

ENROLLED ACT NO. 92, SENATE

SIXTY-SEVENTH LEGISLATURE OF THE STATE OF WYOMING
2023 GENERAL SESSION

AN ACT relating to education; prohibiting students of the male sex from competing on a team designated for students of the female sex as specified; prohibiting retaliation; providing for an administrative hearing as specified; alternatively providing for a commission to determine student eligibility as specified; providing definitions; providing immunity as specified; providing an appropriation; requiring rulemaking; and providing for an effective date.

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

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

CHAPTER 25
STUDENT ELIGIBILITY IN INTERSCHOLASTIC ACTIVITIES

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 a Wyoming high school activities association sanctioned sport;

(iii) "School" means a school consisting of grades seven (7) through 12 (twelve), or any combination of

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grades within this range, as determined by the plan of organization by the school district board of trustees;

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

21-25-102. Participation in school athletic activities.

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

(i) Designated for students of the male sex;

(ii) Designated for students of the female sex;

or

(iii) Coed or mixed.

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

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

(d) Nothing in this section shall be construed to:

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(i) Restrict the eligibility of any student to participate in any interscholastic athletic activity designated for students of the male sex or designated as coed or mixed; or

(ii) Prohibit a school from permitting males to train or practice with an interscholastic athletic activity that is designated for females so long as no female is deprived of a roster spot on a team or sport, opportunity to participate in a practice or competition, scholarship, admission to an educational institution or any other benefit that accompanies participating in the interscholastic athletic activity.

(e) A government entity, any licensing or any athletic association shall not retaliate or take any adverse action against:

(i) A school for maintaining separate athletic teams or sports for students of the female sex; or

(ii) A student if the student or the parent or guardian of a student requests a contested case pursuant to subsection (f) of this section or that reports a violation of this section to an employee or representative of the school or athletic association.

(f) Any student or parent or guardian of a student aggrieved by an act of a government entity, school, athletic association or licensing or accrediting organization for failing to enforce the provisions of this act, may seek review in accordance with the Wyoming Administrative Procedures Act. In accordance with W.S.

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16-3-112, review of a decision of a government entity, school, athletic association or licensing or accrediting organization under this subsection shall be before the state board of education.

ARTICLE 2
STUDENT ELIGIBILITY

21-25-201. Definitions.

(a) As used in this article:

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

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

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

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

(v) "Gender identity" means as stated in the Diagnostic and Statistical Manual. A person's gender identity can be shown by providing evidence, including but not limited to medical history, care or treatment of the gender identity, consistent and uniform assertion of the gender identity or the evidence that the gender identity is sincerely held, part of a person's core identity and not being asserted for an improper purpose;

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

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

(viii) "Student" means a student who is enrolled in grades seven (7) through twelve (12) of a public school that participates in interscholastic activities;

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

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

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

21-25-203. School activity eligibility commission.

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

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(b) The commission shall consist of five (5) members appointed by the Wyoming high school activities association within thirty (30) days following this article becoming effective pursuant to W.S. 21-25-202 and who may be removed by the Wyoming high school activities association. The members shall be residents of the state of Wyoming and shall consist of:

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

(ii) A mental health professional;

(iii) A parent of a current student;

(iv) Two members at large.

(c) All members of the commission shall be required to constitute a quorum of the commission for the determination of the eligibility of a student. A majority of the commission constitutes a quorum for any other purpose.

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

(e) The members of the commission shall elect a chairman from among their membership. Appointments by the Wyoming high school activities association shall be made within thirty (30) days of expiration of membership terms. Each member shall serve a three (3) year term. A vacancy on the commission shall be filled for the unexpired term by the Wyoming high school activities association.

(f) The chairman of the commission shall:

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- (i) Schedule meetings of the commission;
- (ii) Set the agenda of commission meetings; and
- (iii) Facilitate discussion among the commission's members.

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

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

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

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

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

(n) Any person, who serves on the commission or on the Wyoming high school activities association is immune from any liability arising from complying with or administering this act. This immunity shall apply to any health care provider as defined in W.S. 35-31-101(a)(iii) that assists the commission in making eligibility determination in accordance with this act. Nothing in this subsection shall be construed to limit any other immunity available under law.

21-25-204. Eligibility for interscholastic activities.

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

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

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

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

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

(d) When a student registers 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 (b) of this section;

(ii) The athletic association shall notify the commission of a student for whom an eligibility determination of the commission is required due to the sex designation on the student's 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 paragraph (a)(ii) of this section;

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

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(e) The commission shall:

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

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

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

(i) The student for whom the commission has scheduled the meeting or the student's parent or guardian 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.

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(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.

(iii) The commission shall cover the cost of a diagnostic assessment if the commission makes a request for medical information under paragraph (ii) of this subsection 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 without additional expense to the student.

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

(i) Only the following persons 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

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(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;

(iii) The commission shall:

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

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

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

(i) Make a determination regarding whether, when measured against the eligibility criteria established by rule of the commission, 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 when compared to students of the same age competing in the relevant gender-designated activity,

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including consideration of the student's previous history of participation in gender-designated interscholastic activities.

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

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

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

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

(k) 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.

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

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

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

16-4-405. Executive sessions.

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

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

Section 3. There is appropriated one hundred thousand dollars (\$100,000.00) from the general fund to the department of education for purposes of funding the school activity eligibility commission created under this act for the period beginning July 1, 2023 and ending June 30, 2024. This appropriation shall not be transferred or expended for any other purpose and any unexpended, unobligated funds remaining from this appropriation on June 30, 2024 shall revert as provided by law. It is the intent of the legislature that this appropriation be included in the standard budget for the department of education for the immediately succeeding fiscal biennium.

ORIGINAL SENATE
FILE NO. SF0133

ENGROSSED

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

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk