

HOUSE BILL NO. HB0187

Student eligibility in interscholastic activities-2.

Sponsored by: Representative(s) Crago, Northrup, Oakley,
Stith and Western and Senator(s) Schuler

A BILL

for

1 AN ACT relating to school sports; prohibiting students of
2 the male sex from competing on a team designated for
3 students of the female sex as specified; alternatively
4 providing for the state board of education to determine
5 student eligibility as specified; providing definitions;
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

14

STUDENT ELIGIBILITY IN INTERSCHOLASTIC ACTIVITIES

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ARTICLE 1

PARTICIPATION IN FEMALE SPORTS

21-25-101. Definitions.

(a) As used in this chapter:

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

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

(iii) "School" includes primary, secondary and institutions of higher education. Nothing in this article shall be construed to limit students of out-of-state institutions of higher education from competing in this state;

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, with a team designated for students of the
23 female sex in an interscholastic athletic activity.

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 for
7 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.

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ARTICLE 2

17

STUDENT ELIGIBILITY

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

20

21 (a) As used in this article:

22

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

4
5 (ii) "Board" means the state board of education;

6
7 (iii) "Female-designated" means an
8 interscholastic activity that is designated specifically
9 for female students;

10
11 (iv) "Gender-designated" means an
12 interscholastic activity or facility that is designated
13 specifically for female or male students;

14
15 (v) "Gender identity" has the meaning provided
16 in the Diagnostic and Statistical Manual (DSM-5). A
17 person's gender identity can be shown by providing
18 evidence, including but not limited to medical history,
19 care or treatment of the gender identity, consistent and
20 uniform assertion of the gender identity or other evidence
21 that the gender identity is sincerely held, part of a
22 person's core identity and not being asserted for an
23 improper purpose;

1

2 (vi) "Interscholastic activity" means an
3 activity in which a student represents the student's school
4 in the activity in competition against another school;

5

6 (vii) "Male-designated" means an interscholastic
7 activity that is designated specifically for male students;

8

9 (viii) "Student" means a student who is enrolled
10 in a K-12 public school that participates in
11 interscholastic activities;

12

13 (ix) "This article" means W.S. 21-25-201 through
14 21-25-204.

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16 **21-25-202. Effect contingent on court ruling.**

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18 This article is effective only during the period when a
19 court of competent jurisdiction has invalidated or enjoined
20 W.S. 21-25-102. The attorney general shall, within thirty
21 (30) days of the date of any invalidation or enjoinder,
22 notify the governor who shall certify to the office of the
23 secretary of state that this article is effective. If at

1 any point the invalidation or enjoinder is lifted, the
2 attorney general shall, within thirty (30) days of the
3 invalidation or enjoinder being lifted, notify the governor
4 who shall certify to the office of the secretary of state
5 that this article is no longer effective and W.S. 21-25-102
6 is effective.

7

8 **21-25-203. School activity eligibility.**

9

10 (a) The board shall determine the eligibility of a
11 student to participate in interscholastic activities as
12 provided in this article, and may consult with mental
13 health professionals, sports physiologists, coaches,
14 athletic directors and other experts in making a
15 determination of eligibility.

16

17 (b) The board shall promulgate rules to determine
18 eligibility based on physical characteristics for the age
19 and gender group in a given gender-designated
20 interscholastic activity including height, weight, physical
21 characteristics relevant to the application of the standard
22 described in W.S. 21-25-204 and other relevant factors.

23

1 (c) Any record of the board, including any
2 communication between an athletic association and the
3 board, that relates to a specific student is not a public
4 record for purposes of W.S. 16-4-201 through 16-4-205.

5

6 (d) Members of the board are immune from suit with
7 respect to all acts done and actions taken in good faith in
8 carrying out the purposes of this article.

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 board under subsection (d) of this section,
19 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 board under subsection (d) of
3 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 board under subsection (d) of this section before
11 participating in a gender-designated interscholastic
12 activity that corresponds with the student's gender
13 identity.

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 board's
4 eligibility approval as described in subsection (b) of this
5 section;

6

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

15

16 (iii) The board 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 board 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 board receives the notification
4 described in subsection (d) of this section; and

5

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

9

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

12

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

18

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

21

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 board may request additional evidence
11 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 board's
17 eligibility determination.

18

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

1 does not provide coverage or reimbursement for the
2 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 board 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 board; 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 board shall:

9

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

12

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

20

21 (h) In making an eligibility determination, the
22 board, after considering whether the student's assertion of
23 a gender identity is consistent with the statutory

1 definition of gender identity, including the implications
2 for the student's mental health of participating in the
3 gender-designated interscholastic activity, shall:

4

5 (i) Make a determination regarding whether, when
6 measured against the eligibility criteria established by
7 rule of the commission, granting the student's eligibility
8 would:

9

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

13

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

20

21 (ii) Record the board's decision and rationale
22 in writing and provide the written decision to the student

1 within thirty (30) days after the day on which the board
2 renders an eligibility decision.

3

4 (j) Notwithstanding any other provision of law and
5 except as provided in subsections (h) and (k) of this
6 section, the board shall not disclose:

7

8 (i) The name of a student whose eligibility the
9 board will consider, is considering, or has considered;

10

11 (ii) The board's determination regarding a
12 student's eligibility.

13

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

20

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

1

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

6

7 **Section 2.** W.S. 16-4-405(a) by creating a new
8 paragraph (xiii) and 21-2-304(a) by creating a new
9 paragraph (viii) are amended to read:

10

11 **16-4-405. Executive sessions.**

12

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

15

16 (xiii) To consider an individual student's
17 eligibility to participate in an interscholastic activity,
18 including the state board of education's determinative vote
19 on the student's eligibility, pursuant to W.S. 21-25-204,
20 if that section is in effect pursuant to W.S. 21-25-202.

21

22 **21-2-304. Duties of the state board of education.**

23

1 (a) The state board of education shall:

2

3 (viii) Determine a student's eligibility for
4 interscholastic activities pursuant to article 2, chapter
5 25 of title 21 if that article is in effect pursuant to
6 W.S. 21-25-202.

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8 **Section 3.** This act is effective July 1, 2023.

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(END)