

California Department of Education

Executive Office

SBE-005 (REV. 1/2018)

General Waiver

# California State Board of Education September 2022 Agenda Item #W-05

## Subject

Request by **Fortuna Union High School District** to waive portions of California *Education Code* Section 51222(a), related to the statutory minimum requirement of 400 minutes of physical education each 10 school days for students in grades nine through twelve in order to implement a block schedule at Fortuna High School.

## Waiver Number

1-4-2022

## Type of Action

Action, Consent

## Summary of the Issue(s)

Fortuna Union High School District (FUHSD) is requesting to implement a 4X4 block schedule where students receive 800 minutes of physical education (PE) instruction each 10 school days for 18 weeks. California *Education Code* (*EC*) Section 51222(a) requires a minimum of 400 minutes each 10 school days for the entire school year. The students from Fortuna High School only take PE for one semester; therefore, FUHSD is seeking a waiver of *EC* Section 51222(a).

## Authority for Waiver

*EC* Section 33050

## Recommendation

* Approval: No
* Approval with conditions: Yes
* Denial: No

*EC* Section 33051(b) will NOT apply and the district must renew this waiver before August 7, 2023 (two years less two days), consistent with State Board of Education (SBE) Waiver Policy 99-03. The district must also create a uniform way for the school site to document and report to the district evidence of compliance; the district will collect documentation that provides evidence of compliance for each waiver criteria applicable to SBE Waiver Policy 99-03 annually.

## Summary of Key Issues

*EC* Section 51222(a) establishes requirements for minimum instructional minutes of PE, 400 minutes each 10 school days for pupils in grades seven through twelve. Fortuna High School will implement a block schedule in grades nine through twelve that does not provide each student with PE instruction for a minimum of 400 minutes each 10 school days.

These students will be enrolled in PE for only 18 weeks of the school year, receiving instruction for an average of 88 minutes per school day. This means that PE is taught for 440 minutes per school week (or 880 minutes each 10 days). Therefore, the actual time that Fortuna High School students are enrolled in PE meets the minimum minute requirements, if added on an annual basis (7,200 minutes).

| **Sample Student Schedules** | **Fall Term**  18 Consecutive Weeks | **Spring Term**  18 Consecutive Weeks |
| --- | --- | --- |
| Student A | Minutes per week of PE Instruction = 440 | Minutes per week of PE Instruction = 0 |
| Student B | Minutes per week of PE Instruction = 0 | Minutes per week of PE Instruction = 440 |

The California Department of Education (CDE) has worked closely with FUHSD to ensure that all criteria have been met to a high degree of completion. The district has provided evidence indicating they have met the criteria for this waiver as follows:

1. The PE instructional program at Fortuna High School complies with federal and state statutes and regulations related to PE pertaining to minimum minute requirements; instruction is based on PE content standards, and instruction is aligned with the *Physical Education Framework* *for California Public Schools* (sequential, articulated, and age-appropriate instruction).
2. The FUHSD has developed a PE professional development plan for teachers who deliver instruction in PE at that school.
3. Fortuna High School students are enrolled in courses of PE a minimum of 18 weeks in 80–90 minute daily class periods during the regular school year.
4. The FUHSD described a method by which it will monitor students’ maintenance of their personal physical activity programs during the weeks they are not participating in a PE course at their school. The monitoring programs includes: student accountability for participation in physical activity, guidance for students in using the principles of exercise to design and complete their physical activity program and specific information regarding the design, and delivery of the monitoring program.
5. The PE program complies with *California Code of Regulations*, Title 5, Article 3.1, Section 10060.
6. All eligible students are prepared for and participate in the physical performance testing as specified in *EC* Section 60800.
7. Alternate day scheduling for PE rather than alternate term scheduling has been thoroughly investigated by the district.

When the district is identified for a Federal Program Monitoring (FPM) review by the CDE, Fortuna High School, in the FUHSD, shall have PE reviewed as a part of the district’s FPM process.

The data below includes the most recent California Physical Fitness Test (PFT) scores from the 2018–19 school year. This is due to the 2019–20 Executive Order N-56-20 and the 2020–21 Section 68, of Senate Bill 820 (Chapter 110, 2020), suspending the PFT respectively.

As required by SBE Waiver Policy 99-03, PE Requirements for Block Schedules, the 2017–18 and 2018–19 PFT data from Fortuna High School was reviewed and indicates that 26.5 percent of the grade nine students met all six out of six fitness standards on each of the PFT items. This indicates a decrease from their 2017–18 (32 percent) scores.

For the 2021–22 school year, local education agencies (LEAs) will not be required to report the raw PFT scores including the reporting of each component of the Healthy Fitness Zones to the CDE. Instead, LEAs will be required to submit participation results (by component and grade) as part of their annual School Accountability Report Card.

**Demographic Information:** Fortuna High School has a student population of 250 and is located in a rural area located in Humboldt County.

**Because this is a general waiver, if the SBE decides to deny the waiver, it must cite one of the seven reasons in *EC* 33051(a), available on the California Legislative Information web page at** <http://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=EDC&sectionNum=33051>.

## Summary of Previous State Board of Education Discussion and Action

SBE Waiver Policy 99-03, PE Requirements for Block Schedules, which was last revised in July 2006, establishes criteria for granting waivers related to PE instructional minutes for the purpose of implementing a block schedule. Please see the PE Requirements for Block Schedules on the CDE Waiver Policies web page at <https://www.cde.ca.gov/re/lr/wr/waiverpolicies.asp>.

Schools began implementing block schedules, sometimes with disregard for the statutory requirements for PE instructional minutes, in the 1980s. Several types of these block schedules incorporate PE instruction on a limited basis and do not meet the statutory requirement of 400 minutes each 10 school days. A committee including PE experts, district staff, SBE members, and CDE staff developed a recommendation for a waiver policy. This group did not feel that they could ask high schools in the state to stop doing block scheduling, so flexibility was sought, and a waiver policy was created.

## Fiscal Analysis (as appropriate)

There is no statewide fiscal impact of waiver approval or denial.

## Attachment(s)

* **Attachment 1:** Summary Table of Physical Education Block Schedule State Board of Education Waiver (1 page)
* **Attachment 2:** Fortuna Union High School District General Waiver Request 1-4-2022 (2 pages) (Original waiver request is signed and on file in the Waiver Office.)

# Attachment 1: Summary Table of Physical Education Block Schedule State Board of Education Waiver

California *Education Code* Section 51222(a)

| **Waiver Number** | **District** | **Period of Request** | **Bargaining Unit, Representatives Consulted, Date, and Position** | **Public Hearing and Board Approval Date** | **Public Hearing Advertisement** | **SSC/Advisory Committee Consulted, Date, and Position** |
| --- | --- | --- | --- | --- | --- | --- |
| 1-4-2022 | Fortuna Union High School District | **Requested:**  Start: 8/9/2021  End: 5/27/2022  **Recommended:**  Start: 8/9/2021  End: 8/7/2023 | Fortuna Union High School Teachers Association  Representative:  Brooke Raven  President  Date: 4/1/2022  Position: Support | Public Hearing  Local Board Approval  Date: 3/9/2022 | It was published in accordance with Board Meeting Agenda requirements | Community Council  Department Chairs  Date: 2/18/2022  Objection: N |

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# Attachment 2: Fortuna Union High School District General Waiver Request 1-4-2022

**California Department of Education**

**WAIVER SUBMISSION - General**

CD Code: 1262810

Waiver Number: 1-4-2022

Active Year: 2022

Date In: 4/4/2022 2:46:03 PM

Local Education Agency: Fortuna Union High

Address: 735 13th St.

Fortuna, CA 95540

Start: 8/9/2021

End: 5/27/2022

Waiver Renewal: N

Previous Waiver Number:

Previous SBE Approval Date:

Waiver Topic: Physical Education Program

Ed Code Title: Block Schedules

Ed Code Section: 51222(a)

Ed Code Authority: 33050

*Education Code* or *CCR* to Waive: This is a application to waive the 400 minutes every 10 day portion of the ed code. Our block schedule meets the minute requirement over the course of a semester and a year, but not every 10 days.

Outcome Rationale: We adopted a new schedule post Covid. In this schedule students are basically attending classes in a quarter type system for 9 weeks at a time. So there is a stretch of 9 weeks where some students may not be enrolled in PE. Since the time they are in PE is in a block system they gain the minutes to make the yearly requirment.

Student Population: 250

City Type: Rural

Public Hearing Date: 3/9/2022

Public Hearing Advertised: It was advertised on the district web page and posted in locations in accordance with the Brown Act since it took place at our regular March Board Meeting.

Local Board Approval Date: 3/9/2022

Community Council Reviewed By: Department Chairs Meeting

Community Council Reviewed Date: 2/18/2022

Community Council Objection: N

Community Council Objection Explanation:

Audit Penalty Yes or No: N

Categorical Program Monitoring: N

Submitted by: Mr. Clint Duey

Position: Principal

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