interscholastic activity for a given age;
- 34 • provides that records of the commission related to a specific student are
- 35 protected;
- 36 • provides immunity from suit for members of the commission;
- 37 • allows a student to participate in a gender-designated interscholastic activity that
- 38 does not correspond to the sex designation on the student's birth certificate or in
- 39 the case of a gender transition if the student receives the commission's eligibility
- 40 approval;
- 41 • provides processes for an athletic association to notify the commission when a
- 42 student registers to participate in a gender-designated sport in a situation that
- 43 requires the commission's eligibility approval;
- 44 • provides processes for the commission to receive information and evidence;
- 45 • provides for the confidentiality of the proceedings, commission vote, eligibility
- 46 determination, and student's identity; and
- 47 • establishes a standard for the commission's considerations in rendering an
- 48 eligibility determination;
- 49 • allows for commission meetings in which the commission discusses and votes
- 50 on a specific student's request to be closed under the Open and Public Meetings
- 51 Act;
- 52 • provides for reasonable accommodations in school facilities related to gender
- 53 identity for students participating in interscholastic activities; and
- 54 • provides for severability; and
- 55 ▶ makes technical changes.

56 Money Appropriated in this Bill:

57 None

58 **Other Special Clauses:**

59 This bill provides a special effective date.

60 **Utah Code Sections Affected:**

61 AMENDS:

62 **52-4-205**, as last amended by Laws of Utah 2021, Chapters 179 and 231

63 ENACTS:

64 **53G-6-901**, Utah Code Annotated 1953

65 **53G-6-902**, Utah Code Annotated 1953

66 **53G-6-903**, Utah Code Annotated 1953

67 **53G-6-1001**, Utah Code Annotated 1953

68 **53G-6-1002**, Utah Code Annotated 1953

69 **53G-6-1003**, Utah Code Annotated 1953

70 **53G-6-1004**, Utah Code Annotated 1953

71 **53G-6-1005**, Utah Code Annotated 1953

72 **53G-6-1006**, Utah Code Annotated 1953

73

74 *Be it enacted by the Legislature of the state of Utah:*

75 Section 1. Section **52-4-205** is amended to read:

76 **52-4-205. Purposes of closed meetings -- Certain issues prohibited in closed**
77 **meetings.**

78 (1) A closed meeting described under Section **52-4-204** may only be held for:

79 (a) except as provided in Subsection (3), discussion of the character, professional
80 competence, or physical or mental health of an individual;

81 (b) strategy sessions to discuss collective bargaining;

82 (c) strategy sessions to discuss pending or reasonably imminent litigation;

83 (d) strategy sessions to discuss the purchase, exchange, or lease of real property,

84 including any form of a water right or water shares, if public discussion of the transaction

85 would:

86 (i) disclose the appraisal or estimated value of the property under consideration; or

87 (ii) prevent the public body from completing the transaction on the best possible terms;

88 (e) strategy sessions to discuss the sale of real property, including any form of a water

89 right or water shares, if:

90 (i) public discussion of the transaction would:

91 (A) disclose the appraisal or estimated value of the property under consideration; or

92 (B) prevent the public body from completing the transaction on the best possible terms;

93 (ii) the public body previously gave public notice that the property would be offered for

94 sale; and

95 (iii) the terms of the sale are publicly disclosed before the public body approves the

96 sale;

97 (f) discussion regarding deployment of security personnel, devices, or systems;

98 (g) investigative proceedings regarding allegations of criminal misconduct;

99 (h) as relates to the Independent Legislative Ethics Commission, conducting business

100 relating to the receipt or review of ethics complaints;

101 (i) as relates to an ethics committee of the Legislature, a purpose permitted under

102 Subsection [52-4-204\(1\)\(a\)\(iii\)\(C\)](#);

103 (j) as relates to the Independent Executive Branch Ethics Commission created in

104 Section [63A-14-202](#), conducting business relating to an ethics complaint;

105 (k) as relates to a county legislative body, discussing commercial information as

106 defined in Section [59-1-404](#);

107 (l) as relates to the Utah Higher Education Assistance Authority and its appointed

108 board of directors, discussing fiduciary or commercial information as defined in Section

109 [53B-12-102](#);

110 (m) deliberations, not including any information gathering activities, of a public body

111 acting in the capacity of:

112 (i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code,

113 during the process of evaluating responses to a solicitation, as defined in Section 63G-6a-103;
114 (ii) a protest officer, defined in Section 63G-6a-103, during the process of making a
115 decision on a protest under Title 63G, Chapter 6a, Part 16, Protests; or
116 (iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement
117 Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17,
118 Procurement Appeals Board;
119 (n) the purpose of considering information that is designated as a trade secret, as
120 defined in Section 13-24-2, if the public body's consideration of the information is necessary in
121 order to properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;
122 (o) the purpose of discussing information provided to the public body during the
123 procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of
124 the meeting:
125 (i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be
126 disclosed to a member of the public or to a participant in the procurement process; and
127 (ii) the public body needs to review or discuss the information in order to properly
128 fulfill its role and responsibilities in the procurement process;
129 (p) as relates to the governing board of a governmental nonprofit corporation, as that
130 term is defined in Section 11-13a-102, the purpose of discussing information that is designated
131 as a trade secret, as that term is defined in Section 13-24-2, if:
132 (i) public knowledge of the discussion would reasonably be expected to result in injury
133 to the owner of the trade secret; and
134 (ii) discussion of the information is necessary for the governing board to properly
135 discharge the board's duties and conduct the board's business; or
136 (q) a purpose for which a meeting is required to be closed under Subsection (2).
137 (2) The following meetings shall be closed:
138 (a) a meeting of the Health and Human Services Interim Committee to review a report
139 described in Subsection 62A-16-301(1)(a), and the responses to the report described in
140 Subsections 62A-16-301(2) and (4);

- 141 (b) a meeting of the Child Welfare Legislative Oversight Panel to:
- 142 (i) review a report described in Subsection 62A-16-301(1)(a), and the responses to the
- 143 report described in Subsections 62A-16-301(2) and (4); or
- 144 (ii) review and discuss an individual case, as described in Subsection 62A-4a-207(5);
- 145 (c) a meeting of the Opioid and Overdose Fatality Review Committee, created in
- 146 Section 26-7-13, to review and discuss an individual case, as described in Subsection
- 147 26-7-13(10);
- 148 (d) a meeting of a conservation district as defined in Section 17D-3-102 for the
- 149 purpose of advising the Natural Resource Conservation Service of the United States
- 150 Department of Agriculture on a farm improvement project if the discussed information is
- 151 protected information under federal law;
- 152 (e) a meeting of the Compassionate Use Board established in Section 26-61a-105 for
- 153 the purpose of reviewing petitions for a medical cannabis card in accordance with Section
- 154 26-61a-105; [and]
- 155 (f) a meeting of the Colorado River Authority of Utah if:
- 156 (i) the purpose of the meeting is to discuss an interstate claim to the use of the water in
- 157 the Colorado River system; and
- 158 (ii) failing to close the meeting would:
- 159 (A) reveal the contents of a record classified as protected under Subsection
- 160 63G-2-305(82);
- 161 (B) reveal a legal strategy relating to the state's claim to the use of the water in the
- 162 Colorado River system;
- 163 (C) harm the ability of the Colorado River Authority of Utah or river commissioner to
- 164 negotiate the best terms and conditions regarding the use of water in the Colorado River
- 165 system; or
- 166 (D) give an advantage to another state or to the federal government in negotiations
- 167 regarding the use of water in the Colorado River system[-]; and
- 168 (g) a meeting of the School Activity Eligibility Commission, described in Section

169 53G-6-1003, if the commission is in effect in accordance with Section 53G-6-1002, to
170 consider, discuss, or determine, in accordance with Section 53G-6-1004, an individual student's
171 eligibility to participate in an interscholastic activity, as that term is defined in Section
172 53G-6-1001, including the commission's determinative vote on the student's eligibility.

- 173 (3) In a closed meeting, a public body may not:
- 174 (a) interview a person applying to fill an elected position;
 - 175 (b) discuss filling a midterm vacancy or temporary absence governed by Title 20A,
176 Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office;
177 or
 - 178 (c) discuss the character, professional competence, or physical or mental health of the
179 person whose name was submitted for consideration to fill a midterm vacancy or temporary
180 absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and
181 Temporary Absence in Elected Office.

182 Section 2. Section **53G-6-901** is enacted to read:

183 **Part 9. Participation in Female Sports**

184 **53G-6-901. Definitions.**

185 As used in this part:

186 (1) "Coed" or "mixed" means that a team is composed of members of both sexes who
187 traditionally compete together.

188 (2) "Interscholastic athletic activity" means that a student represents the student's
189 school or LEA in competition against another school or LEA in an athletic or sporting activity.

190 (3) "Sex" means the biological, physical condition of being male or female, determined
191 by an individual's genetics and anatomy at birth.

192 Section 3. Section **53G-6-902** is enacted to read:

193 **53G-6-902. Participation in school athletic activities.**

194 (1) Notwithstanding any state board rule:

195 (a) a public school or LEA, or a private school that competes against a public school or
196 LEA, shall expressly designate school athletic activities and teams as one of the following,

197 based on sex:

198 (i) designated for students of the male sex;

199 (ii) designated for students of the female sex; or

200 (iii) "coed" or "mixed";

201 (b) a student of the male sex may not compete, and a public school or LEA may not
202 allow a student of the male sex to compete, with a team designated for students of the female
203 sex in an interscholastic athletic activity; and

204 (c) a government entity or licensing or accrediting organization may not entertain a
205 complaint, open an investigation, or take any other adverse action against a school or LEA
206 described in Subsection (1)(a) for maintaining separate school athletic activities for students of
207 the female sex.

208 (2) Nothing in this section prohibits an LEA or school from allowing a student of either
209 gender from participating with a team designated for students of the female sex, consistent with
210 school policy, outside of competition in an interscholastic athletic activity, in accordance with
211 Subsection (1)(b).

212 Section 4. Section **53G-6-903** is enacted to read:

213 **53G-6-903. Severability.**

214 (1) If any provision of this part or the application of any provision of this part to any
215 person or circumstance is held invalid by a final decision of a court of competent jurisdiction,
216 the remainder of this part shall be given effect without the invalidated provision or application.

217 (2) The provisions of this part are severable.

218 Section 5. Section **53G-6-1001** is enacted to read:

219 **Part 10. Student Eligibility in Interscholastic Activities**

220 **53G-6-1001. Definitions.**

221 As used in this part:

222 (1) "Athletic association" means an association, as that term is defined in Section
223 [53G-7-1101](#).

224 (2) "Commission" means the School Activity Eligibility Commission created in

225 Section 53G-6-1003.

226 (3) "Female-designated" means that an interscholastic activity is designated specifically
227 for female students.

228 (4) "Gender-designated" means that an interscholastic activity or facility is designated
229 specifically for female or male students.

230 (5) "Gender identity" means the same as that term is defined in Section 34A-5-102.

231 (6) "Interscholastic activity" means an activity in which a student represents the
232 student's school in the activity in competition against another school.

233 (7) "Male-designated" means that an interscholastic activity is designated specifically
234 for male students.

235 (8) "Student" means a student who is enrolled in a public school that participates in
236 interscholastic activities.

237 Section 6. Section **53G-6-1002** is enacted to read:

238 **53G-6-1002. Effect contingent on court ruling.**

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

241 Section 7. Section **53G-6-1003** is enacted to read:

242 **53G-6-1003. School Activity Eligibility Commission -- Baseline range.**

243 (1) There is created the School Activity Eligibility Commission.

244 (2) (a) The commission shall consist of the following members:

245 (i) the following two members whom the president of the Senate appoints:

246 (A) a mental health professional; and

247 (B) a statistician with expertise in the analysis of medical data;

248 (ii) the following two members whom the speaker of the House of Representatives
249 appoints:

250 (A) a board-certified physician with expertise in gender identity healthcare; and

251 (B) a sports physiologist;

252 (iii) the following two members whom the governor appoints:

- 253 (A) a representative of an athletic association; and
254 (B) an athletic trainer who serves student athletes on the collegiate level; and
255 (iv) one ad hoc member, serving on a case-by-case basis, who is:
256 (A) appointed by the athletic association in which the relevant student's school
257 competes; and
258 (B) a certified high school coach or official who coaches or officiates in a separate
259 region or classification from the relevant student's school and in the sport in which the relevant
260 student seeks eligibility.
261 (b) An athletic association may prepare and communicate the association's
262 sport-specific appointments described in Subsection (2)(a)(iv) in preparation for student
263 requests in a given sport.
264 (3) (a) A member of the commission described in Subsections (2)(a)(i) through (iii)
265 shall serve an initial term of one year, subject to reappointment for subsequent terms of two
266 years.
267 (b) If a vacancy occurs in the membership of the commission, the individual
268 responsible for the appointment of the vacant seat as described in Subsection (2) shall fill the
269 vacancy in the same manner as the original appointment.
270 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), all members of the commission
271 constitute a quorum of the commission for a meeting to determine the eligibility of a student.
272 (ii) All members of the commission described in Subsections (2)(a)(i) through (iii)
273 constitute a quorum for any meeting other than the meeting described in Subsection (4)(a)(i).
274 (b) An action of a majority of a quorum constitutes an action of the commission.
275 (5) A majority of the commission members described in Subsections (2)(a)(i) through
276 (iii) shall elect a chair from among the members described in Subsections (2)(a)(i) through (iii)
277 to:
278 (a) schedule meetings of the commission;
279 (b) set the agenda of commission meetings; and
280 (c) facilitate discussion among the commission's members.

281 (6) A commission member:
282 (a) may not receive compensation or benefits for the member's service on the
283 commission; and
284 (b) may receive per diem and reimbursement for travel expenses that the commission
285 member incurs as a commission member at the rates that the Division of Finance establishes
286 under:
287 (i) Sections [63A-3-106](#) and [63A-3-107](#); and
288 (ii) rules that the Division of Finance makes under Sections [63A-3-106](#) and [63A-3-107](#).
289 (7) The commission may enter into an agreement with an athletic association to
290 provide staff support to the commission.
291 (8) (a) The commission shall establish a baseline range of physical characteristics for
292 students participating in a specific gender-designated activity at a specific age to provide the
293 context for the evaluation of an individual student's eligibility for a given gender-designated
294 interscholastic activity under Section [53G-6-1004](#).
295 (b) In creating the baseline ranges described in Subsection (8)(a), the commission shall
296 include the physical characteristics for the age and gender group in a given gender-designated
297 interscholastic activity that are relevant to the specific interscholastic activity.
298 (c) The physical characteristics described in Subsection (8)(b) may include height,
299 weight, physical characteristics relevant to the application of the standard described in
300 Subsection [53G-6-1004](#)(3), or the extent of physical characteristics affected by puberty, giving
301 consideration to the practicability of considering the physical characteristic when making an
302 assessment of an individual student's eligibility under Section [53G-6-1004](#).
303 (9) Any record of the commission, including any communication between an athletic
304 association and the commission, that relates to a specific student shall be classified as a
305 protected record under Title 63G, Chapter 2, Government Records Access and Management
306 Act.
307 (10) Members of the commission are immune from suit with respect to all acts done
308 and actions taken in good faith in carrying out the purposes of this part.

309 (11) The commission has no authority in relation to eligibility questions other than
310 participation in a gender-designated interscholastic activity under this part.

311 Section 8. Section **53G-6-1004** is enacted to read:

312 **53G-6-1004. Eligibility for interscholastic activities.**

313 (1) (a) Notwithstanding any state board rule or policy of an athletic association, and
314 except as provided in Subsections (1)(b) and (c):

315 (i) once a student has obtained the eligibility approval of the commission under
316 Subsection (2), the student may participate in a gender-designated interscholastic activity that
317 does not correspond with the sex designation on the student's birth certificate; and

318 (ii) if a student does not obtain the eligibility approval of the commission under
319 Subsection (2), the student may not participate in a gender-designated interscholastic activity
320 that does not correspond with the sex designation on the student's birth certificate.

321 (b) A student who has undergone or is undergoing a gender transition shall obtain the
322 eligibility approval of the commission under Subsection (2) to participate in a
323 gender-designated interscholastic activity that corresponds with the student's gender identity.

324 (c) Nothing in this subsection prohibits a student from participating in a
325 gender-designated interscholastic activity in accordance with 34 C.F.R. Sec. 106.41(b).

326 (2) (a) When a student registers with an athletic association to participate in a
327 gender-designated interscholastic activity:

328 (i) a student who has undergone or is undergoing a gender transition shall notify the
329 athletic association of the student's transition and the need for the commission's eligibility
330 approval as described in Subsection (1)(b);

331 (ii) the athletic association shall notify the commission of:

332 (A) a student for whom an eligibility determination of the commission is required due
333 to the sex designation on the student's birth certificate not corresponding with the gender
334 designation of the gender-designated interscholastic activity in which the student seeks to
335 participate or the student's notice of a gender transition under Subsection (1)(a)(ii); and

336 (B) the association's ad hoc appointment to the commission described in Subsection

337 53G-6-1003(2)(a)(iv); and

338 (iii) the commission shall notify the student described in Subsection (2)(a) regarding
339 the process for determining the student's eligibility for the activity under this section.

340 (b) The commission shall:

341 (i) schedule a closed meeting to consider a student's eligibility to be held within 30
342 days after the day on which the commission receives the notification described in Subsection
343 (2)(a); and

344 (ii) notify the relevant athletic association and the student's parents or legal guardians
345 of the scheduled meeting.

346 (c) Before the meeting described in Subsection (2)(b):

347 (i) the student for whom the commission has scheduled the meeting or the student's
348 parent or guardian is not required but may submit to the commission any information the
349 student wishes to disclose to the commission that may be relevant to the commission's
350 eligibility determination, including information regarding:

351 (A) the gender-designated interscholastic activities for which the student seeks
352 eligibility;

353 (B) the gender-designated interscholastic activities in which the student has previously
354 participated; and

355 (C) the student's physical characteristics or medical treatments that support the
356 student's eligibility for the specific gender-designated interscholastic activity;

357 (ii) the commission may request additional evidence from the student that is:

358 (A) limited to the extent possible to protect the student's privacy; and

359 (B) only directly relevant to the commission's eligibility determination; and

360 (iii) the commission may offer the student a voucher to cover the cost of a diagnostic
361 assessment if the commission makes a request for medical information under Subsection
362 (2)(c)(ii) for which the student's insurance does not provide coverage or reimbursement for the
363 diagnostic that:

364 (A) would provide the requested information; and

365 (B) is not free or otherwise readily available to the student.
366 (d) During the meeting described in Subsection (2)(b):
367 (i) only the following individuals may be present or participate electronically:
368 (A) the student for whom the commission is meeting to make an eligibility
369 determination;
370 (B) the student's parents or guardians;
371 (C) the members and necessary staff of the commission; and
372 (D) any medical professionals or other witnesses the student chooses to include to
373 support the student's eligibility;
374 (ii) attendees may participate in person or electronically; and
375 (iii) the commission shall:
376 (A) hear the information that supports the student's eligibility;
377 (B) deliberate the facts relevant to the student's physical characteristics and eligibility
378 in camera or otherwise after temporarily excusing from the meeting the student, the student's
379 parents or legal guardians, and any medical professionals or other witnesses whom the student
380 includes; and
381 (C) render the commission's eligibility determination in accordance with Subsection
382 (3) or request additional information and schedule an additional commission meeting to be held
383 within 30 days of the meeting and in accordance with this Subsection (2)(d) to discuss the
384 additional information and render the commission's eligibility determination.
385 (3) In making an eligibility determination, the commission, after considering whether
386 the student's assertion of a gender identity is consistent with the statutory definition of gender
387 identity as that term is defined in Section 34A-5-102, including the implications for the
388 student's mental health of participating in the gender-designated interscholastic activity, shall:
389 (a) make a determination regarding whether, when measured against the relevant
390 baseline range described in Subsection 53G-6-1003(8), granting the student's eligibility would:
391 (i) present a substantial safety risk to the student or others that is significantly greater
392 than the inherent risks of the given activity; or

393 (ii) likely give the student a material competitive advantage when compared to students
394 of the same age competing in the relevant gender-designated activity, including consideration
395 of the student's previous history of participation in gender-designated interscholastic activities;
396 and

397 (b) record the commission's decision and rationale in writing and provide the written
398 decision to the student within 30 days after the day on which the commission renders an
399 eligibility decision under Subsection (3)(a) in a meeting described in Subsection (2)(b).

400 (4) (a) Notwithstanding any other provision of law and except as provided in
401 Subsections (3)(b) and (4)(b), the commission may not disclose:

402 (i) the name of a student whose eligibility the commission will consider, is considering,
403 or has considered; or

404 (ii) the commission's determination regarding a student's eligibility.

405 (b) The commission shall disclose the commission's determination of a student's
406 eligibility for a given gender-designated interscholastic activity to the relevant athletic
407 association, only for the purpose of confirming whether the student is eligible for the
408 interscholastic activity.

409 (c) (i) Notwithstanding any other provision of law, an athletic association may not
410 disclose the information described in Subsections (4)(a)(i) and (ii).

411 (ii) Nothing in this Subsection (4) prohibits an athletic association from affirming that
412 a student is eligible if the eligibility of a student is questioned.

413 Section 9. Section **53G-6-1005** is enacted to read:

414 **53G-6-1005. Reasonable accommodations.**

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

419 Section 10. Section **53G-6-1006** is enacted to read:

420 **53G-6-1006. Severability.**

421 (1) If any provision of this part or the application of any provision of this part to any
422 person or circumstance is held invalid by a final decision of a court of competent jurisdiction,
423 the remainder of this part shall be given effect without the invalidated provision or application.

424 (2) The provisions of this part are severable.

425 Section 11. **Effective date.**

426 This bill takes effect on July 1, 2022.