

**FAMILY & MEDICAL LEAVES OF ABSENCE ("FMLA")**

In accordance with Federal law, the Board of Education shall provide up to twelve (12) weeks of unpaid FMLA leave in any twelve (12) month period to eligible professional staff members for the following reasons:

- A. the birth of a child and/or the care of a newborn child within one (1) year of the child's birth;
- B. the placement of a child with the staff member by way of adoption or foster care and/or to care for the child within one (1) year of the child's arrival;
- C. the staff member is needed to care for a spouse, son, daughter, or parent if such individual has a serious health condition;
- D. the staff member's own serious health condition prevents him/her from performing the functions of his/her position; or
- E. any qualifying exigency (as defined in applicable Federal regulations) arising out of the fact that the staff member's spouse, son, daughter, or parent is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces ("Qualifying Exigency Leave"). Covered active duty means duty during deployment with the Armed Forces to a foreign country. Qualifying exigencies, as defined by Federal regulations, include:
  - 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.

In addition, an eligible staff member who is a spouse, son, daughter, parent, or next of kin (i.e., the nearest blood relative) of a covered service member shall be entitled to a total of twenty-six (26) work weeks of leave during a twelve (12) month period to care for the service member ("Military Caregiver Leave"). Military Caregiver Leave shall only be available during a single twelve (12) month period. Additionally, during the single twelve (12) month period described in this paragraph, an eligible staff member shall be entitled to a combined total of twenty-six (26) work weeks of leave under this paragraph and general FMLA leave described in the preceding paragraph. Nothing in this paragraph shall be construed to limit the availability of general FMLA leave under the preceding paragraph during any other twelve (12) month period. A covered service member is defined as (1) 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, or (2) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. Serious injury or illness for purposes of Military Caregiver Leave is defined as an injury or illness incurred by a covered member in line of duty on active duty in the Armed Forces (or existed before the beginning of the covered service member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating. In the case of a veteran the injury or illness could have manifested itself before or after the member became a veteran.

Professional staff members are "eligible" if they have worked for the Board for at least twelve (12) months, and for at least 1,250 hours over the twelve (12) months prior to the leave request. Months and hours that reservists or National Guard members would have worked if they had not been called up for military service counts towards the staff member's eligibility for FMLA leave/Military Caregiver Leave. All full-time professional staff members are deemed to meet the 1,250 hour requirement.

Twelve (12) month period is defined as:

- ( ) a fixed twelve (12) month period (i.e. the "leave year" is identical for all staff members -- e.g., a fiscal year or calendar year).
- ( ) the twelve (12) month period measured forward from the date the staff member's first FMLA leave begins (i.e., the "leave year" is specific to each individual staff member).
- (X) a rolling twelve (12) month period measured backward from the date the staff member uses FMLA leave (i.e. the "leave year" is specific to each individual staff member).

Serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves:

- A. Inpatient care, including any period of incapacity or any subsequent treatment in connection with such inpatient care.
- B. Continuing treatment by a healthcare provider, including:
  - 1. a period of incapacity of more than three (3) consecutive full calendar days and any subsequent treatment or period of incapacity relating to the same condition, that also involves either treatment two (2) or more times by a healthcare provider (including a nurse under direct supervision of a healthcare provider, a provider of healthcare services or under order of or referral by a healthcare provider) within thirty (30) days of the first day of incapacity, unless extenuating circumstances exist, or treatment by a healthcare provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of a healthcare provider;

"Extenuating circumstances" means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the healthcare provider;

2. any incapacity due to pregnancy or for prenatal care;
  3. any period of incapacity or treatment for such incapacity due to a chronic serious health condition;
  4. a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective;
  5. any period of absence to receive multiple treatments by a healthcare provider either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three (3) consecutive days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), kidney disease (dialysis).
- C. Conditions for which cosmetic treatment are administered are not "serious health conditions" unless inpatient hospital care is required or complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomachs, minor ulcers, headaches other than migraines, routine dental or orthodontia problems, periodontal disease, etc., are conditions that do not meet this definition and do not qualify for FMLA leave.

The Superintendent may allow a staff member to take FMLA leave intermittently or on a reduced-leave schedule for reason (A) or (B) above. A staff member may take FMLA leave on an intermittent or reduced-leave schedule when medically necessary as indicated in reasons (C) and (D) on page one. A staff member may also take FMLA leave on an intermittent or reduced-leave schedule for reason (E) on page one. Finally, Military Caregiver Leave may be taken on an intermittent or reduced-leave schedule when medically necessary. Regardless, the taking of such leave results in the total reduction of the twelve (12) or twenty-six (26) weeks only by the amount of leave actually taken. If the intermittent or reduced-leave schedule is foreseeable based on planned medical treatment or the staff member is taking Military Caregiver Leave, the Superintendent may require the staff member to transfer temporarily to an available alternative position which better accommodates recurring periods of leave. The alternative position shall have equivalent pay and benefits but not necessarily equivalent duties. Professional staff members (i.e. individuals whose principal function is to teach and instruct students in a class, a small group, or an individual setting) who request intermittent leave or a reduced-leave schedule because of reasons on page one or pursuant to Military Caregiver Leave and the leave would exceed twenty percent (20%) of the total number of working days over the period of anticipated leave must elect either to:

- A. Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
- B. Transfer temporarily to an available alternative position offered by the Superintendent for which the professional staff member is qualified, and that has equivalent pay and benefits and that better accommodates the recurring periods of leave than the staff member's regular position.

Whenever the leave is necessitated by the serious health condition of the staff member or his/her immediate family member or leave is taken pursuant to Military Caregiver Leave, and is foreseeable based on planned medical treatment, the staff member shall provide the Superintendent with thirty (30) days notice. If there is insufficient time to provide such notice because of the need for treatment, the staff member shall provide such notice as early as practicable. When a staff member is taking leave because of a "qualifying exigency" (i.e., reason "E") and the leave is foreseeable, whether because the staff member's spouse, son, daughter or parent is on active duty, or because of notification of an impending call or order to active duty in support of a contingency operation, the staff member shall provide such notice to the Superintendent as is reasonable and practicable. When planning medical treatment or taking leave pursuant to Military Caregiver Leave, the staff member must consult with the Superintendent and make a reasonable effort to schedule the leave so as not to unduly disrupt the regular operation of the District, subject to the approval of the healthcare provider.

The Board shall require the staff member

The staff member may request

to substitute any of his/her earned or accrued paid vacation leave, personal leave or family leave (per the applicable collective bargaining agreement) for unpaid FMLA leave provided pursuant to reason (A) or (B) on page one.

The Board shall require the staff member

The staff member may request

to substitute any of his/her earned or accrued paid vacation leave, personal leave or sick leave (per the applicable collective bargaining agreement) for unpaid FMLA leave provided pursuant to reason (C) or (D) on page one.

[ ] The Board shall require the staff member

[X] The staff member may request

to substitute any of his/her earned or accrued paid vacation, personal leave, family leave or sick leave (per the applicable collective bargaining agreement) for unpaid Military Caregiver Leave.

If the staff member has not earned or accrued adequate paid leave to encompass the entire twelve (12) week period of FMLA leave or twenty-six (26) period of Military Caregiver Leave, the additional weeks of leave to obtain the twelve (12) weeks of FMLA leave or twenty-six (26) weeks of Military Caregiver Leave, the staff member is entitled to shall be unpaid. Whenever a staff member uses paid leave in substitution for unpaid FMLA leave/Military Caregiver Leave, such leave counts toward the twelve (12) week/twenty-six (26) week, maximum leave allowance provided by this Policy.

**Absent extenuating circumstances, the Superintendent will provide to the employee a "Designation Notice" stating whether a request for leave has been approved or denied within five (5) business days of the date the staff member provides information to the Superintendent sufficient to enable him/her to determine that the leave is being taken for an FMLA-qualifying reason.**

In cases in which the Board employs both spouses, the total amount of FMLA leave is twelve (12) weeks for the couple, except when the leave is due to the serious health condition of either spouse or a child. Additionally, the aggregate number of work weeks of leave to which both the husband and wife may be entitled pursuant to this policy may be limited to twenty-six (26) work weeks during the single twelve (12) month period provided for in the Military Caregiver Leave provision if the leave is taken pursuant to Military Caregiver Leave or a combination of general FMLA leave and Military Caregiver Leave.

When FMLA leave is taken for either reason (C) or (D) on page one, or Military Caregiver Leave is taken, the staff member must provide medical certification from the healthcare provider of the eligible staff member, his/her immediate family member, or the next of kin of the individual. The staff member may either:

- A. submit the completed medical certification to the Superintendent or his/her designee; or
- B. direct the healthcare provider to transfer the completed medical certification directly to the Superintendent, which will generally require the staff member to furnish the healthcare provider with a HIPAA-compliant authorization.

When the need for FMLA leave is foreseeable and at least thirty (30) days notice has been provided, the staff member must provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the Superintendent within fifteen (15) calendar days after the staff member requests FMLA leave unless it is not practicable under the circumstances to do so despite the staff member's diligent and good faith efforts.

The Board reserves the right to obtain, at its expense, the opinion of a second healthcare provider and, in the event of conflict, the opinion of a third healthcare provider whose decision shall be binding and final. The staff member may either:

- A. submit the opinion of the second healthcare provider, and the opinion of the third healthcare provider if applicable, to the Superintendent or his/her designee; or
- B. direct the second or third healthcare provider to transfer his/her opinion directly to the Superintendent, which will generally require the staff member to furnish the healthcare provider with a HIPAA-compliant authorization.

[X] A staff member who takes leave for reason (D) on page one, prior to returning to work, must provide the Superintendent with a statement from his/her healthcare provider that s/he is able to resume work.

A staff member seeking to take leave pursuant to reason (E) on page one must submit, in a timely manner to the Superintendent, an appropriate certification as described by Federal regulations.



For the duration of FMLA leave, the District will maintain the professional staff member's health coverage under any group health plan provided the professional staff member pays any required professional staff member's contribution and for dependent coverage costs in a timely manner. Upon return from FMLA leave, professional staff members will be restored to their original or equivalent position with equivalent pay, benefits, and other employment terms. The use of FMLA leave will not result in the loss of any employment benefit that accrued prior to the start of a professional staff member's leave. Sick leave and vacation do not accrue during an FMLA leave period.

Leave Taken By Professional Employees Towards the End of a Term

District employees primarily engaged in a professional capacity who take Federal leave near the end of an academic term may be required to extend their leave through the end of the academic term if (a) the leave is commenced more than five (5) weeks from the end of the term but the employee intends to return during the final three (3) weeks of the term and the leave is at least three (3) weeks in duration; (b) the leave is commenced within five (5) weeks of the end of the term and the employee intends to return during the final two (2) weeks of the term and the leave period is greater than two (2) weeks in duration; or (c) the leave commences within three (3) weeks of the end of a term and the leave is greater than five (5) working days in duration.

- [X] The staff member shall not accrue any sick leave, vacation, or other benefits during a period of unpaid FMLA leave.
  
- [ ] If the staff member fails to return to work at the end of the leave for reasons other than the continuation, recurrence, circumstances beyond the control of the staff member, or onset of a serious health condition that entitles the staff member or the staff member's immediate family to leave pursuant to reasons (C) or (D) on page one or Military Caregiver Leave the staff member shall reimburse the Board for the health insurance premiums paid by the Board during the unpaid FMLA leave period.

A staff member who fraudulently obtains FMLA leave is not protected by this policy's job restoration or maintenance of health benefits provisions.

The Superintendent shall prepare any guidelines that are appropriate for this policy and ensure that the policy is posted properly.

The Superintendent shall provide a copy of the policy upon the request of a staff member.

29 U.S.C. 2601 et seq.

29 C.F.R. Part 825

National Defense Authorization Act (October 28, 2009)

To Policy 5/26/2015

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