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UNITED INDEPENDENT SCHOOL DISTRICT AGENDA ACTION ITEM

TOPIC: First Reading of Policy DEC (LOCAL): Compensation and Benefits: Leaves and Absences

SUBMITTED BY: Gloria S. Rendon OF Asst. to the Superintendent

APPROVED FOR TRANSMITTAL TO SCHOOL BOARD: September 16, 2009

RECOMMENDATION:

It is recommended that the Board of Trustees approve First Reading of Policy DEC (LOCAL): Compensation and Benefits: Leaves and Absences

RATIONALE:

BUDGETARY INFORMATION:

BOARD POLICY REFERENCE AND COMPLIANCE:

PROPOSED POLICY

DEFINITIONS

The term "immediate family" is defined as:

FAMILY

1. Spouse.
2. Son or daughter, including a biological, adopted, or foster child, a son- or daughter-in-law, a stepchild, a legal ward, or a child for whom the employee stands *in loco parentis*.
3. Parent, stepparent, parent-in-law, or other individual who stands *in loco parentis* to the employee.
4. Sibling, stepsibling, and sibling-in-law.
5. Grandparent and grandchild.

For purposes of the Family and Medical Leave Act (FMLA), the definitions of spouse, parent, son or daughter, and next of kin are found in DECA(LEGAL).

FAMILY EMERGENCY

The term "family emergency" shall be limited to disasters and life-threatening situations involving the employee or a member of the employee's immediate family.

WORKDAY

A "workday" for purposes of earning, use, or recording shall mean the number of hours per day equivalent to the employee's usual assignment, whether full-time or part-time.

CATASTROPHIC ILLNESS OR INJURY

A catastrophic illness or injury is a severe condition or combination of conditions affecting the physical health of the employee or a member of the employee's immediate family that requires the services of a licensed practitioner for a prolonged period of time and that forces the employee to exhaust all leave time earned by that employee and to lose compensation from the District. Complications resulting from pregnancy shall be treated the same as any other condition.

AVAILABILITY

The District shall make paid leave for the current year available for use at the beginning of the school year.

The District shall not approve paid leave for more workdays than have been accumulated in prior years plus those to be earned during the current year. Any absences beyond available paid leave shall result in deductions from the employee's pay.

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EARNING LEAVE

An employee shall not earn leave when he or she is in unpaid status. An employee using full or proportionate paid leave shall be considered to be in paid status.

When an employee has used more leave than he or she has earned, the District shall deduct the cost of unearned leave days from the employee's final paycheck for the year or from the last paycheck after the employee ceases to be employed by the District.

RECORDING

Leave shall be recorded as follows:

1. Leave shall be recorded in half-day increments for all employees.
2. If the employee is taking intermittent FMLA leave, leave shall be recorded in one-hour increments.
3. If the employee chooses to offset leave against workers' compensation benefits, leave shall be recorded in the amount used.

ORDER OF USE

Earned compensatory time shall be used before any available paid state and local leave. [See DEA]

Unless an employee requests a different order, available paid state and local leave shall be used in the following order, as applicable:

1. Local leave.
2. State sick leave accumulated before the 1995-96 school year.
3. State personal leave.

Use of sick leave bank or catastrophic leave pool days shall be permitted only after all available state and local leave has been exhausted. Use of other types of leave shall be permitted in accordance with administrative regulations and as outlined in the employee handbook.

CONCURRENT USE OF
LEAVE

When an absent employee is eligible for FMLA leave, the District shall designate the absence as FMLA leave.

The District shall require the employee to use temporary disability leave and paid leave, including compensatory time, concurrently with FMLA leave.

An employee receiving workers' compensation income benefits may be eligible for paid or unpaid leave. An absence due to a work-related injury or illness shall be designated as FMLA leave, temporary disability leave, and/or assault leave, as applicable.

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MEDICAL
CERTIFICATION

An employee shall submit medical certification of the need for leave if:

1. The employee is absent more than five consecutive workdays because of personal illness or illness in the immediate family;
2. The District requires medical certification due to a questionable pattern of absences or when deemed necessary by the supervisor or Superintendent;
3. The employee requests FMLA leave for the employee's serious health condition or that of a spouse, parent, or child; or
4. The employee requests FMLA leave for military caregiver purposes.

In each case, medical certification shall be made by a health-care provider as defined by the FMLA. [See DECA(LEGAL)]

Note: For District contribution to employee insurance during leave, see CRD(LOCAL).

FREQUENT OR
PROLONGED
ABSENCE

All absences in excess of ten days during a semester shall be investigated by the immediate supervisor who shall take appropriate action as required by District guidelines.

Supervisors shall report absences for individuals in excess of 20 days in a school year to the Superintendent or designee who shall take whatever action is deemed appropriate. Such action may result in disciplinary action including termination of employment.

UNAUTHORIZED
ABSENCE

An employee may be terminated when he or she is:

1. Released by a doctor to return to work but fails to contact the District's department of human resources to pursue a work assignment;
2. Unable to report to work and fails to request or extend a leave of absence; or
3. Unable to report to work and has no earned paid leave available and, if eligible to apply for leave of absence, does not request a leave.

STATE PERSONAL
LEAVE

For purposes of this section, each employee shall earn state personal leave up to the statutory maximum of five workdays annually at the rate established in administrative regulations.

The Board requires employees to differentiate the manner in which state personal leave is used:

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| NON- DISCRETIONARY USE | <p>5. Non-discretionary use of leave shall be for the same reasons and in the same manner as state sick leave accumulated before May 30, 1995. [See DEC(LEGAL)]</p> <p>Non-discretionary use also includes leave for well-baby care within the first year after birth, adoption, or placement of a child.</p> | | | | | | | | | |
| DISCRETIONARY USE | <p>6. Discretionary use of leave is at the individual employee's discretion, subject to limitations set out below.</p> | | | | | | | | | |
| LIMITATIONS REQUEST FOR LEAVE | <p>The employee shall submit a written request for discretionary use of state personal leave to the immediate supervisor or designee in advance in accordance with administrative regulations. In deciding whether to approve or deny state personal leave, the supervisor or designee shall not seek or consider the reasons for which an employee requests to use leave. The supervisor or designee shall, however, consider the effect of the employee's absence on the educational program or District operations, as well as the availability of substitutes. The supervisor or designee shall notify the employee in advance as to whether the request is approved or denied.</p> | | | | | | | | | |
| DURATION OF LEAVE | <p>Discretionary use of state personal leave shall not exceed two consecutive workdays. Requests for leave beyond the two consecutive days shall require prior approval of the Superintendent or designee.</p> | | | | | | | | | |
| LOCAL LEAVE | <p>All employees shall earn paid local leave per school year in accordance with the following:</p> <table border="0" style="margin-left: 40px;"><tr><td>183–193 contract/assignment days</td><td>— 10 months</td><td>5 days</td></tr><tr><td>207–220 contract/assignment days</td><td>— 11 months</td><td>6 days</td></tr><tr><td>226+ contract/assignment days</td><td>— 12 months</td><td>7 days</td></tr></table> <p>Local leave shall accumulate without limit.</p> <p>Local leave shall be used according to the terms and conditions of state personal leave. [See STATE PERSONAL LEAVE, above]</p> | 183–193 contract/assignment days | — 10 months | 5 days | 207–220 contract/assignment days | — 11 months | 6 days | 226+ contract/assignment days | — 12 months | 7 days |
| 183–193 contract/assignment days | — 10 months | 5 days | | | | | | | | |
| 207–220 contract/assignment days | — 11 months | 6 days | | | | | | | | |
| 226+ contract/assignment days | — 12 months | 7 days | | | | | | | | |
| FUNERAL LEAVE | <p>During the employee's annual term of employment and approved duty calendar, the District shall provide three paid workdays of funeral leave, per occurrence, for the employee to prepare for or attend the funeral of an immediate family member. The employee shall be required to submit appropriate documentation as required by administrative regulations</p> | | | | | | | | | |

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SICK LEAVE BANK

The District shall establish a sick leave bank that employees may join through contribution of local leave or state personal leave.

Leave contributed to the bank shall be solely for the use of participating employees. An employee who is a member of the bank may request leave from the bank if the employee experiences a personal illness or injury and has exhausted all paid leave.

If the employee is unable to request leave from the sick leave bank, a member of the employee's family or the employee's supervisor may submit the request.

The Superintendent or designee shall develop regulations for the operation of the sick leave bank that address the following:

1. Membership in the sick leave bank, including the number of days an employee must donate to become a member;
2. Procedures to request leave from the sick leave bank;
3. The maximum number of days per school year a member employee may receive from the sick leave bank;
4. The committee or administrator authorized to consider requests for leave from the sick leave bank and criteria for granting requests; and
5. Other procedures deemed necessary for the operation of the sick leave bank.

APPEAL

All decisions regarding the sick leave bank may be appealed in accordance with DGBA(LOCAL), beginning with the Superintendent or designee.

CATASTROPHIC LEAVE
POOL

An employee who has exhausted all paid leave, including sick leave bank days if he or she is a member of the sick leave bank, and who suffers from a catastrophic illness or injury or is absent due to the catastrophic illness or injury of a member of the employee's immediate family may request the establishment of a catastrophic leave pool, to which District employees may donate only local leave for use by the eligible employee. If the employee is unable to submit the request, a member of the employee's family or the employee's supervisor may submit the request to establish a sick leave pool.

The pool shall cease to exist when the employee no longer needs leave for the purpose requested, uses the maximum number of days allowed under a pool, or exhausts all leave days donated to the catastrophic leave pool.

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The Superintendent or designee shall develop regulations for the implementation of the catastrophic leave pool that address the following:

1. Procedures to request the establishment of a catastrophic leave pool;
2. The maximum number of days an employee may donate to a catastrophic leave pool;
3. The maximum number of days per school year an eligible employee may receive from a catastrophic leave pool; and
4. The return of unused days to donors.

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| APPEAL | All decisions regarding the establishment or implementation of the District's sick leave pool may be appealed in accordance with DGBA(LOCAL), beginning with the Superintendent or designee. |
| FAMILY AND MEDICAL LEAVE TWELVE-MONTH PERIOD | For purposes of an employee's entitlement to FMLA, the 12-month period shall be measured backward from the date an employee uses FMLA leave. |
| COMBINED LEAVE FOR SPOUSES | If both spouses are employed by the District, the District shall limit FMLA leave for the birth, adoption, or placement of a child, or to care for a parent with a serious health condition, to a combined total of 12 weeks. The District shall limit military caregiver leave to a combined total of 26 weeks. [See DECA(LEGAL)] |
| INTERMITTENT OR REDUCED SCHEDULE LEAVE | The District shall permit use of intermittent or reduced schedule FMLA leave for the care of a newborn child or for the adoption or placement of a child with the employee. [See DECA(LEGAL) for use of intermittent or reduced schedule leave due to a medical necessity.] |
| CERTIFICATION OF LEAVE | If an employee requests leave, the employee shall provide certification, as required by FMLA regulations, of the need for leave. [See DECA(LEGAL)] |
| FITNESS-FOR-DUTY CERTIFICATION | If an employee takes FMLA leave due to the employee's own serious health condition, the employee shall provide, before resuming work, a fitness-for-duty certification. If the District will require certification of the employee's ability to perform essential job functions, the District shall provide a list of essential job functions to the employee with the FMLA designation notice. |
| END OF SEMESTER LEAVE | If a teacher takes leave near the end of the semester, the District may require the teacher to continue leave until the end of the |

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semester. [See DECA(LLEGAL), LEAVE AT THE END OF A SEMESTER]

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| FAILURE TO RETURN | If, at the expiration of FMLA leave, the employee is able to return to work but chooses not to do so, the District may require reimbursement of premiums paid by the District during the leave. [See DECA(LLEGAL), RECOVERY OF BENEFIT COST] |
| TEMPORARY DISABILITY LEAVE EDUCATORS | All full-time employees shall be eligible for temporary disability (unpaid) leave. The maximum length of temporary disability leave shall be 180 calendar days. |
| OTHER EMPLOYEES | A temporary disability (unpaid) leave may be granted also to other eligible employees for a maximum of 180 calendar days, upon approval by the Superintendent or designee. In order to qualify for such leave of absence, an employee must have worked 1,250 hours in the prior 12-month period from the date of the request of temporary disability leave. Application for this leave shall be submitted in accordance with the established administrative procedures. Reinstatement to regular employment shall be on a position-available basis only. |
| REINSTATEMENT OR RESIGNATION | An employee reaching the end of the temporary disability leave period shall provide 30 calendar days' timely written notice of his or her intention to resume active duty or to request an extension of leave pursuant to the Americans with Disabilities Act. Failure to comply with the time notification provisions shall constitute good cause for termination of contract employees, in accordance with law and District policies. [See DF policy series] |
| REASSIGNMENT FOLLOWING LEAVE | Employees who are not certified by SBEC and who are returning from unpaid personal illness of 60 or fewer calendar days shall be returned to the same position. Unless otherwise prescribed by law, employees returning from unpaid personal illness leave in excess of 60 calendar days shall be given priority for assignment to a comparable position as determined by the Superintendent or designee based on the needs of the District. |

WORKERS'
COMPENSATION

Note: Workers' compensation is not a form of leave. The workers' compensation law does not require the continuation of the District's contribution to health insurance. [See CRD(LOCAL) regarding payment of insurance contribution during employee absences.]

An absence due to a work-related injury or illness shall be designated as FMLA leave, temporary disability leave, and/or assault leave, as applicable.

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| PAID LEAVE OFFSET | An employee eligible for workers' compensation income benefits, and not on assault leave, may elect in writing to use available partial-day increments of paid leave to make up the difference between the employee's income benefits and the pre-injury wage. [See CRE] |
| WORKING WHILE ON LEAVE | With the exception of noncontract and/or paid vacation leave, while on any type of leave status with the District, the employee may not perform work in any capacity except as approved by the assistant superintendent of human resources or designee as part of an approved return-to-work or transitional duty assignment at the District. Working during a leave of absence shall be considered a violation of the District's leave policy and may be grounds for immediate termination of at-will employees or recommendation of termination for contract employees. |
| COURT APPEARANCES | Absences due to compliance with a valid subpoena or for jury duty shall be fully compensated by the District and shall not be deducted from the employee's pay or leave balance. Absences for court appearances related to the employee's personal business shall be deducted from the employee's leave balance or taken as leave without pay. |
| REIMBURSEMENT OF LEAVE UPON RETIRING | The following leave provisions shall apply to state/local leave earned beginning on the original effective date of this program. An employee who retires from employment with the District under the Texas Teacher Retirement System (TRS) shall be eligible for reimbursement of state/local leave under the following conditions: <ol style="list-style-type: none"><li data-bbox="574 1325 1373 1381">1. The employee's retirement is voluntary and the employee is not being discharged or nonrenewed.<li data-bbox="574 1409 1393 1507">2. The employee provides advance written notice of intent to retire from employment at least 30 days before the last day of employment.<li data-bbox="574 1535 1382 1591">3. The employee has at least five years of service with the District. The employee shall be reimbursed for each day of state/local leave, to a maximum of 80 days, at a rate of \$30 per day. If the employee is reemployed with the District, days for which the employee received payment shall not be available to that employee. The rate established by the Board shall be in effect until the Board adopts a new rate. Any changes to the rate shall apply beginning with the school year following the adoption of the rate change. |

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EXPIRATION OF
AVAILABLE LEAVE

Upon the expiration of all leave for which an employee has applied and is eligible, if the employee has not already returned to work, the District shall notify the employee in writing that his or her leave has been exhausted.

The employee shall have ten calendar days to apply for any additional leave for which the employee may be eligible or to notify the District in writing that the employee is ready, willing, and able to return to work. A medical clearance showing that the employee is physically able to perform the essential functions of his or her position, with reasonable accommodations if necessary, is required to return to work. Additionally, some jobs require the employee to submit to a District-paid fitness-for-duty evaluation wherein the employee must demonstrate the ability to meet all the essential physical requirements of his or her job.

An at-will employee who does not receive approval of such additional leave and who does not report and document his or her availability and fitness to return to work within such ten-day period shall be deemed to have voluntarily resigned his or her employment with the District, effective immediately upon the expiration of the ten-day period designated in such notice, and shall be offered health benefits according to COBRA. [See CRD]

An at-will employee who fails to return to work after 180 calendar days of leave, regardless of the type of leave, shall be deemed to have voluntarily resigned his or her employment with the District, and shall be offered health benefits according to COBRA. [See CRD]

A contract employee's failure to receive approval of such additional leave and his or her subsequent failure to report and document his or her availability and fitness to return to work, within such ten-day period, shall be considered good cause for termination. A contract employee's failure to return to work after 180 calendar days of leave, regardless of the type of leave, shall be considered good cause for termination. For termination procedures and rights of contract employees, see DF series and DCE.

The uniform enforcement of a reasonable absence-control policy is not retaliatory discharge.