

SCHOOL ACTIVITY ELIGIBILITY COMMISSION

MODIFICATIONS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Michael S. Kennedy

House Sponsor: Kera Birkeland

LONG TITLE

General Description:

This bill amends provisions related to the operation of the School Activity Eligibility Commission.

Highlighted Provisions:

This bill:

▶ amends the Open and Public Meetings Act to:

• expressly exempt a meeting of the School Activity Eligibility Commission (commission) to discuss the eligibility of a specific student from the open meetings requirement; and

• remove a meeting of the commission to discuss the eligibility of a specific student from the list of reasons to close a public meeting;

▶ prohibits the commission from discussing a specific student's eligibility in a public meeting;

▶ expands the records that are classified as protected records under the Government Records Access and Management Act in relation to a specific student's eligibility;

▶ amends provisions to ensure that an athletic association serves to pass communications between students, parents, or schools and the commission;

▶ clarifies an indemnification provision; and

▶ makes technical and conforming changes.



28 **Money Appropriated in this Bill:**

29 None

30 **Other Special Clauses:**

31 None

32 **Utah Code Sections Affected:**

33 AMENDS:

34 **52-4-201**, as last amended by Laws of Utah 2006, Chapter 263 and renumbered and
35 amended by Laws of Utah 2006, Chapter 14

36 **52-4-205**, as last amended by Laws of Utah 2023, Chapters 263, 328, 374, and 521

37 **53G-6-1003**, as enacted by Laws of Utah 2022, Chapter 478

38 **53G-6-1004**, as enacted by Laws of Utah 2022, Chapter 478

39 **53G-6-1007**, as enacted by Laws of Utah 2022, Third Special Session, Chapter 1



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

42 Section 1. Section **52-4-201** is amended to read:

43 **52-4-201. Meetings open to the public -- Exceptions.**

44 (1) A meeting is open to the public unless:

45 (a) closed under Sections **52-4-204**, **52-4-205**, and **52-4-206**~~[-]~~; or

46 (b) the meeting is solely for the School Activity Eligibility Commission, described in
47 Section **53G-6-1003**, if the commission is in effect in accordance with Section **53G-6-1002**, to
48 consider, discuss, or determine, in accordance with Section **53G-6-1004**, an individual student's
49 eligibility to participate in an interscholastic activity, as that term is defined in Section
50 **53G-6-1001**, including the commission's determinative vote on the student's eligibility.

51 (2) (a) A meeting that is open to the public includes a workshop or an executive
52 session of a public body in which a quorum is present, unless closed in accordance with this
53 chapter.

54 (b) A workshop or an executive session of a public body in which a quorum is present
55 that is held on the same day as a regularly scheduled public meeting of the public body may
56 only be held at the location where the public body is holding the regularly scheduled public
57 meeting unless:

58 (i) the workshop or executive session is held at the location where the public body

59 holds its regularly scheduled public meetings but, for that day, the regularly scheduled public
60 meeting is being held at different location;

61 (ii) any of the meetings held on the same day is a site visit or a traveling tour and, in
62 accordance with this chapter, public notice is given;

63 (iii) the workshop or executive session is an electronic meeting conducted according to
64 the requirements of Section 52-4-207; or

65 (iv) it is not practicable to conduct the workshop or executive session at the regular
66 location of the public body's open meetings due to an emergency or extraordinary
67 circumstances.

68 Section 2. Section 52-4-205 is amended to read:

69 **52-4-205. Purposes of closed meetings -- Certain issues prohibited in closed**
70 **meetings.**

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

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

74 (b) strategy sessions to discuss collective bargaining;

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

76 (d) strategy sessions to discuss the purchase, exchange, or lease of real property,
77 including any form of a water right or water shares, or to discuss a proposed development
78 agreement, project proposal, or financing proposal related to the development of land owned by
79 the state, if public discussion would:

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

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

82 (e) strategy sessions to discuss the sale of real property, including any form of a water
83 right or water shares, if:

84 (i) public discussion of the transaction would:

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

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

87 (ii) the public body previously gave public notice that the property would be offered for
88 sale; and

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

90 sale;

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

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

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

94 relating to the receipt or review of ethics complaints;

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

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

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

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

99 (k) as relates to a county legislative body, discussing commercial information as
100 defined in Section [59-1-404](#);

101 (l) as relates to the Utah Higher Education Savings Board of Trustees and its appointed
102 board of directors, discussing fiduciary or commercial information;

103 (m) deliberations, not including any information gathering activities, of a public body
104 acting in the capacity of:

105 (i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code,
106 during the process of evaluating responses to a solicitation, as defined in Section [63G-6a-103](#);

107 (ii) a protest officer, defined in Section [63G-6a-103](#), during the process of making a
108 decision on a protest under Title 63G, Chapter 6a, Part 16, Protests; or

109 (iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement
110 Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17,
111 Procurement Appeals Board;

112 (n) the purpose of considering information that is designated as a trade secret, as
113 defined in Section [13-24-2](#), if the public body's consideration of the information is necessary to
114 properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;

115 (o) the purpose of discussing information provided to the public body during the
116 procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of
117 the meeting:

118 (i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be
119 disclosed to a member of the public or to a participant in the procurement process; and

120 (ii) the public body needs to review or discuss the information to properly fulfill its

121 role and responsibilities in the procurement process;

122 (p) as relates to the governing board of a governmental nonprofit corporation, as that
123 term is defined in Section 11-13a-102, the purpose of discussing information that is designated
124 as a trade secret, as that term is defined in Section 13-24-2, if:

125 (i) public knowledge of the discussion would reasonably be expected to result in injury
126 to the owner of the trade secret; and

127 (ii) discussion of the information is necessary for the governing board to properly
128 discharge the board's duties and conduct the board's business;

129 (q) as it relates to the Cannabis Production Establishment Licensing Advisory Board,
130 to review confidential information regarding violations and security requirements in relation to
131 the operation of cannabis production establishments;

132 (r) considering a loan application, if public discussion of the loan application would
133 disclose:

134 (i) nonpublic personal financial information; or

135 (ii) a nonpublic trade secret, as defined in Section 13-24-2, or nonpublic business
136 financial information the disclosure of which would reasonably be expected to result in unfair
137 competitive injury to the person submitting the information;

138 (s) a discussion of the board of the Point of the Mountain State Land Authority, created
139 in Section 11-59-201, regarding a potential tenant of point of the mountain state land, as
140 defined in Section 11-59-102; or

141 (t) a purpose for which a meeting is required to be closed under Subsection (2).

142 (2) The following meetings shall be closed:

143 (a) a meeting of the Health and Human Services Interim Committee to review a report
144 described in Subsection 26B-1-506(1)(a), and the responses to the report described in
145 Subsections 26B-1-506(2) and (4);

146 (b) a meeting of the Child Welfare Legislative Oversight Panel to:

147 (i) review a report described in Subsection 26B-1-506(1)(a), and the responses to the
148 report described in Subsections 26B-1-506(2) and (4); or

149 (ii) review and discuss an individual case, as described in Subsection 36-33-103(2);

150 (c) a meeting of the Opioid and Overdose Fatality Review Committee, created in
151 Section 26B-1-403, to review and discuss an individual case, as described in Subsection

152 26B-1-403(10);

153 (d) a meeting of a conservation district as defined in Section 17D-3-102 for the
154 purpose of advising the Natural Resource Conservation Service of the United States
155 Department of Agriculture on a farm improvement project if the discussed information is
156 protected information under federal law;

157 (e) a meeting of the Compassionate Use Board established in Section 26B-1-421 for
158 the purpose of reviewing petitions for a medical cannabis card in accordance with Section
159 26B-1-421;

160 (f) a meeting of the Colorado River Authority of Utah if:

161 (i) the purpose of the meeting is to discuss an interstate claim to the use of the water in
162 the Colorado River system; and

163 (ii) failing to close the meeting would:

164 (A) reveal the contents of a record classified as protected under Subsection
165 63G-2-305(82);

166 (B) reveal a legal strategy relating to the state's claim to the use of the water in the
167 Colorado River system;

168 (C) harm the ability of the Colorado River Authority of Utah or river commissioner to
169 negotiate the best terms and conditions regarding the use of water in the Colorado River
170 system; or

171 (D) give an advantage to another state or to the federal government in negotiations
172 regarding the use of water in the Colorado River system;

173 (g) a meeting of the General Regulatory Sandbox Program Advisory Committee if:

174 (i) the purpose of the meeting is to discuss an application for participation in the
175 regulatory sandbox as defined in Section 63N-16-102; and

176 (ii) failing to close the meeting would reveal the contents of a record classified as
177 protected under Subsection 63G-2-305(83); and

178 (h) a meeting of a project entity if:

179 (i) the purpose of the meeting is to conduct a strategy session to discuss market
180 conditions relevant to a business decision regarding the value of a project entity asset if the
181 terms of the business decision are publicly disclosed before the decision is finalized and a
182 public discussion would:

183 (A) disclose the appraisal or estimated value of the project entity asset under
184 consideration; or

185 (B) prevent the project entity from completing on the best possible terms a
186 contemplated transaction concerning the project entity asset;

187 (ii) the purpose of the meeting is to discuss a record, the disclosure of which could
188 cause commercial injury to, or confer a competitive advantage upon a potential or actual
189 competitor of, the project entity;

190 (iii) the purpose of the meeting is to discuss a business decision, the disclosure of
191 which could cause commercial injury to, or confer a competitive advantage upon a potential or
192 actual competitor of, the project entity; or

193 (iv) failing to close the meeting would prevent the project entity from getting the best
194 price on the market~~[; and]~~.

195 ~~[(i) a meeting of the School Activity Eligibility Commission, described in Section~~
196 ~~53G-6-1003, if the commission is in effect in accordance with Section 53G-6-1002, to~~
197 ~~consider, discuss, or determine, in accordance with Section 53G-6-1004, an individual student's~~
198 ~~eligibility to participate in an interscholastic activity, as that term is defined in Section~~
199 ~~53G-6-1001, including the commission's determinative vote on the student's eligibility.]~~

200 (3) In a closed meeting, a public body may not:

201 (a) interview a person applying to fill an elected position;

202 (b) discuss filling a midterm vacancy or temporary absence governed by Title 20A,
203 Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office;
204 or

205 (c) discuss the character, professional competence, or physical or mental health of the
206 person whose name was submitted for consideration to fill a midterm vacancy or temporary
207 absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and
208 Temporary Absence in Elected Office.

209 Section 3. Section **53G-6-1003** is amended to read:

210 **53G-6-1003. School Activity Eligibility Commission -- Baseline range.**

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

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

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

214 (A) a mental health professional; and
215 (B) a statistician with expertise in the analysis of medical data;
216 (ii) the following two members whom the speaker of the House of Representatives
217 appoints:
218 (A) a board-certified physician with expertise in gender identity healthcare; and
219 (B) a sports physiologist;
220 (iii) the following two members whom the governor appoints:
221 (A) a representative of an athletic association; and
222 (B) an athletic trainer who serves student athletes on the collegiate level; and
223 (iv) one ad hoc member, serving on a case-by-case basis, who is:
224 (A) appointed by the athletic association in which the relevant student's school
225 competes; and
226 (B) a certified high school coach or official who coaches or officiates in a separate
227 region or classification from the relevant student's school and in the sport in which the relevant
228 student seeks eligibility.
229 (b) An athletic association may prepare and communicate the association's
230 sport-specific appointments described in Subsection (2)(a)(iv) in preparation for student
231 requests in a given sport.
232 (3) (a) A member of the commission described in Subsections (2)(a)(i) through (iii)
233 shall serve an initial term of one year, subject to reappointment for subsequent terms of two
234 years.
235 (b) If a vacancy occurs in the membership of the commission, the individual
236 responsible for the appointment of the vacant seat as described in Subsection (2) shall fill the
237 vacancy in the same manner as the original appointment.
238 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), all members of the commission
239 constitute a quorum of the commission for a meeting to determine the eligibility of a student.
240 (ii) All members of the commission described in Subsections (2)(a)(i) through (iii)
241 constitute a quorum for any meeting other than the meeting described in Subsection (4)(a)(i).
242 (b) An action of a majority of a quorum constitutes an action of the commission.
243 (5) A majority of the commission members described in Subsections (2)(a)(i) through
244 (iii) shall elect a chair from among the members described in Subsections (2)(a)(i) through (iii)

245 to:

246 (a) schedule meetings of the commission;

247 (b) set the agenda of commission meetings; and

248 (c) facilitate discussion among the commission's members.

249 (6) A commission member:

250 (a) may not receive compensation or benefits for the member's service on the

251 commission; and

252 (b) may receive per diem and reimbursement for travel expenses that the commission

253 member incurs as a commission member at the rates that the Division of Finance establishes

254 under:

255 (i) Sections [63A-3-106](#) and [63A-3-107](#); and

256 (ii) rules that the Division of Finance makes under Sections [63A-3-106](#) and [63A-3-107](#).

257 (7) The commission may enter into an agreement with an athletic association to

258 provide staff support to the commission.

259 (8) (a) The commission shall establish a baseline range of physical characteristics for

260 students participating in a specific gender-designated activity at a specific age to provide the

261 context for the evaluation of an individual student's eligibility for a given gender-designated

262 interscholastic activity under Section [53G-6-1004](#).

263 (b) In creating the baseline ranges described in Subsection (8)(a), the commission shall

264 include the physical characteristics for the age and gender group in a given gender-designated

265 interscholastic activity that are relevant to the specific interscholastic activity.

266 (c) The physical characteristics described in Subsection (8)(b) may include height,

267 weight, physical characteristics relevant to the application of the standard described in

268 Subsection [53G-6-1004](#)(3), or the extent of physical characteristics affected by puberty, giving

269 consideration to the practicability of considering the physical characteristic when making an

270 assessment of an individual student's eligibility under Section [53G-6-1004](#).

271 (9) ~~[Any record of the commission, including any communication between an athletic~~

272 ~~association and the commission, that relates to]~~ The following records that relate to the

273 application or analysis of or determination under this part regarding the eligibility of a specific

274 student shall be classified as a protected record under Title 63G, Chapter 2, Government

275 Records Access and Management Act[-]:

276 (a) any record of the commission, including any communication between an athletic
277 association and the commission; and

278 (b) any record that a school or LEA possesses.

279 (10) Members of the commission are immune from suit with respect to all acts done
280 and actions taken in good faith in carrying out the purposes of this part.

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

283 Section 4. Section **53G-6-1004** is amended to read:

284 **53G-6-1004. Eligibility for interscholastic activities.**

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

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

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

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

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

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

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

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

304 (A) a student for whom an eligibility determination of the commission is required due
305 to the sex designation on the student's birth certificate not corresponding with the gender
306 designation of the gender-designated interscholastic activity in which the student seeks to

307 participate or the student's notice of a gender transition under Subsection (1)(a)(ii); and
308 (B) the association's ad hoc appointment to the commission described in Subsection
309 53G-6-1003(2)(a)(iv); and
310 (iii) the ~~commission~~ athletic association shall notify the student described in
311 Subsection (2)(a) regarding the process for determining the student's eligibility for the activity
312 under this section.

313 (b) The commission shall:

314 (i) schedule a ~~closed~~ non-public meeting to consider a student's eligibility to be held
315 within 30 days after the day on which the commission receives the notification described in
316 Subsection (2)(a); and

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

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

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

324 (A) the gender-designated interscholastic activities for which the student seeks
325 eligibility;

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

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

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

331 (A) limited to the extent possible to protect the student's privacy; and
332 (B) only directly relevant to the commission's eligibility determination; and

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

337 (A) would provide the requested information; and

338 (B) is not free or otherwise readily available to the student.
339 (d) During the meeting described in Subsection (2)(b):
340 (i) only the following individuals may be present or participate electronically:
341 (A) the student for whom the commission is meeting to make an eligibility
342 determination;
343 (B) the student's parents or guardians;
344 (C) the members and necessary staff of the commission; and
345 (D) any medical professionals or other witnesses the student chooses to include to
346 support the student's eligibility;
347 (ii) attendees may participate in person or electronically; and
348 (iii) the commission shall:
349 (A) hear the information that supports the student's eligibility;
350 (B) deliberate the facts relevant to the student's physical characteristics and eligibility
351 in camera or otherwise after temporarily excusing from the meeting the student, the student's
352 parents or legal guardians, and any medical professionals or other witnesses whom the student
353 includes; and
354 (C) render the commission's eligibility determination in accordance with Subsection
355 (3) or request additional information and schedule an additional commission meeting to be held
356 within 30 days of the meeting and in accordance with this Subsection (2)(d) to discuss the
357 additional information and render the commission's eligibility determination.
358 (e) The commission may not address the commission's application or analysis of or
359 determination under this part regarding the eligibility of a specific student in a public meeting
360 or public communication.
361 (3) (a) In making an eligibility determination, the commission, after considering
362 whether the student's assertion of a gender identity is consistent with the statutory definition of
363 gender identity as that term is defined in Section 34A-5-102, including the implications for the
364 student's mental health of participating in the gender-designated interscholastic activity, shall:
365 ~~(a)~~ (i) make a determination regarding whether, when measured against the relevant
366 baseline range described in Subsection 53G-6-1003(8), granting the student's eligibility would:
367 ~~(i)~~ (A) present a substantial safety risk to the student or others that is significantly
368 greater than the inherent risks of the given activity; or

369 [(†)] (B) likely give the student a material competitive advantage when compared to
370 students of the same age competing in the relevant gender-designated activity, including
371 consideration of the student's previous history of participation in gender-designated
372 interscholastic activities; and

373 [(b)] (ii) record the commission's decision and rationale in writing and provide the
374 written decision to the [student] athletic commission within 30 days after the day on which the
375 commission renders an eligibility decision under Subsection (3)(a) in a meeting described in
376 Subsection (2)(b).

377 (b) Upon receipt of the commission's determination and rationale under Subsection
378 (3)(a), the athletic commission shall notify the student and the relevant school or LEA of the
379 commission's determination and rationale.

380 (c) A school or LEA shall comply with the commission's determination under this
381 Subsection (3).

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

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

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

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

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

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

395 Section 5. Section **53G-6-1007** is amended to read:

396 **53G-6-1007. Indemnification -- Enforcement.**

397 (1) The [~~state shall defend, indemnify,~~] attorney general shall defend and the state shall
398 indemnify and hold harmless a person acting under color of state law to enforce this part for
399 any claims or damages, including court costs and attorney fees, that:

400 (a) are brought or incurred as a result of this part; and

401 (b) are not covered by the person's insurance policies or by any coverage agreement
402 issued by the State Risk Management Fund.

403 (2) An LEA or school within the public education system with a team that competes in
404 an interscholastic athletic activity is responsible for the enforcement of this part in relation to
405 the LEA's or school's teams.

406 Section 6. **Effective date.**

407 This bill takes effect on May 1, 2024.