# FINDING OF EMERGENCYPhysical Fitness Test

The State Board of Education (SBE) finds that an emergency exists and that the emergency regulations adopted are necessary to avoid serious harm to the public peace, health, safety, or general welfare, especially the welfare of students attending California’s public schools.

## SPECIFIC FACTS DEMONSTRATING THE EXISTENCE OF AN EMERGENCY AND THE NEED FOR IMMEDIATE ACTION

### Overview

The proposed amended regulations, California Code of Regulations, title 5 (5 CCR), section 1040, must be adopted, on an emergency basis, in order for California to continue to fairly and properly administer the 2021-22 California Physical Fitness Test (PFT) while awaiting recommendations from a study pursuant to Senate Bill (SB) No. 820, Statutes 2020, chapter 10, section 68, due on or before November 1, 2022, that will address significant concerns about the PFT relating to body image, gender identity and students with disabilities, among other issues. The intended purpose of the proposed amendments is to ensure the accessibility and equitability of the PFT, and to avoid inflicting harm to student’s mental and physical health, in the interim.

### Background

Education Code (EC) section 60800 requires that local educational agencies (LEAs) administer the PFT, designated by the SBE, during the month of February, March, April, or May to each student in grades five, seven, and nine. The law also requires that LEAs provide individual results to students for completed testing and report aggregate results in their annual school accountability report card and to the CDE at least every two years.

The FITNESSGRAM® was designated by the SBE in February 1996 as the PFT for California schools. The FITNESSGRAM® is a physical fitness assessment developed by the Cooper Institute and published by Human Kinetics and includes six fitness areas: Aerobic Compacity, Body Composition, Abdominal Strength and Endurance, Trunk Extensor and Strength and Flexibility, Upper Body Strength and Endurance, and Flexibility. The desired performance standard (developed by the Cooper Institute) for each fitness-area test is the Healthy Fitness Zone (HFZ).

EC section 51241(b)(1) allows LEAs to grant a high school student an exemption from participating in physical education courses for two years anytime during grades ten through twelve, if the student has satisfactorily met at least five of the six standards of the PFT administered in grade nine.

In 2020, the Legislature passed and the Governor approved SB 820 (Stats. 2020, ch. 110, § 68), which required the CDE to consult with experts and other interested partners, including, but not limited to, individuals with expertise in fitness, adapted physical education, gender identity, body image, and pupils with disabilities in order to provide recommendations regarding the purpose and administration of the PFT. On or before November 1, 2022, the State Superintendent of Public Instruction must submit a report with recommendations to the appropriate fiscal and policy committees of the Legislature, the Department of Finance, and the SBE. In the interim, students are scheduled to take the PFT in spring 2022.

### Specific Basis for the Finding of Emergency

The concerns that prompted passage of SB 820, ch. 110, section 68 remain. One concern relates to body image. Specifically, the Body Composition subtest of FITNESSGRAM® commonly involves measuring Body Mass Index (BMI), which may negatively impact a student’s personal body perception. (A study published in the Journal of the American Medical Association Pediatrics entitled “Effect of School-Based Body Mass Index Reporting in California Public Schools: A Randomized Clinical Trial” found that reporting BMI alone may decrease weight satisfaction.) In the interests of students’ mental and physical health, it is necessary to eliminate the Body Composition subtest and the related Body Composition Health Fitness Zone now, even pending the results of the ongoing study pursuant to SB 820.

A second concern relates to nonbinary students. Currently LEAs report students’ HFZ scores on each FITNESSGRAM® subtest to the student upon completion, and report aggregate results on the LEA’s School Accountability Report Card and to the CDE. However, the HFZs for the FITNESSGRAM® subtests correspond to a student’s sex at birth. There are no HFZs for a nonbinary student. While a nonbinary student may receive raw scores, the nonbinary student will not receive HFZ scores, and therefore will not be included in the LEA’s aggregate scores, and will not have the opportunity to satisfy the criteria for exemption from physical education in EC section 51241(b)(1), i.e., receiving a passing HFZ score on at least five of the six subtests. To ensure equity, it is necessary to add a regulatory definition of “Results” to indicate that for all students, LEAs will report **raw scores** only to the student upon completion of the test, and LEAs will report **participation scores**only on their School Accountability Report Card (SARC) and to the CDE.

While the lack of HFZ scores will eliminate all students’ ability to satisfy the criteria for the exemption from physical education in EC section 51241(b)(1), there remain alternative options for students to receive an exemption from physical education. For example, EC section 51241(c) permits an exemption from physical education for students who are age 16 or older and have been enrolled in grade 10 for one academic year or longer.

A third concern relates to students with physical disabilities. While EC section 60800 states that students with physical disabilities shall participate in the PFT to the extent they are able, and the regulations confirm in 5 CCR sections 1041(e) and1047(a) that a student’s Individualized Education Program or Section 504 plan may exempt the student from a subtest or subtests, the PFT does not offer a student with a physical disability an alternative way of satisfying the HFZ for any subtest in which the student cannot participate. Thus a student with a physical disability will not receive a HFZ score for any subtest from which the student is exempted, and therefore will not be included in the LEA’s aggregate scores for that subtest, and will not have an alternative way of satisfying the criteria for exemption from physical educaiton in EC section 51241(b)(1). To ensure equity, it is necessary to add a regulatory definition of “Results” to indicate that LEAs will report individual students’ **raw scores** only to the student upon completion of the test, and LEAs will report **participation scores** only on their SARC and to the CDE. As noted above, while the lack of HFZ scores will eliminate all students’ ability to satisfy the criteria for the exemption from physical education in EC section 51241(b)(1). Alternative options remain for students to receive an exemption from physical education. For example, EC section 51241(c) permits an exemption from physical education for students who are age 16 or older and have been enrolled in grade 10 for one academic year or longer.

### These Issues Could Not Be Addressed Through Nonemergency Regulations

The 2021-22 window for PFT testing would expire before formal rulemaking could be undertaken, and therefore LEAs would be required to administer the FITNESSGRAM® as currently prescribed pursuant to EC section 60800, without consideration for recent concerns regarding the equitability and accessibility of the PFT described herein.

## NON-DUPLICATION

Government Code (GC) section 11349 prohibits unnecessary duplication of state or federal statutes in regulation. In this case, duplication of certain state statute in the proposed emergency regulations is necessary in order to provide additional specific detail not included in state statute.

## AUTHORITY AND REFERENCE

Authority: Section 33031, Education Code.

Reference: Sections 60603 and 60800, Education Code.

## INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Section 1040 of 5 CCR provides the definitions for the physical performance test required by EC section 60800, and also referred to as the PFT. The PFT is administered annually to public school students in grades five, seven, and nine. The SBE has designated the FITNESSGRAM® as the PFT. Current regulations require the LEA to report the student’s HFZ scores to the student upon completion of the PFT, and to report aggregate HFZ scores on the SARC and to the CDE.

The amendments to 5 CCR section 1040 are as follows. Section 1040(e) is amended to change the SBE’s designation of FINTESSGRAM® as the PFT to eliminate the Body Composition subtest and related HFZ. Proposed Section 1040(i) is added to define “Results” to mean raw scores only when reporting to a student, and participation scores only when reporting on the SARC and to the CDE. Section 1040(k) is amended to change "Standards and Assessment Division” to the current name, “Assessment Development Administrative Division.”

### Policy Statement Overview

The proposed regulations are necessary for the state implementation of EC section 60800, while the required PFT study is in process and ensuring equitable results for all students.

### Determination of Inconsistency/Incompatibility with Existing State Regulations

An evaluation of the proposed regulations has determined they are not inconsistent/incompatible with existing regulations, pursuant to GC section 11346.5(a)(3)(D).

### Documents Incorporated by Reference

FITNESSGRAM® is hereby incorporated by reference and may be found at <https://pftdata.org/files/hfz-standards.pdf>.

## SPECIFIC BENEFITS ANTICIPATED BY THE PROPOSED REGULATIONS

The proposed regulations will provide LEAs flexibility in the administration of the PFT while the required PFT panel’s work is underway. The proposed regulations will allow for an equitable administration, while collecting and reporting only participation results.

## TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS RELIED UPON

Effect of School-Based Body Mass Index Reporting in California Public Schools: A Randomized Clinical Trial <https://jamanetwork.com/journals/jamapediatrics/fullarticle/2773004>.

## MANDATE ON LOCAL AGENCIES OR SCHOOL DISTRICTS

The proposed regulations do not impose a new mandate on LEAs because the amendments are made to the definitions of existing regulations and do not impose new or additional work on the LEAs.

## FISCAL IMPACT ESTIMATION

These emergency regulations will not result in any additional costs or savings to state agencies, or federal funding to the state. These emergency regulations will not result in any additional cost to any local agency or school district that is required to be reimbursed under GC section 17500 et seq. The emergency regulations will not result in any additional non-discretionary costs or savings upon local agencies.

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