

FAMILY AND MEDICAL LEAVE OF ABSENCE

This Policy is adopted to implement the federal Family and Medical Leave Act of 1993 (FMLA) pursuant to the terms, conditions, and limitations of the Act and as amended in future. In the event of any conflict between the provisions of this or any other leave policy of the Board of Education and the provisions of the FMLA, the latter shall prevail.

- A. To be eligible for leave under the Act, an employee must have worked for the School District for a total of twelve (12) months, and the employee must have worked a total of 1,250 hours in the previous twelve (12) months.
- B. Pursuant to the Family and Medical Leave Act, employees are permitted up to twelve (12) workweeks of unpaid leave per year during any twelve (12)-month period. Family and medical leave can be requested for the following reasons:
 - 1. childbirth and infant care;
 - 2. placement of a child with the employee for adoption or placement of a child with the employee by a state agency for foster care. Entitlement to leave for birth or placement of a child expires twelve (12) months after the birth or placement of the child. Adoption leave covers only children under the age of eighteen (18) unless the child is incapable of self-care in three (3) or more activities of daily living because of a mental or physical handicap;
 - 3. care of the employee's spouse, son or daughter or parent with a serious health condition; and
 - 4. the inability of the employee to perform their job duties due to their own serious health condition, or the necessary absence from work of an employee to receive medically necessary treatment.

The twelve (12)-month period within which each employee may take twelve (12) weeks of leave under the FMLA shall be a "rolling" twelve (12)-month period, measured backward for each employee from the first time each such employee uses leave under the FMLA.

- C. A "serious health condition" is an illness, injury, impairment, or physical or mental condition that (a) requires in-patient care in a hospital, hospice, or residential medical care facility; or (b) requires continuing treatment by a health care provider and which, if left untreated, would likely result in an absence from work of more than three days; or (c) involves pre-natal care. A "serious health condition" does not include voluntary cosmetic treatments, unless inpatient care is required, or routine physical examinations.

- D. An employee requesting leave shall submit a "Request for Leave" form to the Director for Human Resources.
- E. If an employee requests leave for treatment of an employee's serious medical condition or for that of a child, parent, or spouse, the employee must make a reasonable effort to schedule the treatment at a time that is not unduly disruptive to the District.
- F. An employee seeking leave for a foreseeable reason such as the birth or placement of a child or for planned medical treatment shall provide the School District with at least thirty (30) days advance notice of the leave. If thirty (30) days advance notice is not possible under the circumstances, e.g., in the case of a premature birth, the employee shall give such notice as is practicable (*e.g.*, within one or two business days of the day the employee learns of the need for leave). If an employee's reason for seeking leave was unforeseeable, such employee shall give such notice as is practicable. An employee who fails to give notice of leave as required herein may be denied such leave until the notice requirements are met. If less than thirty (30) days notice of leave is provided, the employee must schedule an appointment with the Director for Human Resources for approval.
- G. An employee seeking leave on the basis of the serious medical condition of the employee or the employee's spouse, son or daughter, or parent, must provide certification issued by the health care provider of the employee or of the employee's spouse, son or daughter, or parent, stating:
 - 1. the date the condition began;
 - 2. its probable duration;
 - 3. appropriate medical facts; and
 - 4. that, for a specified time, either:
 - (a) the employee is unable to perform his or her job functions or will be unavailable to do so while receiving necessary medical treatment, or
 - (b) the employee will be needed to care for the sick family member.

If the adequacy of medical certification is questioned by the District, the District may require the employee to seek the opinion of a second health care provider, who is not regularly employed by the District, at the District's expense. If the opinions of the first and second health care providers differ, the District may require the employee to obtain a third opinion at the District's expense, from a health care provider agreed upon by the employee and the District. The third opinion shall be final and binding.

- H. Spouses employed by the School District are limited to a combined total of twelve (12) workweeks per year for the birth or placement of a child, or to care for a parent. However, for other covered leaves, such as to care for a spouse or child, or for treatment of the employee's own serious health condition, each spouse may take up to twelve (12) weeks a year.
- I. Intermittent leave and reduced work schedules are allowed when such are medically necessary; however, employees may not take intermittent leaves or go on reduced work schedules that reduce the number of hours worked per week or per day for childbirth/infant care or adoption leave.
- J. If an eligible "instructional employee" seeks intermittent leave or reduced-schedule leave for the care of a spouse, son or daughter, or parent, or for the employee's own serious health condition, and the leave is foreseeable on the basis of planned medical treatment, and the employee would be on leave for more than 20% of the work days during the twelve (12)-month period, the employee must choose either to:
 - 1. Take leave for a period or periods of a particular length, not greater than the length of the planned medical treatment; or
 - 2. Transfer temporarily to an equivalent position which better accommodates recurring periods of leave.

"Instructional employees" include teachers, instructional assistants, coaches, and other employees whose duties principally involve the direct provision of instructional services to students. In the event an employee involuntarily takes additional leave time under subparagraph 1, above, the entire leave time shall be counted against the employee's available leave under the FMLA and any District leave policy.

- K. If any employee requests intermittent leave or leave on a reduced work schedule to care for a seriously-ill family member or for the employee's own serious health condition, and the need for leave is foreseeable based upon planned medical treatment, the employee may temporarily be transferred to an available alternative position with equivalent pay and benefits, if the employee is qualified for the position and the position better accommodates recurring periods of leave than the employee's regular job.
- L. The responsibilities of instructional employees near the end of academic terms - examinations, grading, etc. - require that the School District be able to limit leave taking by instructional employees at such times as follows:
 - 1. Leaves beginning more than five weeks before the end of a semester: If an instructional employee starts a leave more than five weeks before the

end of a semester, the School District may require the employee to continue the leave until the end of the semester if:

- (a) the leave is of at least three weeks' duration; and
- (b) the employee would return from leave during the three-week period preceding the semester's end.

2. Leaves beginning five (5) weeks or less before the end of a semester: If an instructional employee begins a leave five weeks or less before the end of a semester, the School District may require the employee to continue the leave until the end of the semester if:

- (a) the leave will last more than two (2) weeks; and
- (b) the employee would return from leave during the two (2)-week period before the term's end.

3. Leaves beginning three weeks or less before the end of a semester: If an instructional employee starts a leave three weeks or less before the end of a semester, the School District may require the employee to continue the leave until the end of the term if the leave will last more than five (5) working days.

M. All requests for family/medical leave must be approved by the employee's supervisor and the Director for Human Resources.

N. Employees who take family/medical leave must utilize any available paid leave they have accrued under another of the District's leave policies when the reason for leave corresponds with the basis for leave under the other policy. Accrued vacation or personal leave shall be substituted for any FMLA-qualifying purpose. If the requested leave period extends beyond the employee's accrued number of paid leave days, the remaining leave days will be unpaid.

Example: An employee who sought leave due to his or her own serious medical condition and inability to perform his or her job duties has accrued six (6) weeks sick leave. The employee must use the six (6) weeks of paid sick leave and may thereafter use the remaining six (6) weeks of unpaid leave available under this policy.

Any employee seeking leave shall explain the reasons for the needed leave on forms provided by the School District. It shall be the School District's responsibility to identify the requested leave as covered by the FMLA and as paid or unpaid on the basis of leave time accrued under other School District leave policies. Such identification shall be made at the time leave is requested or during such leave, on the basis of information provided by the employee.

- O. During the period of leave, the School District will maintain the School District group-coverage health plan if the employee is enrolled; however, the employee is responsible for continuing to pay the employee's monthly portion of the premium. If an employee fails to make payment of the employee's share of health insurance premiums, the District will pay both portions while the employee is on leave and recover these payments upon return to work.

If the employee fails to return to work following leave under the FMLA for any reason (1) other than the continuation of the FMLA-qualifying circumstances upon which the need for leave was originally based; or (2) circumstances beyond the control of the employee, the employee shall be required to reimburse the District for the cost of health insurance premiums the School District paid to maintain coverage for the employee during the leave period.

- P. Employees will not accrue leave or other benefits during the family/medical leave period.
- Q. An employee other than a "key employee," who has taken family/medical leave will be restored to his or her previous position or to a position of equivalent pay, benefit, and other terms and conditions of employment. Equivalency of positions shall be determined on the basis of District policy. A "key employee" may be denied reinstatement if it would create a substantial and grievous economic injury for the School District. A "key employee" is one whose compensation is within the highest ten (10) percent of the work force of the School District.
- R. While on leave, the employee may be required to furnish the School District with periodic reports of their status and intent to return to work as stated in § 825.309 of the FMLA regulations.
- S. The employee may also be required to furnish re-certification relating to a serious health condition as stated in § 825.308 of the FMLA regulations.
- T. In each School District building there shall be posted a notice to employees, describing the provisions of the FMLA, provided and approved by the Wage and Hour Division of the United States Department of Labor.
- U. Special provisions for FMLA **Servicemember Family Leave**

1. An eligible employee of the District may take up to twelve (12) workweeks of FMLA leave measured backward for each employee from the first time such employee uses leave under FMLA, without pay, because of any qualifying exigency, as the U.S. Secretary of Labor shall by regulation determine, arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on active duty or has been notified of an impending call or order to active duty in the Armed Forces in support of a contingency operation.

2. “qualifying exigency” is defined by the Department of Labor by referring to a number of broad categories for which employees can use FMLA leave: (1) Short-notice deployment; (2) Military events and related activities; (3) Childcare and school activities; (4) Financial and legal arrangements; (5) Counseling; (6) Rest and recuperation; (7) Post-deployment activities; and (8) Additional activities not encompassed in the other categories, but agreed to by the employer and employee.

3. An eligible employee of the District may take up to twenty-six (26) workweeks of FMLA to care for a covered servicemember who is the spouse, son, daughter, parent, or next of kin of a covered servicemember. A “covered service member” is a member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness. The leave described to care for a covered service member shall only be available during a single twelve (12) month period.

4. The aggregate number of workweeks of leave to which both the husband and wife working for the District may be entitled under covered servicemember family leave combined with leave shall be limited to twenty-six (26) workweeks during only one (1) twelve (12)-month period.

5. An employee must provide at least thirty (30) days notice before FMLA Servicemember Family Leave is to begin if the need for the leave is foreseeable. When thirty (30) notice is not practicable, notice must be given as soon as practicable.

6. Certification of active military duty or call to active duty in support of a contingency operation for purpose of receiving FMLA Servicemember Family Leave shall be required under the same conditions as FMLA certification for other FMLA leave. In the case of continuation, recurrence, or onset of a serious health condition of the covered servicemember being cared for by an employee and the employee is unable to return to work, certification issued by the health care provider of the servicemember with the serious health condition shall be required to support the inability of the employee to return to work.

7. All other provisions of the FMLA policy shall apply to the FMLA Servicemember Family Leave.

PROCEDURES FOR SUBMITTING FAMILY/MEDICAL LEAVE REQUEST

Employees requesting family/medical leave absence are required to:

1. Submit a "Leave Request Form" to the Human Resources Department at least thirty (30) days prior to the requested leave period. If the leave must

be taken in less than thirty (30) days, the employee must schedule an appointment with the Director for Human Resources for approval.

2. The Human Resources Department will advise the employee in writing of the employee's obligations under the FMLA within two (2) work days from receipt of the employee's written request for leave.
3. If the requested family/medical leave is for treatment of an employee's serious medical condition or for treatment of a child, parent, or spouse, the employee must make "a reasonable effort" to schedule the treatment at a time that is not "unduly disruptive" to the School District and must give at least thirty (30) days notice of the leave. However, if the leave must be taken in less than thirty (30) days, the employee must schedule an appointment with the Director for Human Resources for approval.
4. In cases where the employee is requesting leave based upon the serious health condition of a child, spouse or parent, or the employee's own serious health condition, the employee must provide certification of his or her condition by a health care provider. This certification must be submitted with the leave request form.