Enrolled Copy **H.B. 424**

School Activity Eligibility Commission Amendments

2025 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Nelson T. Abbott

Senate Sponsor: Brady Brammer

LONG TITLE

General Description:

This bill amends provisions regarding the School Activity Eligibility Commission (commission).

Highlighted Provisions:

This bill:

- broadens the scope of available appointees to the commission;
- modifies quorum requirements for the commission;
- modifies a requirement to establish certain baseline ranges;
- provides that an eligibility determination of the commission is for a given school year;
- provides a standard of proof for eligibility determinations of the commission;
- prohibits public schools from participating with an athletic association that does not provide administrative staff support to the commission;
- provides for the scheduling of commission meetings throughout the school year with certain submission deadlines and ad hoc meetings for students who do not meet certain deadlines; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53G-6-1001, as last amended by Laws of Utah 2023, Chapter 340

53G-6-1003, as last amended by Laws of Utah 2024, Chapter 524

53G-6-1004, as last amended by Laws of Utah 2024, Chapter 524

53G-7-1102, as last amended by Laws of Utah 2024, Chapter 46

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

Section 1. Section **53G-6-1001** is amended to read:

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.

(11) "Unamended birth certificate" means a birth certificate:

(a) with no amendment history; or

(b) with an amendment history that:

(i) does not include gender-related amendments; or

(ii) includes gender-related amendments that only:

(A) correct an error or omission resulting from a scrivener's error under Subsection 26B-8-107(2); or

(B) correct a misidentification of birth sex for an intersex individual under Subsection 26B-8-107(2).

Section 2. Section **53G-6-1003** is amended to read:

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, including an endocrinologist, a family medicine physician, or a pediatrician; and

(B) a sports physiologist, an exercise physiologist, a sports medicine physician, a pediatrician with experience in youth sports, or an orthopedist or orthopedic surgeon;

(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)[~~,~~] :

(A) all members of the commission constitute a quorum of the commission for a meeting to determine the eligibility of a student[~~.~~] ; and

[~~(ii)~~] (B) [~~All~~] 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).

(ii) The commission satisfies the quorum requirements described in Subsection (4)(a)(i) if no more than one of the commission positions described in Subsections (2)(a)(i) through (iii) is vacant.

(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~~]

Department of Government Operations shall provide administrative staff support to the commission.

(8)(a) The commission shall, to the extent possible based on the available evidence,

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) The following records that relate to the application or analysis of or determination under this part regarding the eligibility of a specific student shall be classified as a protected record under Title 63G, Chapter 2, Government Records Access and Management Act:

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

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

(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.

Section 3. Section **53G-6-1004** is amended to read:

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), unless otherwise prohibited by federal law or a policy of an LEA, school, or athletic association that governs the relevant interscholastic athletic activity, the student [~~may~~] is eligible under this part to participate in a gender-designated interscholastic activity that does not correspond with the sex designation on the student's unamended birth certificate for the given school year;

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 unamended 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~~] may only participate in a gender-designated interscholastic activity that [~~corresponds with the student's gender identity~~] does not correspond with the student's sex, as defined in Section 68-3-12.5, if the student obtains the eligibility approval of the commission under Subsection (2).

(c) Nothing in this [~~subsection~~] part 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 unamended 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 athletic association shall notify the student described in this Subsection (2)(a) regarding the process for determining the student's eligibility for the activity under this section.

(b) The commission shall:

(i)(A) schedule at least three non-public meetings throughout the school year to consider any student eligibility notifications described in Subsection (2)(a) the commission has received at least 14 days before the date of each meeting; and

(B) give notice of each scheduled meeting and the associated 14-day deadline to the relevant athletic association; and

[~~(i)~~] (ii)(A) if the commission receives a notification described in Subsection (2)(a) after the 14-day deadline described in Subsection (2)(b)(i), schedule [~~a~~] an ad hoc non-public meeting to consider [~~a~~] the given student's eligibility[~~ to be held within 30 days after the day on which the commission receives the notification described in Subsection (2)(a)~~] , occurring within 60 days after the day on which the commission receives the notification; and

[~~(ii)~~] (B) [~~notify~~] give notice of the ad hoc meeting to the relevant athletic association and the [~~student's parents or legal guardians of the scheduled meeting~~] parents of each student seeking an eligibility determination.

(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.

(e) The commission may not address the commission's application or analysis of or determination under this part regarding the eligibility of a specific student in a public meeting or public communication.

(3)(a) 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:

(i) make a determination <u>based on a preponderance of the evidence</u> regarding whether, when measured against the relevant baseline range described in Subsection 53G-6-1003(8), granting the student's eligibility would:

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

(B) likely give the student a material competitive advantage<u>, as the commission defines,</u> 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

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

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

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

(d) An eligibility determination of the commission only applies for the relevant school year.

(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.

Section 4. Section **53G-7-1102** is amended to read:

53G-7-1102 . Public schools prohibited from membership.

(1) A public school may not be a member of or pay dues to an association that:

(a) is not in compliance with:

(i) this part;

(ii) Title 52, Chapter 4, Open and Public Meetings Act;

(iii) Title 63G, Chapter 2, Government Records Access and Management Act; and

(iv) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(b) does not collect each student's unamended birth certificate[-], as that term is defined in Section 53G-6-1001, or subject to Subsection (3), equivalent documentation, as

described in Subsection (2)(a), to determine eligibility as a condition of the association's registration process for an athletic team, event, or category; or

(c) does not require a student to provide the student's date of birth and sex as a condition of the registration process for an athletic team, event, or category.

(2)(a) For a student who is not a United States citizen and who is unable to provide [~~a~~] an unamended birth certificate, as that term is defined in Section 53G-6-1001, the association may collect the student's:

(i) state-issued identification document, including a driver's license or passport; or

(ii) federally recognized identification document, including a document that the Department of Homeland Security issues.

(b) If a student who is not a United States citizen is unable to provide a document under Subsection (2)(a), the association may collect other reliable proof of a student's date of birth and sex, including:

(i) an affidavit from the student's parent or legal guardian attesting:

(A) to the student's date of birth and sex; and

(B) that the parent or legal guardian is unable to obtain a document described in Subsection (2)(a); and

(ii) one of the following:

(A) a religious, hospital, or physician certificate;

(B) verified school records;

(C) verified immunization records; or

(D) documentation from a social service provider.

(3)(a) Subsection (1)(b) does not apply to an association for a student who is a homeless child or youth, as defined in the McKinney-Vento Homeless Assistance Act, 42 U.S.C. Sec. 11431 et seq.

(b) For a student who is a homeless child or youth, including an unaccompanied homeless child or youth, an association may collect:

(i) an affidavit from the student's parent or guardian, or the student if the student is an unaccompanied homeless child or youth, indicating that the student does not meet the necessary requirements to obtain a document described in Subsection (2)(a); and

(ii) a document described in Subsection (2)(b)(ii).

(4) Nothing in this section limits or impairs an LEA's requirement to verify a student's initial review of eligibility to participate in an athletic team, event, or category under

applicable state or federal law or state board rule, including the student's:

(a) residency status;

(b) age;

(c) sex, verified by the student's unamended birth certificate, as that term is defined in Section 53G-6-1001;

(d) academic requirements; or

(e) school enrollment capacity.

(5) Unless otherwise specified, an association's compliance with or an association employee or officer's compliance with the provisions described in Subsection (1) does not alter:

(a) the association's public or private status; or

(b) the public or private employment status of the employee or officer.

Section 5. **Effective Date.**

This bill takes effect on May 7, 2025.