



UNITED INDEPENDENT SCHOOL DISTRICT AGENDA ACTION ITEM

TOPIC: Approval of First and Final Reading of Revised DEC (local)

SUBMITTED BY: Juan Cruz **OF:** School Attorney

APPROVED FOR TRANSMITTAL TO SCHOOL BOARD: _____

DATE ASSIGNED FOR BOARD CONSIDERATION: March 17, 2020

RECOMMENDATION: It is recommended that the United ISD Board of Trustees approve the First and Final Reading of Revised DEC (local)

DH (LOCAL)

RATIONALE:

BUDGETARY INFORMATION:

POLICY REFERENCE & COMPLIANCE:

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Types of Leave

The District shall operate a local leave program serving all employees of the District. The leave program shall consist of four types: state personal leave, local personal leave, temporary disability leave, and funeral leave.

Types of Leave	Paid/Unpaid	Number of Days
State Personal Leave: [see DEC(LEGAL)]	Paid	5 leave days per year
Local Personal Leave: 10-month employees 11-month employees 12-month employees	Paid	5 leave days per year 6 leave days per year 7 leave days per year
Temporary Disability: All leave-eligible employees. For full-time educators, temporary disability shall be in accordance with Education Code 21.409 and may be granted to other District employees with limitations established at TEMPORARY DISABILITY LEAVE, below	Unpaid	180 calendar days
Funeral Leave (as defined on page 6)	Paid	3 leave days per event

Accumulation and Transferability

Both state and local leave may accumulate without limit. Unused state leave is transferable among districts as part of the employee's service record; local leave is not transferable.

Definitions

Family

The term "immediate family" is defined as:

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.

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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.
Leave Day	A "leave day" for purposes of earning, use, or recording of leave shall mean the number of hours per day equivalent to the employee's usual full-time assignment.
School Year	The "school year" is the period between July 1 and June 30.
Catastrophic Illness or Injury	A catastrophic illness 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 health-care provider as defined by the FMLA 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. Such conditions typically require prolonged hospitalization or recovery or are expected to result in disability or death. Conditions relating to pregnancy or childbirth shall be considered catastrophic if they meet the requirements of this paragraph.
Availability	The District shall make state personal leave and local leave for the current year available for use at the beginning of the school year.
Earning Local Leave	An employee shall not earn any local 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.
Deductions	The District shall not approve paid leave for more leave days than have been accumulated in prior years plus leave currently available. Any unapproved absences or absences beyond accumulated and available paid leave shall result in deductions from the employee's pay.
Leave Without Pay	
Leave Proration <i>Employed for Less Than Full Year</i>	If an employee separates from employment with the District before his or her last duty day of the year, or begins employment after the first duty day, state personal leave and local leave shall be prorated based on the actual time employed. If an employee separates from employment before the last duty day of the school year, the employee's final paycheck shall be reduced for: 1. State personal leave the employee used beyond his or her pro rata entitlement for the school year; and

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2. Local leave the employee used but had not earned as of the date of separation.

*Employed for Full
Year*

If an employee uses more local leave than he or she earned and remains employed with the District through his or her last duty day, the District shall deduct the cost of the excess leave days from the employee's pay in accordance with administrative regulations.

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 half-day 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 DEAB]

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

1. State sick leave accumulated before the 1995-96 school year.
2. State personal leave.
3. Local 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 four 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.
5. **The District requires medical certification due to a pandemic, which poses a direct threat to the health or safety of the students or employees.**

In each case, medical certification shall be made by a health-care provider as defined by the FMLA. [See DECA(LEGAL)] **The District may modify medical certification requirements as needed during a pandemic.**

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

**Excessive
Absences/Tardies**

When an employee's absences/tardies become a concern or when an employee establishes a pattern of absences/tardies or exceeds the annual number of state and local leave days an employee can earn, with the exception of approved leave, such absences/tardies shall be considered excessive. If absences/tardies are deemed excessive, the employee may be subject to disciplinary action, up to and including termination of employment.

An employee's excessive absences/tardies shall be subject to verification and referral for eligible leaves of absence by the District. If the absences/tardies are not approved, the employee may be subject to disciplinary action, up to and including termination of employment.

Supervisors shall report absences/tardies for individuals in excess of 15 workdays 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.

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**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.

Job Abandonment

An employee who is absent from work for three consecutive working days without notice and who cannot be reached by his or her immediate supervisor shall be deemed to have voluntarily resigned from the District and shall be separated from service with the District for job abandonment in accordance with this policy. [See DC, and DF series]

State Personal Leave

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

**Non-Discretionary
Use**

1. 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)]

Non-discretionary use includes leave related to the birth or placement of a child and taken within the first year after the child's birth, adoption, or foster placement.

Discretionary Use

2. Discretionary use of leave is at the individual employee's discretion, subject to limitations set out below.

Limitations

**Request for
Leave—
Campus**

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.

A maximum of five percent of campus employees in each category may be permitted to be absent at the same time for discretionary personal leave.

Non-Campus

The District shall reasonably accommodate an employee's request to be absent from duty so long as it does not cause undue hardship on the department or District operations.

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Duration of Leave Discretionary use of state personal leave shall not exceed two consecutive workdays. Requests for leave beyond the two consecutive workdays shall require prior approval of the Superintendent.

Schedule Limitations Discretionary use of personal leave shall not be allowed during the first week of a new semester, the day before or the day after a school holiday, days scheduled for end-of-semester or end-of-year examinations, days scheduled for state-mandated assessments, days scheduled for District-scheduled assessments, or professional or staff development days.

Pay Status As long as an employee has unused leave, the employee shall remain in full-pay status and there shall be no loss of pay. When an employee uses more days than have been previously earned, the cost of any unearned days shall be deducted, subject to the Fair Labor Standards Act (FSLA) guidelines, from the employee's paycheck. [See DEA(LEGAL)] If insufficient funds exist in the employee's final paycheck, the employee shall be required to refund the overpayment to the District.

Local Leave

All employees shall earn paid local leave days per school year in accordance with the following:

183–193 contract/assignment workdays	— 10 months	5 leave days
207–220 contract/assignment workdays	— 11 months	6 leave days
226+ contract/assignment workdays	— 12 months	7 leave days

Local leave shall accumulate without limit.

Local leave shall be used according to the terms and conditions of state personal leave. [See STATE PERSONAL LEAVE, above]

All local sick leave earned and carried over at the end of the 1996–97 school year, as well as local leave earned during the 1997–98 school year, shall become local personal leave. Local personal leave shall be used under the terms and conditions applicable to state personal leave. Local leave shall not transfer between districts and shall be forfeited upon resignation or termination from the District.

Funeral Leave

During the employee's annual term of employment and approved duty calendar, the District shall provide three paid leave days of funeral leave, per occurrence, for the funeral of an employee's immediate family member, as defined in this policy. The District shall permit the employee to take the funeral leave within ten workdays prior to or after the burial. The employee shall be required to sub-

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mit appropriate documentation as required by administrative regulations.

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 contribute 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).

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 local leave or state personal 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 catastrophic 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.

Appeal

All decisions regarding the establishment or implementation of the District's catastrophic leave pool may be appealed in accordance with DGBA(LOCAL).

Military Leave

After all other paid leave is exhausted, an employee of the District who is granted a leave of absence from work due to a voluntary or involuntary enlistment in the military to serve the country at war shall receive "differential pay" from the District for a period of 12 calendar months. For this purpose, differential pay shall mean the normal daily wage earned by the employee for the position held prior to enlistment minus the employee's earned daily wage from the U.S. government. In order to receive differential pay, an employee must submit verification of his or her military earnings to the department of human resources. An employee who receives a higher daily wage from the government than from the District shall not be entitled to differential pay.

Family and Medical Leave

For purposes of an employee's entitlement to FMLA leave, the 12-month period shall be measured backward from the date an employee uses FMLA leave.

Twelve-Month Period

Verification of Family Relationship

An employee requesting leave for the birth or placement of a child with the employee for adoption or state-approved foster care, or to care for a family member with a serious health condition, may be required to provide reasonable documentation of a family relationship. The department of human resources shall inform employees of any need for such verification.

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)]

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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 semester. [See DECA(LEGAL), LEAVE AT THE END OF A SEMESTER]
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(LEGAL), RECOVERY OF BENEFIT COST]
Temporary Disability Leave	All full-time employees shall be eligible for temporary disability (unpaid) leave.
	The maximum length of temporary disability leave for a full-time employee whose position requires educator certification by the State Board for Educator Certification (SBEC) or by the District shall be 180 calendar days.
Educators	
Other Employees	Temporary disability (unpaid) leave may also be granted to other eligible full-time employees for a maximum of 180 calendar days, upon approval from the Superintendent or designee. In order to qualify for this type of leave of absence, an employee must have worked 1,250 hours during the previous 12-month period from the date of the request for temporary disability leave. Applications for temporary disability leave shall be submitted in accordance with the established administrative procedures. Reinstatement to regular employment shall be on a position-available basis only. The District shall place the employee in an assignment and shall make its best effort to place the employee within five business days.
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

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her intention to resume active duty or to request an extension of leave pursuant to the Americans with Disabilities Act (ADA).

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 temporary disability leave of 60 or fewer calendar days shall be returned to the same position. Unless otherwise prescribed by law, employees returning from temporary disability 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.

Assault Leave

Assault leave, during which the employee's workers' compensation wage benefits shall be supplemented by the District up to the pre-assault weekly salary, with no deduction from the employee's accumulated paid leave benefits, shall run concurrently with family and medical leave.

The employee shall report the assault to his or her immediate supervisor within 24 hours of the incident. The employee must complete the assault leave forms within 30 calendar days from the date of the incident. Assault leave shall become effective on the date the employee submits the completed forms to the human resources department.

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]

Employment
Following Leave

Employment following leave shall be determined based on the type of leave for which the employee qualifies.

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An employee qualifying for leave under FMLA shall be placed in a like or comparable position upon his or her release to return to work.

A professional employee who is under contract and who qualifies for temporary disability leave may return to a previously vacated position, subject to availability, upon release to return to work. If a position is not available, the employee shall be assigned to an alternate position no later than the beginning of the next school year. For the duration of time a position is not available, the employee shall remain in an unpaid status after exhausting all available leave.

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 for District-related business 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 for Leave Upon Retirement

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 the District under the Texas Teacher Retirement System (TRS), or the designated beneficiary of an otherwise eligible employee who passes away while employed by the District, shall be eligible for reimbursement of state and local leave if the employee has at least ten consecutive years of service with the District.

The reimbursement rate shall be established based on the District's approved base pay plan; stipends and extra duty pay shall not be included. The reimbursement shall be a one-time-only benefit for the eligible employee.

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The reimbursement rates established by the Board shall remain 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.

**Professional
Employee Rate**

A professional employee shall be reimbursed for each day of state/local leave, to a maximum of 40 days of state leave and 40 days of local leave. If the employee is reemployed with the District, days for which the employee received payment shall not be available to that employee. Leave shall be reimbursed according to the following prorated schedule:

1. Five days of state leave at 100 percent of the employee's daily base rate;
2. Ten days of state leave at 75 percent of the employee's daily base rate;
3. Twenty-five days of state leave at 50 percent of the employee's daily rate; and
4. Forty days of local leave at \$100 per day.

**Para-Professional
and Auxiliary
Employee Rate**

A paraprofessional or auxiliary employee shall be reimbursed for each day of state/local leave, to a maximum of 80 days of leave. If the employee is reemployed with the District, days for which the employee received payment shall not be available to that employee. Leave shall be reimbursed according to the following pro-rated schedule:

1. The first ten days of leave at 100 percent of the employee's daily base rate;
2. The next 15 days of leave at 75 percent of the employee's daily base rate; and
3. The next 55 days of leave at 50 percent of the employee's daily base rate.

Absence Reporting

With the exception of an approved leave of absence, an employee shall notify his or her immediate supervisor prior to an absence, or as soon as practical in the event of an emergency, so that a substitute can be secured if necessary. Notification to the employee's immediate supervisor shall be in accordance with administrative, campus, and department regulations. An employee shall also notify his or her immediate supervisor if the employee is going to be late for work for any reason. An employee absent beyond five consecutive workdays, except for vacation, shall apply for a leave of absence. Failure to apply for a leave of absence shall constitute grounds for disciplinary action up to and including termination.

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Sanctions for Abuse

All employee leave shall be provided for the specific purpose stipulated in this policy. It is not intended to be used as a vacation or for mere convenience. Except for discretionary use of state personal leave, documentation may be required for any absence at the discretion of the Superintendent or designee. Abuse of the employee leave program, misrepresentation of the need to use leave, or falsification of a document from a health-care provider is a violation of District policy and may result in disciplinary action up to and including loss of pay, suspension, demotion, or termination of employment, in accordance with appropriate District policies. [See DCD and DF series]

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, shall be required to return to work. Additionally, some jobs shall 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

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cause for termination. For termination procedures and rights of contract employees, see DF series and DCE.

The employee's eligibility for reasonable accommodations, as required by the ADA shall be considered before termination. [See DAA(LEGAL)] If an employee has exhausted all available paid leave, he or she shall remain in an unpaid status during the ADA consideration period.

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