

Exemptions for Students with Disabilities
Statutory References and Expectations for Data Submission

The Texas Education Code (TEC) permits an exemption for students with disabilities from participating in the physical fitness assessment, as indicated in the code below:

TEC § 38.101. ASSESSMENT REQUIRED.

(a) *Except as provided by Subsection (b), a school district annually shall assess the physical fitness of students enrolled in grades 3 through 12.*

(b) *A school district is not required to assess a student for whom, as a result of disability or other condition identified by commissioner rule, the assessment instrument adopted under Section 38.102 is inappropriate.*

A “student with a disability” may be able to participate like any other student or with modifications and/or adaptations. A student receiving special education services should not be restricted from participating in the assessment based solely on the student’s eligibility for special education services. Only students who meet the “restricted” definition as provided in the Texas Administrative Code (TAC) must be temporarily and/or permanently restricted from participation.

TAC §74.31. Health Classifications for Physical Education.

For physical education, a district must classify each student, on the basis of health, into one of the following categories.

(1) **Unrestricted** (not limited in activities).

(2) **Restricted** (excludes the more vigorous activities).

(A) **Permanent.** *A member of the healing arts licensed to practice in Texas must provide the school written documentation concerning the nature of the impairment and the expectations for physical activity for the student.*

(B) **Temporary.** *The student may be restricted from physical activity of the physical education class. A member of the healing arts licensed to practice in Texas must provide the school written documentation concerning the nature of the temporary impairment and the expected amount of time for recovery. During recovery time, the student must continue to learn the concepts of the lessons but may not actively participate in the skill demonstration.*

(3) **Adapted and remedial** (specific activities prescribed or prohibited, as directed by a member of the healing arts licensed to practice in Texas).

A student’s health classification must be determined by a member of the healing arts, as defined in Chapter 104 of the Occupations Code:

Sec. 104.002. HEALING ART. *The healing art includes any system, treatment, operation, diagnosis, prescription, or practice to ascertain, cure, relieve, adjust, or correct a human disease, injury, or unhealthy or abnormal physical or mental condition.*

Sec. 104.003. REQUIRED IDENTIFICATION. (a) A person subject to this section who uses the person's name on a written or printed professional identification, including a sign, pamphlet, stationery, or letterhead, or who uses the person's signature as a professional identification shall designate as required by this section the healing art the person is licensed to practice.

(b) A person who is licensed by the Texas State Board of Medical Examiners and holds a doctor of medicine degree

(c) A person who is licensed by the Texas State Board of Medical Examiners and holds a doctor of osteopathy degree

(d) A person who is licensed by the State Board of Dental Examiners

(e) A person who is licensed by the Texas Board of Chiropractic Examiners

(f) A person who is licensed by the Texas Optometry Board

(g) A person who is licensed by the Texas State Board of Podiatric Medical Examiners

Exemptions:

A student can be completely or partially exempted from the six test items required for assessment with the FITNESSGRAM assessment instrument based on the conditions of their disability.

NOTE: There is no requirement to indicate these exemptions in the software or to the agency at this time.

Entering Scores Complete:

If the student completes some, but not all, of the test items based on a restriction from particular types of physical activity, those test items that the student completes should be entered into the FITNESSGRAM software.

Scoring Tests Not Completed:

The test items that are not completed should be **left blank**. (no score recorded) Blank entries will not count against a student or school's overall percentages. The agency will only see aggregated data that reflects the test items that were completed. There will be no indication of what test items were not completed for a specific student.

Inclusion for All Students:

All students, regardless of a disability, should be included in this initiative to exemplify the importance of health for every child. **Note:** A student receiving special education services should not be restricted from participating in the assessment based solely on the student's eligibility for special education services.

Following Test Protocols:

Do not enter any scores into the FITNESSGRAM software unless you feel that it is fair to judge a child against the regular FITNESSGRAM standards.

Modifications vs. Testing Protocols:

Modifying the test items when necessary to provide an opportunity for students to participate in a safe and relevant way is recommended, but the data resulting from these modifications should not be entered into the software or submitted to the agency at this time, but should be maintained by the district.

Ordering of Extra Kits:

The terms of our agreement with TEA, stipulate that each participating *school* will receive one (1) kit with a site license. If there are multiple teachers, the school/district has the option to purchase additional kits without site licenses for a price of \$75 each. An order form is included in each kit to facilitate that process or the district may contact:

Cheri Scott
K-12 Sales
Human Kinetics Publishers
PO Box 5076
Champaign, IL 61825

cheris@hkusa.com
(800) 747-4457, ext. 2412
FAX (217) 351-2674
www.humankinetics.com

Questions and Answers:

Does this mean that all students with disabilities are exempt from the FITNESSGRAM?

No; the majority of students with disabilities will be able to participate in the FITNESSGRAM without accommodations or modifications to the assessment. Some students with disabilities will require accommodations or modifications to the assessment based on the individual student's disability, but many will be able to participate without any accommodations or modifications. Only students (with or without disabilities) who have been "restricted" in accordance with TAC §74.31, shall not participate in the administration of the FITNESSGRAM.

What actions should a school take when a student can participate in the FITNESSGRAM if provided appropriate accommodations or modifications to the assessment?

For the remainder of this school year (2007-2008), school personnel should exercise common sense and good judgment when including students with disabilities in the FITNESSGRAM. If the student is considered "unrestricted" in accordance with TAC §74.31, then the student must be administered the FITNESSGRAM in the same manner as any other student. However, if school personnel and/or the parent believe the student will require certain accommodations or modifications to participate, then an admission, review and dismissal (ARD) committee may need to be convened to consider accommodations or modifications to the assessment based on the individual student's disability. However, for the remainder of this school year (2007-2008), and in the future, the Agency strongly encourages school districts and parents to use the regulatory provision that allows the parent and school district to agree to amend the ARD/IEP in writing without convening an ARD committee meeting. As school districts convene Spring 2008 ARD committee meetings they should consider the students participation in the FITNESSGRAM for the 2008-2009 school year.

What if an Admission, Review and Dismissal (ARD) committee determines that some items in the FITNESSGRAM are not appropriate for a student with a disability?

The student's IEP should include a statement explaining why the child cannot participate in test items that are determined by the ARD committee to be inappropriate.

Must an ARD committee meet to discuss the FITNESSGRAM for every student who receives special education services in a district?

No, the Agency strongly encourages school districts and parents to use the regulatory provision that allows the parent and school district to agree to amend the ARD/IEP in writing without convening an ARD committee meeting when there is a need to discuss appropriate accommodations, modifications, or alternate assessments for students who are unable to fully participate in the assessment.

Does a school have any alternatives to holding an ARD committee meeting when making decisions regarding the FITNESSGRAM?

The school and the parent of a student with a disability may agree not to convene an ARD committee meeting for the purposes of making changes to the student's IEP and instead may develop a written document to amend or modify the child's current IEP.

What if a student's disability is of sufficient severity to make it dangerous or impossible for the student to participate in any portion of the FITNESSGRAM?

Assessment using the FITNESSGRAM will be inappropriate for some students with significant disabilities. Documentation for excluding the student should be maintained by the district. In the future it may be or may not be necessary for schools to administer an alternative assessment for a student on an individual basis. The Agency will provide information regarding this issue at a later date.

There are no other permissible exemptions for this state mandate. Thus, it is critical that those administering the assessment communicate the importance of student health. To merely state that it is a requirement without teaching the value of the assessment will potentially lead to student disinterest and parent discontent.

Some ways to garner support from students and parents:

- Share with parents and students that the data will be utilized to improve curriculum, direct resources and, most importantly, provide opportunities for students to improve their own health.
- Send a letter home to parents to communicate the requirements and the importance of this initiative before the test is facilitated.
- Share the "parent report" and "student report" (both generated by the software at no cost) voluntarily when the assessment is complete.
- Share research and articles with students and parents that describe the positive effects on students for taking care of their health, such improved performance, concentration, and attendance rates.
- Host an assembly for students and/or a family fitness night to share these insights and demonstrate the test protocols.

This new state law allows us to begin a very important dialogue with our students, their families, and the community. It is important for students of all ages to receive this message, including those not in a physical education class or those preparing to leave home after graduation. Students and parents who are provided with this information prior to test administration will likely be more supportive of this state mandate. Although these expectations will need to be communicated regularly for the next several years, support for this initiative will be stronger as the benefits become realized.

For questions regarding special education services and requirements, please refer to the Division website at <http://www.tea.state.tx.us/special.ed/>.

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From the official SB 530 document

(l-1) In adopting rules relating to an activity described by Subsection (l)(2), **the commissioner [State Board of Education] may permit an exemption for a student who participates in a school-related activity or an activity sponsored by a private league or club only if the student provides proof of participation in the activity.**

SECTION 2. Section 28.004, Education Code, is amended by amending Subsection (k) and adding Subsection (l) to read as follows:

(k) A school district shall publish in the student handbook and post on the district's Internet website, if the district has an Internet website:

(1) **a statement of the policies adopted to ensure that elementary school, middle school, and junior high school students engage in at least the amount and level [30 minutes per school day or 135 minutes per school week] of physical activity required by Section 28.002(l); [and]**

(2) a statement of:

(A) the number of times during the preceding year the district's school health advisory council has met;

(B) whether the district has adopted and enforces policies to ensure that district campuses comply with agency vending machine and food service guidelines for restricting student access to vending machines; and

(C) whether the district has adopted and enforces policies and procedures that prescribe penalties for the use of tobacco products by students and others on school campuses or at school-sponsored or school-related activities; and

(3) a statement providing notice to parents that they can request in writing their child's physical fitness assessment results at the end of the school year.

(l) The local school health advisory council shall consider and make policy recommendations to the district concerning the importance of daily recess for elementary school students. The council must consider research regarding unstructured and undirected play, academic and social development, and the health benefits of daily recess in making the recommendations. The council shall ensure that local community values are reflected in any policy recommendation made to the district under this subsection.