

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.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

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

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

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

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

(1) A meeting is open to the public unless[-] :

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

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

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

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

(i) the workshop or executive session is held at the location where the public body holds its regularly scheduled public meetings but, for that day, the regularly scheduled public meeting is being held at different location;

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

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

(iv) it is not practicable to conduct the workshop or executive session at the regular

location of the public body's open meetings due to an emergency or extraordinary circumstances.

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

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

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

- (a) except as provided in Subsection (3), discussion of the character, professional competence, or physical or mental health of an individual;
- (b) strategy sessions to discuss collective bargaining;
- (c) strategy sessions to discuss pending or reasonably imminent litigation;
- (d) strategy sessions to discuss the purchase, exchange, or lease of real property, including any form of a water right or water shares, or to discuss a proposed development agreement, project proposal, or financing proposal related to the development of land owned by the state, if public discussion would:
 - (i) disclose the appraisal or estimated value of the property under consideration; or
 - (ii) prevent the public body from completing the transaction on the best possible terms;
- (e) strategy sessions to discuss the sale of real property, including any form of a water right or water shares, if:
 - (i) public discussion of the transaction would:
 - (A) disclose the appraisal or estimated value of the property under consideration; or
 - (B) prevent the public body from completing the transaction on the best possible terms;
 - (ii) the public body previously gave public notice that the property would be offered for sale; and
 - (iii) the terms of the sale are publicly disclosed before the public body approves the sale;
- (f) discussion regarding deployment of security personnel, devices, or systems;
- (g) investigative proceedings regarding allegations of criminal misconduct;
- (h) as relates to the Independent Legislative Ethics Commission, conducting business relating to the receipt or review of ethics complaints;
- (i) as relates to an ethics committee of the Legislature, a purpose permitted under Subsection 52-4-204(1)(a)(iii)(C);

- (j) as relates to the Independent Executive Branch Ethics Commission created in Section 63A-14-202, conducting business relating to an ethics complaint;
- (k) as relates to a county legislative body, discussing commercial information as defined in Section 59-1-404;
- (l) as relates to the Utah Higher Education Savings Board of Trustees and its appointed board of directors, discussing fiduciary or commercial information;
- (m) deliberations, not including any information gathering activities, of a public body acting in the capacity of:
- (i) an evaluation committee under Title 63G, Chapter 6a, Utah Procurement Code, during the process of evaluating responses to a solicitation, as defined in Section 63G-6a-103;
 - (ii) a protest officer, defined in Section 63G-6a-103, during the process of making a decision on a protest under Title 63G, Chapter 6a, Part 16, Protests; or
 - (iii) a procurement appeals panel under Title 63G, Chapter 6a, Utah Procurement Code, during the process of deciding an appeal under Title 63G, Chapter 6a, Part 17, Procurement Appeals Board;
- (n) the purpose of considering information that is designated as a trade secret, as defined in Section 13-24-2, if the public body's consideration of the information is necessary to properly conduct a procurement under Title 63G, Chapter 6a, Utah Procurement Code;
- (o) the purpose of discussing information provided to the public body during the procurement process under Title 63G, Chapter 6a, Utah Procurement Code, if, at the time of the meeting:
- (i) the information may not, under Title 63G, Chapter 6a, Utah Procurement Code, be disclosed to a member of the public or to a participant in the procurement process; and
 - (ii) the public body needs to review or discuss the information to properly fulfill its role and responsibilities in the procurement process;
- (p) as relates to the governing board of a governmental nonprofit corporation, as that term is defined in Section 11-13a-102, the purpose of discussing information that is designated as a trade secret, as that term is defined in Section 13-24-2, if:
- (i) public knowledge of the discussion would reasonably be expected to result in injury to the owner of the trade secret; and
 - (ii) discussion of the information is necessary for the governing board to properly

- 130 discharge the board's duties and conduct the board's business;
- 131 (q) as it relates to the Cannabis Production Establishment Licensing Advisory Board, to
- 132 review confidential information regarding violations and security requirements in
- 133 relation to the operation of cannabis production establishments;
- 134 (r) considering a loan application, if public discussion of the loan application would
- 135 disclose:
- 136 (i) nonpublic personal financial information; or
- 137 (ii) a nonpublic trade secret, as defined in Section 13-24-2, or nonpublic business
- 138 financial information the disclosure of which would reasonably be expected to
- 139 result in unfair competitive injury to the person submitting the information;
- 140 (s) a discussion of the board of the Point of the Mountain State Land Authority, created
- 141 in Section 11-59-201, regarding a potential tenant of point of the mountain state land,
- 142 as defined in Section 11-59-102; or
- 143 (t) a purpose for which a meeting is required to be closed under Subsection (2).
- 144 (2) The following meetings shall be closed:
- 145 (a) a meeting of the Health and Human Services Interim Committee to review a report
- 146 described in Subsection 26B-1-506(1)(a), and the responses to the report described in
- 147 Subsections 26B-1-506(2) and (4);
- 148 (b) a meeting of the Child Welfare Legislative Oversight Panel to:
- 149 (i) review a report described in Subsection 26B-1-506(1)(a), and the responses to the
- 150 report described in Subsections 26B-1-506(2) and (4); or
- 151 (ii) review and discuss an individual case, as described in Subsection 36-33-103(2);
- 152 (c) a meeting of the Opioid and Overdose Fatality Review Committee, created in Section
- 153 26B-1-403, to review and discuss an individual case, as described in Subsection
- 154 26B-1-403(10);
- 155 (d) a meeting of a conservation district as defined in Section 17D-3-102 for the purpose
- 156 of advising the Natural Resource Conservation Service of the United States
- 157 Department of Agriculture on a farm improvement project if the discussed
- 158 information is protected information under federal law;
- 159 (e) a meeting of the Compassionate Use Board established in Section 26B-1-421 for the
- 160 purpose of reviewing petitions for a medical cannabis card in accordance with
- 161 Section 26B-1-421;
- 162 (f) a meeting of the Colorado River Authority of Utah if:
- 163 (i) the purpose of the meeting is to discuss an interstate claim to the use of the water

- 164 in the Colorado River system; and
- 165 (ii) failing to close the meeting would:
- 166 (A) reveal the contents of a record classified as protected under Subsection
- 167 63G-2-305(82);
- 168 (B) reveal a legal strategy relating to the state's claim to the use of the water in the
- 169 Colorado River system;
- 170 (C) harm the ability of the Colorado River Authority of Utah or river
- 171 commissioner to negotiate the best terms and conditions regarding the use of
- 172 water in the Colorado River system; or
- 173 (D) give an advantage to another state or to the federal government in negotiations
- 174 regarding the use of water in the Colorado River system;
- 175 (g) a meeting of the General Regulatory Sandbox Program Advisory Committee if:
- 176 (i) the purpose of the meeting is to discuss an application for participation in the
- 177 regulatory sandbox as defined in Section 63N-16-102; and
- 178 (ii) failing to close the meeting would reveal the contents of a record classified as
- 179 protected under Subsection 63G-2-305(83); and
- 180 (h) a meeting of a project entity if:
- 181 (i) the purpose of the meeting is to conduct a strategy session to discuss market
- 182 conditions relevant to a business decision regarding the value of a project entity
- 183 asset if the terms of the business decision are publicly disclosed before the
- 184 decision is finalized and a public discussion would:
- 185 (A) disclose the appraisal or estimated value of the project entity asset under
- 186 consideration; or
- 187 (B) prevent the project entity from completing on the best possible terms a
- 188 contemplated transaction concerning the project entity asset;
- 189 (ii) the purpose of the meeting is to discuss a record, the disclosure of which could
- 190 cause commercial injury to, or confer a competitive advantage upon a potential or
- 191 actual competitor of, the project entity;
- 192 (iii) the purpose of the meeting is to discuss a business decision, the disclosure of
- 193 which could cause commercial injury to, or confer a competitive advantage upon a
- 194 potential or actual competitor of, the project entity; or
- 195 (iv) failing to close the meeting would prevent the project entity from getting the best
- 196 price on the market[; and] .
- 197 ~~[(i) a meeting of the School Activity Eligibility Commission, described in Section~~

~~53G-6-1003, if the commission is in effect in accordance with Section 53G-6-1002,
to consider, discuss, or determine, in accordance with Section 53G-6-1004, an
individual student's eligibility to participate in an interscholastic activity, as that term
is defined in Section 53G-6-1001, including the commission's determinative vote on
the student's eligibility.]~~

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

- (a) interview a person applying to fill an elected position;
- (b) discuss filling a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office; or
- (c) discuss the character, professional competence, or physical or mental health of the person whose name was submitted for consideration to fill a midterm vacancy or temporary absence governed by Title 20A, Chapter 1, Part 5, Candidate Vacancy and Vacancy and Temporary Absence in Elected Office.

Section 3. 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; and

(B) a sports physiologist;

(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), all members of the commission constitute a quorum of the commission for a meeting to determine the eligibility of a student.

(ii) 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).

(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 provide staff support to the commission.

(8) (a) The commission shall 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) ~~[Any record of the commission, including any communication between an athletic association and the commission, that relates to]~~ 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 4. 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), the student may participate in a gender-designated interscholastic activity that does not correspond with the sex designation on the student's birth certificate; and

(ii) if a student does not obtain the eligibility approval of the commission under

- 300 Subsection (2), the student may not participate in a gender-designated
301 interscholastic activity that does not correspond with the sex designation on the
302 student's birth certificate.
- 303 (b) A student who has undergone or is undergoing a gender transition shall obtain the
304 eligibility approval of the commission under Subsection (2) to participate in a
305 gender-designated interscholastic activity that corresponds with the student's gender
306 identity.
- 307 (c) Nothing in this subsection prohibits a student from participating in a
308 gender-designated interscholastic activity in accordance with 34 C.F.R. Sec.
309 106.41(b).
- 310 (2) (a) When a student registers with an athletic association to participate in a
311 gender-designated interscholastic activity:
- 312 (i) a student who has undergone or is undergoing a gender transition shall notify the
313 athletic association of the student's transition and the need for the commission's
314 eligibility approval as described in Subsection (1)(b);
- 315 (ii) the athletic association shall notify the commission of:
- 316 (A) a student for whom an eligibility determination of the commission is required
317 due to the sex designation on the student's birth certificate not corresponding
318 with the gender designation of the gender-designated interscholastic activity in
319 which the student seeks to participate or the student's notice of a gender
320 transition under Subsection (1)(a)(ii); and
- 321 (B) the association's ad hoc appointment to the commission described in
322 Subsection 53G-6-1003(2)(a)(iv); and
- 323 (iii) the ~~[commission]~~ athletic association shall notify the student described in
324 Subsection (2)(a) regarding the process for determining the student's eligibility for
325 the activity under this section.
- 326 (b) The commission shall:
- 327 (i) schedule a ~~[closed]~~ non-public meeting to consider a student's eligibility to be held
328 within 30 days after the day on which the commission receives the notification
329 described in Subsection (2)(a); and
- 330 (ii) notify the relevant athletic association and the student's parents or legal guardians
331 of the scheduled meeting.
- 332 (c) Before the meeting described in Subsection (2)(b):
- 333 (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:

[(a)] (i) make a determination regarding whether, when measured against the relevant baseline range described in Subsection 53G-6-1003(8), granting the student's eligibility would:

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

[(ii)] (B) likely give the student a material competitive advantage 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

[(b)] (ii) record the commission's decision and rationale in writing and provide the written decision to the ~~[student]~~ athletic commission within 30 days after the day on which the commission renders an eligibility decision under 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).

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

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

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

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

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

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

Section 6. **Effective date.**

This bill takes effect on May 1, 2024.