

SENATE FILE NO. SF0133

Student eligibility in interscholastic sports.

Sponsored by: Senator(s) Schuler, Biteman, Dockstader, French, Hutchings, Jones, Kolb, McKeown, Salazar and Steinmetz and Representative(s) Allred, Berger, Crago, Haroldson, Harshman, Henderson, Jennings, Lawley, Ottman, Rodriguez-Williams, Sommers, Styvar and Trujillo

A BILL

for

1 AN ACT relating to education; prohibiting students of the
 2 male sex from competing on a team designated for students
 3 of the female sex as specified; alternatively providing for
 4 a commission to determine student eligibility as specified;
 5 providing definitions; providing an appropriation;
 6 requiring rulemaking; and providing for an effective date.

7

8 *Be It Enacted by the Legislature of the State of Wyoming:*

9

10 **Section 1.** W.S. 21-25-101 through 21-25-204 are
 11 created to read:

12

13

CHAPTER 25

1 STUDENT ELIGIBILITY IN INTERSCHOLASTIC ACTIVITIES

2

3

ARTICLE 1

4

PARTICIPATION IN FEMALE SPORTS

5

6

21-25-101. Definitions.

7

8

(a) As used in this chapter:

9

10

(i) "Coed" or "mixed" means that a team is composed of members of both sexes who traditionally compete together;

13

14

(ii) "Interscholastic athletic activity" means that a student represents the student's school in an athletic or sporting activity;

17

18

(iii) "School" includes primary and secondary schools but does not include institutions of higher education;

21

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

4

5 **21-25-102. Participation in school athletic**
6 **activities.**

7

8 (a) A public school or a private school that competes
9 against a public school shall expressly designate school
10 athletic activities and teams as one (1) of the following
11 based on sex:

12

13 (i) Designated for students of the male sex;

14

15 (ii) Designated for students of the female sex;

16 or

17

18 (iii) Coed or mixed.

19

20 (b) A student of the male sex shall not compete, and
21 a public school shall not allow a student of the male sex
22 to compete, in an athletic activity or team designated for
23 students of the female sex.

1

2 (c) A government entity or licensing or accrediting
3 organization shall not entertain a complaint, open an
4 investigation or take any other adverse action against a
5 school described in subsection (a) of this section for
6 maintaining separate school athletic activities and teams
7 for students of the female sex.

8

9 (d) Nothing in this section prohibits a school from
10 allowing a student of either gender from participating with
11 a team designated for students of the female sex,
12 consistent with school policy, outside of competition in an
13 interscholastic athletic activity in accordance with
14 subsection (b) of this section.

15

16

ARTICLE 2

17

STUDENT ELIGIBILITY

18

19 **21-25-201. Definitions.**

20

21 (a) As used in this article:

22

1 (ii) "Athletic association" means an association
2 that governs or regulates a student's participation in an
3 athletic interscholastic activity;

4

5 (ii) "Commission" means the school activity
6 eligibility commission created in W.S. 21-25-203;

7

8 (iii) "Female-designated" means an
9 interscholastic activity that is designated specifically
10 for female students;

11

12 (iv) "Gender-designated" means an
13 interscholastic activity or facility that is designated
14 specifically for female or male students;

15

16 (v) "Interscholastic activity" means an activity
17 in which a student represents the student's school in the
18 activity in competition against another school;

19

20 (vi) "Male-designated" means an interscholastic
21 activity that is designated specifically for male students;

22

1 (vii) "Student" means a student who is enrolled
2 in a K-12 public school that participates in
3 interscholastic activities;

4

5 (viii) "This article" means W.S. 21-25-201
6 through 21-25-204.

7

8 **21-25-202. Effect contingent on court ruling.**

9

10 This article is effective only during the period when a
11 court of competent jurisdiction has invalidated or enjoined
12 W.S. 21-25-102. The attorney general shall, within thirty
13 (30) days of the date of any invalidation or enjoinder,
14 notify the governor who shall certify to the office of the
15 secretary of state that this article is effective. If at
16 any point the invalidation or enjoinder is lifted, the
17 attorney general shall, within thirty (30) days of the
18 invalidation or enjoinder being lifted, notify the governor
19 who shall certify to the office of the secretary of state
20 that this article is no longer effective and W.S. 21-25-102
21 is effective.

22

23 **21-25-203. School activity eligibility commission.**

1

2 (a) There is created the school activity eligibility
3 commission.

4

5 (b) The commission shall consist of five (5) members
6 appointed by the governor within thirty (30) days following
7 this article becoming effective pursuant to W.S. 21-25-202
8 and who may be removed by the governor as provided in W.S.
9 9-1-202. The members shall be residents of the state of
10 Wyoming and shall consist of:

11

12 (i) A current or former athletic director or
13 coach;

14

15 (ii) A mental health professional;

16

17 (iii) A parent of a current student;

18

19 (iv) Two members at large.

20

21 (c) All members of the commission shall be required
22 to constitute a quorum of the commission for the
23 determination of the eligibility of a student. A majority

1 of the commission constitutes a quorum for any other
2 purpose.

3

4 (d) An action of a majority of a quorum constitutes
5 an action of the commission.

6

7 (e) The members of the commission shall elect a
8 chairman from among their membership. Appointments by the
9 governor shall be made within thirty (30) days of
10 expiration of membership terms. Each member shall serve a
11 three (3) year term. A vacancy on the commission shall be
12 filled for the unexpired term by the governor.

13

14 (f) The chairman of the commission shall:

15

16 (i) Schedule meetings of the commission;

17

18 (ii) Set the agenda of commission meetings; and

19

20 (iii) Facilitate discussion among the
21 commission's members.

22

1 (g) Members of the commission shall serve without
2 salary but shall receive per diem and mileage or actual
3 expenses for attending meetings in the manner and amounts
4 provided by law for state employees. Members who are
5 government employees shall be considered on official
6 business of their agency when performing duties as members
7 of the commission.

8

9 (h) The commission shall promulgate rules to
10 determine eligibility based on physical characteristics for
11 the age and gender group in a given gender-designated
12 interscholastic activity including height, weight, physical
13 characteristics relevant to the application of the standard
14 described in W.S. 21-25-204 and other relevant factors.

15

16 (j) Any record of the commission, including any
17 communication between an athletic association and the
18 commission, that relates to a specific student is not a
19 public record for purposes of the Public Records Act, W.S.
20 16-4-201 through 16-4-205 and shall not be available for
21 inspection under that Act.

22

1 (k) The commission has no authority in relation to
2 eligibility questions other than participation in a
3 gender-designated interscholastic activity under this
4 article.

5

6 (m) Necessary clerical and administrative support for
7 the commission shall be furnished by the Wyoming department
8 of education.

9

10 **21-25-204. Eligibility for interscholastic**
11 **activities.**

12

13 (a) Notwithstanding any state board rule or policy of
14 an athletic association, and except as provided in
15 subsections (b) and (c) of this section:

16

17 (i) Once a student has obtained the eligibility
18 approval of the commission under subsection (d) of this
19 section, the student may participate in a gender-designated
20 interscholastic activity that does not correspond with the
21 sex designation on the student's birth certificate; or

22

1 (ii) If a student does not obtain the
2 eligibility approval of the commission under subsection (d)
3 of this section, the student shall not participate in a
4 gender-designated interscholastic activity that does not
5 correspond with the sex designation on the student's birth
6 certificate.

7
8 (b) A student who has undergone or is undergoing a
9 gender transition shall obtain the eligibility approval of
10 the commission under subsection (d) of this section before
11 participating in a gender-designated interscholastic
12 activity that does not correspond with the student's
13 biological sex.

14
15 (c) Nothing in this subsection prohibits a student
16 from participating in a gender-designated interscholastic
17 activity in accordance with 34 C.F.R. 106.41(b) as of
18 December 31, 2022.

19
20 (d) When a student registers to participate in a
21 gender-designated interscholastic activity:

22

1 (i) A student who has undergone or is undergoing
2 a gender transition shall notify the athletic association
3 of the student's transition and the need for the
4 commission's eligibility approval as described in
5 subsection (b) of this section;

6
7 (ii) The athletic association shall notify the
8 commission of a student for whom an eligibility
9 determination of the commission is required due to the sex
10 designation on the student's birth certificate not
11 corresponding with the gender-designation of the
12 gender-designated interscholastic activity in which the
13 student seeks to participate or the student's notice of a
14 gender transition under paragraph (a)(ii) of this section;

15
16 (iii) The commission shall notify the student
17 described in paragraphs (i) and (ii) of this subsection
18 regarding the process for determining the student's
19 eligibility for the activity under this section.

20

21 (e) The commission shall:

22

1 (i) Schedule a closed meeting to consider a
2 student's eligibility to be held within thirty (30) days
3 after the day on which the commission receives the
4 notification described in subsection (d) of this section;
5 and

6

7 (ii) Notify the relevant athletic association
8 and the student's parents or legal guardians of the
9 scheduled meeting.

10

11 (f) Before the meeting described in subsection (e) of
12 this section:

13

14 (i) The student for whom the commission has
15 scheduled the meeting or the student's parent or guardian
16 may submit to the commission any information the student
17 wishes to disclose to the commission that may be relevant
18 to the commission's eligibility determination, including
19 information regarding:

20

21 (A) The gender-designated interscholastic
22 activities for which the student seeks eligibility;

23

1 (B) The gender-designated interscholastic
2 activities in which the student has previously
3 participated; and

4

5 (C) The student's physical characteristics
6 or medical treatments that support the student's
7 eligibility for the specific gender-designated
8 interscholastic activity.

9

10 (ii) The commission may request additional
11 evidence from the student that is:

12

13 (A) Limited to the extent possible to
14 protect the student's privacy; and

15

16 (B) Only directly relevant to the
17 commission's eligibility determination.

18

19 (iii) The commission may offer the student a
20 voucher to cover the cost of a diagnostic assessment if the
21 commission makes a request for medical information under
22 paragraph (ii) of this subsection for which the student's

1 insurance does not provide coverage or reimbursement for
2 the diagnostic that:

3

4 (A) Would provide the requested
5 information; and

6

7 (B) Is not free or otherwise readily
8 available without additional expense to the student.

9

10 (g) During the meeting described in subsection (e) of
11 this section:

12

13 (i) Only the following persons may be present or
14 participate electronically:

15

16 (A) The student for whom the commission is
17 meeting to make an eligibility determination;

18

19 (B) The student's parents or guardians;

20

21 (C) The members and necessary staff of the
22 commission; and

23

1 (D) Any medical professionals or other
2 witnesses the student chooses to include to support the
3 student's eligibility.

4

5 (ii) Attendees may participate in person or
6 electronically;

7

8 (iii) The commission shall:

9

10 (A) Hear the information that supports the
11 student's eligibility;

12

13 (B) Render the commission's eligibility
14 determination in accordance with subsection (h) of this
15 section or request additional information and schedule an
16 additional commission meeting to be held within thirty (30)
17 days of the meeting and in accordance with this subsection
18 to discuss the additional information and render the
19 commission's eligibility determination.

20

21 (h) In making an eligibility determination the
22 commission shall:

23

1 (i) Make a determination regarding whether, when
2 measured against the eligibility criteria established by
3 rule of the commission, granting the student's eligibility
4 would:

5

6 (A) Present a substantial safety risk to
7 the student or others that is significantly greater than
8 the inherent risks of the given activity; or

9

10 (B) Likely give the student a material
11 competitive advantage when compared to students of the same
12 age competing in the relevant gender-designated activity,
13 including consideration of the student's previous history
14 of participation in gender-designated interscholastic
15 activities.

16

17 (ii) Record the commission's decision and
18 rationale in writing and provide the written decision to
19 the student within thirty (30) days after the day on which
20 the commission renders an eligibility decision.

21

1 (j) Notwithstanding any other provision of law and
2 except as provided in subsections (h) and (k) of this
3 section, the commission shall not disclose:

4

5 (i) The name of a student whose eligibility the
6 commission will consider, is considering, or has
7 considered;

8

9 (ii) The commission's determination regarding a
10 student's eligibility.

11

12 (k) The commission shall disclose the commission's
13 determination of a student's eligibility for a given
14 gender-designated interscholastic activity to the relevant
15 athletic association, only for the purpose of confirming
16 whether the student is eligible for the interscholastic
17 activity.

18

19 (m) Notwithstanding any other provision of law, no
20 athletic association shall disclose the information
21 described in paragraphs (j)(i) and (ii) of this section.

22

1 (n) Nothing in subsections (k) or (m) of this section
2 prohibits an athletic association from affirming that a
3 student is eligible if the eligibility of a student is
4 questioned.

5

6 **Section 2.** W.S. 16-4-405 by creating a new paragraph
7 (xiii) is amended to read:

8

9 **16-4-405. Executive sessions.**

10

11 (a) A governing body of an agency may hold executive
12 sessions not open to the public:

13

14 (xiii) To consider an individual student's
15 eligibility to participate in an interscholastic activity,
16 including the school activity eligibility commission's
17 determinative vote on the student's eligibility, pursuant
18 to W.S. 21-25-204, if the commission is in effect pursuant
19 to W.S. 21-25-202.

20

21 **Section 3.** There is appropriated thirty thousand
22 dollars (\$30,000.00) from the general fund to the
23 department of education for purposes of funding the school

1 activity eligibility commission created under this act for
2 the period beginning July 1, 2023 and ending June 30, 2024.
3 This appropriation shall not be transferred or expended for
4 any other purpose and any unexpended, unobligated funds
5 remaining from this appropriation on June 30, 2024 shall
6 revert as provided by law. It is the intent of the
7 legislature that this appropriation be included in the
8 standard budget for the department of education for the
9 immediately succeeding fiscal biennium.

10

11 **Section 4.** This act is effective July 1, 2023.

12

13

(END)