



# PHOENIX-TALENT SCHOOLS

EXCELLENCE *for* EVERYONE

Regular Board Meeting - 6:00 PM

Thursday, January 4, 2024

In-Person at Phoenix Elementary School

<https://us02web.zoom.us/j/84002397296?pwd=RWdZYm16SmV4WkdNjF0dmxMdEloZz09>

Password: 815385

**Agenda Español**

**Minutas Español**

## AGENDA

- A. **Executive Session – 5:30 – This session is closed to the public under ORS 192.660 (2)(a)(b)**
- B. **Call to Order - 6:00 p.m.**
- C. **Accentuate the Positive**
- D. **Citizen Comments**
- E. **Student Representative Report**
- F. **Superintendent Report**
- G. **Consent Agenda**
  - 1. Approval of Revised Agenda
  - 2. Approval of Minutes from 12/7/23
  - 3. Personnel Report
- H. **Action Items**
  - 1. **Early Literacy Grant**
  - 2. **ESSER Funds for TES & TMS Seismic Upgrades**
  - 3. **Board Policy GCBDA/GDBDA - Family Medical Leave**
  - 4. **Board Policy GCBDA/GDBDA-AR(1) – Family Leave**
- I. **Recess**
- J. **Information and Discussion**
  - 1. **Facilities/Bond Update**
  - 2. **Financial Update**
  - 3. **Legislative / OSBA Update**
  - 4. **Equity, Diversity, & Inclusion Update**
  - 5. **Audit Report**
  - 6. **School Safety**
  - 7. **Board Policy LBE - Public Charter Schools**
  - 8. **LBEA – Resident Student Denial for Virtual Public Charter School Attendance**
- K. **Review of the Next Meeting Agenda**
- L. **Adjournment**

Phoenix-Talent School District #4 is an Equal Opportunity Employer and, in accordance with Federal and State Legislation, does not discriminate on the basis of race, sex, religion, age, national origin, or marital status, physical or mental disability in employment practices or education programs. **If you need special accommodations for language interpretation or because of a disability**, please contact the District Office Executive Assistant two days prior to meeting at 541-535-1511 Voice/TD.



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Board Meeting – 6:00 PM

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Join the Zoom Meeting:

<https://us02web.zoom.us/j/84002397296?pwd=RWdZYm16SmV4WkdNjF0dmxMdEloZz09>

Meeting ID: 840 0239 7296 Passcode: 815385

## REVISED AGENDA

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- D. Citizen Comments
- E. Student Representative Report
- F. Superintendent Report
- G. Consent Agenda
  - 1. Approval of Revised Agenda
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  - 3. Personnel Report
- H. Action Items
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- I. Recess
- J. Information and Discussion
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  - 8. Board Policy LBEA – Resident Student Denial for Virtual Public Charter School Attendance
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# PHOENIX-TALENT SCHOOLS

EXCELLENCE *for* EVERYONE

Board Meeting  
Thursday, December 7, 2023 6:00 PM Pacific

Talent Elementary School  
307 Wagner Creek Rd  
Talent, OR 97540

Michael Campbell:	Present	Rick Nagel:	Present
Nancy Castillo-McKinnis:	Present	Dawn Watson:	Present
Sara Crawford:	Present	Rebecca Weathers:	Present
Polly Farrimond:	Present	Present:	7

## A. Call to Order - 6:00 p.m.

### 1. PUBLIC MEETING- Annual Student Investment Account (SIA) 21-23 Year-End Report and Grant Agreement/Longitudinal Performance Growth Targets (LPGT's)

The Public Meeting was called to order at 6pm.

Asst Supt. Tiffanie Lambert reminded the board every year we need to ask the board to approve the annual report for SIA. Ms. Lambert gave a review of the 22-23 year-end report for the SIA grant with explanations of some of the expenses. Ms. Lambert reminded the board the SIA account has a 25% match for our federal mental health grant.

This year's plan for 23-24 is part of the integrated guidance plan. The SIA portion still needs to be presented to the public and allow for comments. The 23-24 plan has funds for music, PTR, mental health and school safety. The Longitudinal Performance Growth Targets (LPGT's) are segregated by targets to help meet the benchmarks. Those include 4-year graduation rate, 5-year cohort graduation rate, ninth grade on track, 3rd grade ELA, and regular attenders.

Supt. Barry thanked the integrated guidance team for their work they put into gathering the data for this report.

**2. General Session** - The public meeting was closed at 6:07 and the general session was reopened.

## B. Accentuate the Positive

**TES Principal Heather Lowe shared the following via Shawna Schleif:**

- Our winter concert is Monday, December 11, at TMS at 6:00. Many thanks to Wendy Savage for all of her work preparing for the show and thanks to TMS for allowing us to use their big gym. Please join us for the fun.
- Ms. Lowe gave a huge thank you to our Special Education teachers and paraprofessionals. They work incredibly hard to ensure our students get the best quality support that they deserve.
- Finally, Ms. Lowe would like to wish everyone Happy Holidays!

**PTRA Principal Aaron Santi shared the following via Shawna Schleif:**

- Instead of a field trip this month, PTRAs had an interactive science workshop last Friday. We learned about reptiles and amphibians from John Jackson also known to the students as the Bug Guy. We had kinder through seventh graders, grandparents, parents, and several other siblings who joined in the fun. The whole family engagement is a fundamental value of PTRAs and essential consideration when planning activities to make sure everyone is included.

**PES Principal Shawna Schleif shared the following:**

- Ms. Schleif gave a shout-out to Jenny Brown who is our new instructional coach at PES. Jenny has also been doing half-time teaching, and half time instructional coaching. Today she organized our first SEEKS training, where teachers were able to observe one another. Jenny is doing a phenomenal job balancing it all with grace and a willingness to learn.
- Our winter concert is Tuesday, December 12 from 6-7 pm at PHS. Ms. Schleif gave a shout-out to Andreyana Nicholson and Wendy Savage for doing a fantastic job.
- Ms. Schleif recognized Chris Richardson who is a retired PE teacher; for stepping in to substitute for us. Chris has done a great job and we thank him. Ada Gonzalez, Sallie Conners, and Laura Blake have also done a great job of tilling in where we need them.

**OHES Principal Kent Vallier shared the following:**

- The Hawks made another visit to PHS. Ms. Kwiatkowski's fifth grade class visited Jessica Rollins art class to complete a fun clay project.
- OHES hosted a winter concert last night and there was a great turnout. Mr. Vallier thanked the board for their continual support of elementary music.
- Mr. Vallier thanked Ashley Simms and the wellness team. Last week we enjoyed a staff "chili cook off" that was organized by our staff wellness committee. A fun event when needed as we draw closer to some stressful holidays.
- Mr. Vallier also thanked Asst. Supt. Jessica Hamlin. Jessica helped an Orchard Hill staff member who had a medical issue and it was a gesture of great care and compassion.

**TMS Principal Kathryn Holden shared the following:**

- Last week our scavenger hunt team spent three days working hard researching and solving their scavenger hunt questions. After a day of adjudication at SOU, they came home with a third-place award (with just 6 points separating them from the first-place score). We are so proud of all of their hard work! A big thank you to Sandra Tringolo for coaching our incredible scavenger hunt team this year and for all of her work in making this experience possible for our students. We also have OBOB and Brain bowl happening at TMS this year.
- We are so lucky to have so many great family and community volunteers this year. We have had volunteers running our Chess club, working in our concession stand, helping provide supervision during lunch, helping in the office, and donating baked goods for an upcoming bake sale that our Community Leadership class is sponsoring at the Talent Festival of Lights.

- Ms. Holden shared an excerpt from a social media post that was written about TMS on Facebook this week. This post was from a parent who shadowed their student at school. The parent wrote, *"The teachers were amazing. Almost every teacher did some sort of mindfulness, breathing or self-esteem technique at the beginning of class to help the kids become present, and in their bodies for learning. As community members, I feel that the teachers are holding a lot of space for our children, and if there's any way that we can support the teachers, we should do our best, as it gives our children an even better education when the teachers are supported."*
- Our winter concert is next Wednesday the 13 at 6pm at TMS.
- Looking at an eight-day period starting with the Monday after Thanksgiving, last year we had 39 referrals and this year we had 23 and five of those were document only.

**PHS Principal Kalin Cross shared the following:**

- Ms. Cross said that there were 226 honor roll students with a 3.5 GPA or higher for the 1st quarter. Out of the 226 students, 90 were 4.0 students last quarter.
- Our student-led conferences had great attendance, and we will be sending out a survey to parents to get their feedback.
- Shout out to Alyssum Barber who is our instructional coach for stepping in to sub for a science class. She offered a mini PD class yesterday on listening and the staff loved it.
- Our winter sports kick off was great, and we now have both a varsity and JV cheer squad.
- Ms. Cross gave a shout-out to the teachers who continue to make magic happen in the classrooms.

**Director Rebecca Weathers** said she attended the Phoenix tree lighting. All the choir students from PES, TES and OES were invited to sing a few songs, and it was packed.

**Director Sara Crawford** said that she has been to several of the Phoenix tree lightings and this one was well attended. It was great to see all the families and to see the district well represented.

**Chair Michael Campbell** attended the OHES holiday concert last night. Mr. Campbell appreciated having chairs to sit on this year!

**C. Citizen Comments** - There were no citizen comments.

**D. Student Representative Report**

- **Garrett Walker** said the giving tree is in the office and we have paper ornaments with wishes for our three elementary schools & PTRAs students of families in need. Our goal is to make their holiday wishes come true.
- **Reyna Pillajo Kern** gave a shout-out to Mr. Walker, who is a substitute in the district, for donating \$200 to give to the kids in need in the district. The coat drive started last week, ends on Monday, and so far, we have received a great number of coats. We also had a blood drive, and we had 26 units of blood donated.

- **Javier Quintana** said that PHS has been doing a great job in creating awareness about seasonal depression and mental health. Javier thanked the student body as a whole for doing a good job being part of the school and contributing. We have our school spirit week coming up, and each day is a different theme for dressing up. We will have a winter assembly tomorrow. This year has been a big change in how much engagement we have had for spirit points as a whole school.
- **Aubrey Emry** said she was able to participate and help with the elementary students who came to the high school to make some art items. Aubrey said that while we do have larger cheer quads for winter athletics, we have a lot of engagement from students in TLC classrooms. It is great to see them be able to participate in sports that way and have fun.

### **E. Superintendent Report**

- Supt. Barry mentioned that another company purchased our website company, so we are transitioning to a new site. Joe Zavala, Allan Quiros and some other staff members have been working hard to meet the timeline for having it up and ready by the spring or summer.
- At the JAB meeting last month, we spoke about equitable grading practices, which is a great discussion and a lot of learning. We have ordered some books titled Grading for Equity to get us started. If any board member would like a copy, please stop by the office and get a copy.
- Supt. Barry provided the board with Governor Kotek's statement on charting a path forward in K-12 education.
- Supt. Barry said that he and several board members just had a tour of our charter school's remodel, Armadillo Community Charter, and it looks fabulous now. ACC will have an open house on the 16th from 11-2pm. The space is so much more functional, and we are so happy for them.

### **F. Program Report – Strategic Planning Update**

Javier del Rio, Director of Instructional Improvement and Strategic Plan Coordinator, shared a presentation of the district's strategic plan for 2023-2027 with the board. This included a review of the goals, which include:

- Attend School Regularly - 85% percent of students will attend 90% or more of each school year.
- On-Track by Grade 10 - every student at the completion of ninth grade will have six or more credits.
- High School Graduation - 96% of all students will graduate on time with a regular or modified diploma within four years of starting high school.
- Be Successful in English Language Arts and Mathematics - Forty-five percent (45%) of students in 3rd Grade will meet state grade-level expectations in Language Arts. Thirty-five percent (35%) of students in 8th grade will meet state grade-level Mathematics expectations district-wide.

Mr. del Rio shared what benchmarks we would need to meet in order to achieve our goals to meet state grade-level expectations. Included were graphs for the ELA and Math percentages showing historical performance, including data from 2014-2015 to present. Mr. del Rio spoke about the science of reading, and had the board participate in an exercise of a reading scenario.

## **G. Consent Agenda**

On motion by Dawn Watson, seconded by Polly Farrimond to approve the consent agenda as presented. The consent agenda was approved by unanimous consent.

G.1. Approval of Agenda

G.2. Approval of Minutes from 11/02/23, 11/13/23 & 11/16/23 (JAB Session)

G.3. Personnel Report

## **H. Action Items**

### **H.1. Board Policy BD/BDA - Board Meetings/Regular Board Meetings**

I move to approve the changes to Board Policy BD/BDA as presented. This motion, made by Rebecca Weathers and seconded by Polly Farrimond, Carried.

Michael Campbell: Yea, Nancy Castillo-McKinnis: Yea, Sara Crawford: Yea, Polly

Farrimond: Yea, Rick Nagel: Yea, Dawn Watson: Yea, Rebecca Weathers: Yea

Yea: 7, Nay: 0

### **H.2. Board Policy BDC - Executive Sessions**

I move to approve changes to Board Policy BOC as presented. This motion, made by Nancy Castillo-McKinnis and seconded by Rebecca Weathers, Carried.

Michael Campbell: Yea, Nancy Castillo-McKinnis: Yea, Sara Crawford: Yea, Polly

Farrimond: Yea, Rick Nagel: Yea, Dawn Watson: Yea, Rebecca Weathers: Yea

Yea: 7, Nay: 0

### **H.3. Annual Student Investment Account (SIA) 22-23 Year-End Report and 23-24 Grant Agreement/ Longitudinal Performance Growth Targets (LPGT's)**

I move to approve the 2022-2023 Annual Student Investment Account Year-End Report, the 2023-24 Grant Agreement and the Longitudinal Performance Growth Targets (LPGT's) as presented. This motion, made by Nancy Castillo-McKinnis and seconded by Polly Farrimond, Carried.

Michael Campbell: Yea, Nancy Castillo-McKinnis: Yea, Sara Crawford: Yea, Polly

Farrimond: Yea, Rick Nagel: Yea, Dawn Watson: Yea, Rebecca Weathers: Yea

Yea: 7, Nay: 0

## **I. Recess - 7:15 - 7:30**

## **J. Information and Discussion**

### **J.1. Facilities/Bond Update**

Supt. Barry spoke on Jon McCalip's behalf and shared the following:

- We are planning to add walk-in coolers to PES and TES using surplus food service funds.
- As a part of this project, the electrical system will be updated to current standards in both kitchens over winter break and lighting upgrades.
- As a part of that project, the Facilities department is doing several items in-house; building new walls, replacing suspended ceilings, and anything we can do to save dollars

to ensure maximum benefit from the surplus dollars.

- We are close to an approved design for the PHS tennis courts and hope to send it out for bid by the end of January.
- The Colver master plan is scheduled to be presented to the City of Talent in the coming weeks for annexation.
- TES and TMS seismic design is complete. The project has been put out to bid by Outlier Construction to provide a GMP (guaranteed maximum price). We should have that by the end of December, and we are planning to use Esser III funds to pay for as much as possible. Any funds not paid for by Esser III will be made up of bond funds.

## **J.2. Financial Update**

Supt. Barry spoke about the updated financial statement.

## **J.3. Legislative/ OSBA Update**

Director Watson shared the following:

- OSBA board of directors has some challenges and Jim Green is on paid administrative leave. OSBA will have a public meeting on December 11 at 10 a.m. and they will talk about steps for being a stronger board and a stronger organization.
- OSBA Board of Directors meeting will be held on December 19 from 3-4:30 p.m.
- NSBA is having a Rural Schools Zoom meeting on December 13.
- The Rural School Caucus for OSBA should have the results between the 15th and the 18th.
- Ms. Watson just attended a PACE meeting. Pace has many helpful tools for us, such as training in pre-loss.
- Ms. Watson said that there were no other candidates for the LPC southern region besides Sara Crawford, so she will be with us on the committee for an additional two years.

Director Crawford shared that we will host a legislative reception in January. It will be held on January 22 at 5:30. The Grants Pass orchestra has committed to coming and playing.

## **J.4. Equity, Diversity, & Inclusion Update**

Kelly Soter shared information about the Community Care grant and that it will end in September 2024. Last year our data shows that we had 554 referrals. Most of the referrals were for basic needs, second was referrals for mental health resources, and third was for crisis services. As we go into 2024, ODE is very dedicated to looking at ways for sustainability and showing impact and effort.

The school-based mental health grant is a calendar year grant for five years, and we are coming up at the end of year one. In 2023, we hired a counselor at TMS, a community care specialist at the secondary level, and four La Clinica practitioners. We have 10 of our PHS staff enrolled in a program called QMHA (Qualified Mental Health Associate) pathway. Our goal over the five years was to have 7 staff members participate over the five years, and we have 10 at the end of year one.

We are part of a pilot project with the QMHA and the Jackson County Youth Systems of Care team. One of which is called SBIRTS (Screening brief intervention referral to services). This screening tool can be used to help provide us with information about a student's potential risk level.

**J.5. Early Literacy Grant**

Asst. Supt. Tiffanie Lambert said that the Early Literacy Grant focuses on kindergarten through third grade. This grant focuses on the following allowable expenses for professional development and coaching, extended learning, high-dosage tutoring and student growth assessment. For our district, the grant is \$177,730 this year and \$184,984 for next year.

**J.6. Superintendent Goals Update**

Supt. Barry shared a mid-year update on his goals for this year.

**J.7. Board Policy GCBDA/GDBDA- Family Medical Leave**

**J.8. Board Policy GCBDA/GDBDA-AR(l) – Family Leave**

**K. Review of the Next Meeting Agenda**

**L. Adjournment**

The meeting adjourned at 8:10 p.m.

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Michael Campbell, Chair

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Brent Barry, Superintendent

# Phoenix-Talent Schools District 4

Code: GCBDA/GDBDA  
Adopted: 3/08/18  
Revised/Readopted: 6/16/22  
Orig. Code: GCBDA/GDBDA

## Family Medical Leave

When applicable, the district will comply with the provisions of the Family and Medical Leave Act (FMLA)<sup>{1}</sup>, of 1993, the Oregon Family Leave Act (OFLA)<sup>{2}</sup>, of 1995, the Military Family Leave Act as part of the National Defense Authorization Acts of 2008 and for Fiscal Year 2010 (which expanded certain leave to military families and veterans for specific circumstances), the Oregon Military Family Leave Act (OMFLA), Paid Family Medical Leave Insurance (PFMLI) of 2009 and other applicable provisions of state and federal law, Board policies and collective bargaining agreements regarding family medical leave.

~~FMLA applies to districts with 50 or more employees within 75 miles of the employee's worksite, based on employment during each working day during any of the 20 or more work weeks in the calendar year in which the leave is to be taken, or in the calendar year preceding the year in which the leave is to be taken. The 50 employee test does not apply to educational institutions for determining employee eligibility.~~

~~OFLA and OMFLA applies to districts that employ 25 or more part-time or full-time employees in Oregon, based on employment during each working day during any of the 20 or more work weeks in the calendar year in which the leave is to be taken, or in the calendar year immediately preceding the year in which the leave is to be taken.~~

In order for an employee to be eligible for the benefits under FMLA, ~~the employee~~ they must have been employed by the district for at least 12 months, ~~and~~ have worked at least 1,250 hours during the past 12-month period ~~and worked at a worksite that employs 50 district employees within 75 miles of the worksite.~~

~~Generally, in~~ order for an employee to be eligible for the benefits under OFLA, ~~the employee~~ they must work an average of 25 hours ~~or more~~ per week ~~during the~~ and have been employed at least 180 calendar days ~~immediately~~ prior to the first day of the ~~start of the requested~~ family medical leave of absence. For parental leave purposes, an employee becomes eligible upon completing at least 180 calendar days immediately preceding the date on which the parental leave begins: ~~there~~. ~~There~~ is no minimum average number of hours worked per week. ~~Special requirements apply during public health emergencies when determining employee eligibility for parental leave.~~

OMFLA applies to employees who work an average of at least 20 hours per week; there is no minimum number of days worked when determining an employee's eligibility for OMFLA.

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<sup>{1}</sup> Generally, FMLA applies only to entities with 50 or more employees, however, FMLA applies to all public elementary and secondary educational institutions. See 29 CFR 825.600(b). The rule regarding individual employee eligibility does apply: an employee is only eligible if the employee "is employed at a worksite where 50 or more employees are employed by the employer within 75 miles of that worksite." See 29 CFR 825.110(a)(3). Consequently, FMLA applies to districts with fewer than 50 employees, but individual employees will not be eligible to receive benefits. }

<sup>{2}</sup> OFLA applies to employers with 25 or more employees in Oregon (ORS 659A.153) and OMFLA applies to all public-sector employers in Oregon. (ORS 659A.090(2)) (Oregon BOLI Leave Laws – 2023 Edition) }

PMFLI is generally available to district employees who have earned \$1,000 in subject wages or taxable income during the alternate or base years<sup>3</sup>, contributed to the PMFLI fund in the alternate or base years and are otherwise eligible.<sup>4</sup>

Federal and state leave entitlements generally run concurrently.

The superintendent or designee will develop administrative regulations as necessary for the implementation of the provisions of both federal and state law.

END OF POLICY

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**Legal Reference(s):**

<a href="#">ORS 332.507</a>	<a href="#">ORS 659A.096</a>	<a href="#">ORS 659B.010</a>
<a href="#">ORS 659A.090</a>	<a href="#">ORS 659A.099</a>	<a href="#">OAR 839-009-0200 - 0320</a>
<a href="#">ORS 659A.093</a>	<a href="#">ORS 659A.150 - 659A.186</a>	

Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213; 29 C.F.R. Part 1630 (2017); 28 C.F.R. Part 35 (2017).  
Family and Medical Leave Act, 29 U.S.C. §§ 2601-2654; 5 U.S.C. §§ 6381-6387 (2012); Family and Medical Leave Act, 29 C.F.R. Part 825 (2017).  
Americans with Disabilities Act, 42 U.S.C. §§ 12101-12133 (2018); 29 C.F.R. Part 1630 (2019); 28 C.F.R. Part 35 (2019).  
Escriba v. Foster Poultry Farms, Inc. 743 F.3d 1236 (9<sup>th</sup> Cir. 2014).  
Senate Bill 999 (2023).

**Cross Reference(s):**

GCBDD/GDBDD - Sick Time

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<sup>3</sup> The wages are not required to have been earned for work in the district.

<sup>4</sup> See OAR 471-070-1010 for additional information.

# Phoenix-Talent Schools District 4

Code: GCBDA/GDBDA-AR(1)  
Revised/Reviewed:

## Family Leave \* (Version 1)

{Highly recommended administrative regulation (AR). The law does not require districts to have this information in an AR, but the district is required to follow the law. Having an AR in place can assist with compliance. This AR is intended for districts with 50 or more employees. If the district has between 25 and 50 employees, use version 2 of GCBDA/GDBDA-AR(1) - Family Leave \*. If the district does not have 25 employees, the district should not use this AR.}

### Employee Eligibility

FMLA benefits are available to employees who have been employed by the district for at least 12 months, have worked at least 1,250 hours during the past 12-month period and work at a worksite that employs 50 district employees within 75 miles of the worksite.

An employee who has previously qualified for and has taken some portion of FMLA leave may request additional FMLA leave within the same leave year. In such instances, the employee may not need to requalify as an eligible employee.

Generally, in order for an employee to be eligible for the benefits under OFLA, the employee must work an average of 25 hours or more per week during the 180 calendar days immediately prior to the first day of the start of the requested leave.<sup>1</sup> For parental leave purposes, an employee becomes eligible upon completing at least 180 days immediately preceding the date on which the parental leave begins: there is no minimum average number of hours worked per week.

An employee is eligible to take leave for purposes of OFLA during a period of time covered by a public health emergency except:

1. An employee who has worked for the district for fewer than 30 days immediately before the date on which the family leave would commence; or
2. An employee who has worked for the district for an average of fewer than 25 hours per week in the 30 days immediately before the date on which the family leave would commence.

An employee of the district is eligible to take leave for purposes of OFLA if the employee:

1. Separates from employment with the district, irrespective of any reason:
  - a. Is eligible to take leave OFLA at the time the employee separates; and
  - b. Is reemployed by the district within 180 days of separation from employment; or
2. Is eligible to take OFLA leave:

<sup>1</sup> The requirements of OFLA do not apply to any employer offering eligible employees a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, which provides as one of its options employee leave at least as generous as the leave required by OFLA.

- a. At the beginning of a temporary cessation of scheduled hours of 180 days or less; and
- b. Returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.

Any OFLA leave taken by the employee within any one-year period continues to count against the length of time of OFLA leave the employee is entitled. The amount of time that an employee is deemed to have worked for the district prior to a break in service due to a separation from employment or a temporary cessation of scheduled hours shall be restored to the employee when the employee is reemployed by the district within 180 days of separation from employment or when the employee returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.

An employee who has previously qualified for and has taken some portion of OFLA leave, may request additional OFLA leave within the same leave year. In such instances, the employee must requalify as an eligible employee for each additional leave requested unless one of the following exceptions apply:

1. An employee taking, in any order, some or all of 12 weeks of OFLA pregnancy disability leave and some or all of 12 weeks of OFLA leave for any other purpose, need not requalify leave in the same leave year;
2. An employee who has taken 12 weeks of parental leave need not requalify to take an additional 12 weeks in the same leave year for sick child leave;
3. An employee granted leave for a serious health condition for the employee or a family member need not requalify if additional leave is taken in this leave year for the same reason;
4. An employee unable to work because of a disabling compensable injury<sup>2</sup> need not requalify in order to use OFLA leave following a period the employee is off work due to the compensable injury; and
5. An employee who has taken serious health condition leave to care for a family member who dies during the employee's serious health condition need not requalify to take leave for the death of that family member.

OMFLA applies to employees who work an average of at least 20 hours per week. There is no minimum number of days worked when determining employee eligibility for OMFLA.

In determining if an employee has been employed for the preceding 180 calendar days, the district must consider days, paid or unpaid, an employee is maintained on payroll. Full-time public school teachers who have been maintained on payroll by the district for 180 consecutive calendar days are thereafter deemed to have been employed for an average of at least 25 hours per week during the 180 days immediately preceding the start date of the OFLA leave.

In determining average workweek, the employer must count the actual hours worked using the Fair Labor Standards Act (FLSA) guidelines.

### **Qualifying Reason**

Eligible employees may access FMLA leave for the following reasons:

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<sup>2</sup> As defined in ORS 656.005.

1. Serious health condition of the employee or the employee’s covered family member. Serious health condition means an illness, injury, impairment or physical or mental condition that involves inpatient care<sup>3</sup> or continuing treatment by a health care provider<sup>4</sup>.
2. Parental leave<sup>5</sup> (separate from eligible leave as a result of a child’s serious health condition):
  - a. Bonding with and the care for the employee’s newborn (within 12 months following birth);
  - b. Bonding with and the care for a newly adopted child or newly placed child in foster care<sup>{6}</sup> under the age of 18 (within 12 months of placement);
  - c. Care for a newly adopted child or newly placed child in foster care over 18 years of age who is incapable of self-care because of a physical or mental impairment (within 12 months of placement);
  - d. Time to effectuate the legal process required for placement of a child in foster care or the adoption of a child.
3. Military Caregiver Leave: leave for the care for spouse, child or next-of-kin who is a covered servicemember with a serious injury or illness;
4. Qualifying Exigency Leave: leave arising out of the foreign deployment of the employee’s spouse, child or parent.

Eligible employees may access OFLA for the following reasons:

1. Serious health condition of the employee or the employee’s covered family member. Serious health condition means:
  - a. An illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice or residential medical care facility;
  - b. An illness, disease or condition that in the medical judgement of the treating health care provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care;
  - c. Any period of disability due to pregnancy, or period of absence for prenatal care; or
  - d. Any period of absence for the donation of a body part, organ or tissue, including preoperative or diagnostic services, surgery, post-operative treatment and recovery.<sup>7</sup>
2. Parental leave (separate from eligible leave as a result of the child’s serious health condition):

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<sup>3</sup> Inpatient care means an overnight stay in a hospital, hospice, or residential medical facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care. 29 CFR 825.114.

<sup>4</sup> Continuing treatment includes incapacity and treatment, pregnancy or prenatal care, chronic conditions, permanent or long-term conditions, conditions requiring multiple treatments, and absences attributable to incapacity. See 29 CFR 815.115.

<sup>5</sup> Parental leave must be taken in one continuous block of time within 12 months of the triggering event.

<sup>6</sup> {ORS 659A.159 uses the term “foster child.” Districts can choose to use either “foster child” or “child in foster care” throughout this AR.}

<sup>7</sup> This definition is from ORS 659A.150(7). A more detailed definition is available in OAR 839-009-0210(22).

- a. Bonding with and the care for the employee’s newborn (within 12 months following birth);
  - b. Bonding with and the care for a newly adopted child or newly placed child in foster care under the age of 18 (within 12 months of placement);
  - c. Care for a newly adopted child or newly placed child in foster care over 18 years of age who is incapable of self-care because of a physical or mental impairment (within 12 months of placement);
  - d. Time to effectuate the legal process required for placement of a child in foster care or the adoption of a child.
3. Sick Child Leave: leave for non-serious health conditions of the employee’s child. For OFLA, sick child leave includes absence to care for an employee’s child whose school or child care provider has been closed<sup>8</sup> in conjunction with a statewide public health emergency declared by a public health official.<sup>9</sup>
  4. Bereavement Leave: leave related to the death of a covered family member.<sup>10</sup>
  5. Eligible employees may access OMFLA for the purpose of spending time with a spouse or domestic partner who is in the military and has been notified of an impending call or order to active duty, or who has been deployed during a period of military conflict.
  6. The eligibility of an employee who takes multiple leaves for different qualified reasons during the same leave year may be reconfirmed at the start of each qualified leave requested.

## Definitions

1. Family member:
  - a. For the purposes of FMLA, “family member” means:
    - (1) Spouse<sup>11</sup>;
    - (2) Parent;
    - (3) Child; or
    - (4) Persons who are “in loco parentis”.
  - b. For the purposes of OFLA, “family member” means:
    - (1) Spouse or domestic partner;

<sup>8</sup> “Closure” for the purpose of sick child leave during a statewide public health emergency declared by a public health official means a closure that is ongoing, intermittent, or recurring and restricts physical access to the child’s school or child care provider. OAR 839-009-0210(4).

<sup>9</sup> The district may request verification of the need for sick child leave due to a closure during a statewide emergency. Verification may include:

1. The name of the child being cared for;
2. The name of the school or child care provider that has closed or become unavailable;
3. A statement from the employee that no other family member of the child is willing and able to care for the child; and
4. With the care of a child older than 14, a statement that special circumstances exist requiring the employee to provide care to the child during daylight hours.

<sup>10</sup> Bereavement leave under OFLA must be completed within 60 days of when the employee received notice of the death.

<sup>11</sup> “Spouse” means individuals in a marriage, including “common law” marriage and same-sex marriage.

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- (2) Child or the child’s spouse or domestic partner;
- (3) Parent or the parent’s spouse or domestic partner;
- (4) Sibling or stepsibling, or the sibling’s or stepsibling’s spouse or domestic partner;
- (5) Grandparent or the grandparent’s spouse or domestic partner;
- (6) Grandchild or the grandchild’s spouse or domestic partner; or
- (7) Any individual related by blood or affinity whose close association with a covered individual is the equivalent of a family relationship.<sup>12</sup>

2. Child:

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- a. For the purposes of FMLA, “child” means a biological or adopted child, a child in foster care, a stepchild, a legal ward or a child of a person standing “in loco parentis”, who is either under the age of 18, or who is 18 years of age or older and who is incapable of self-care because of a physical or mental disability.
- b. For the purposes of Military Caregiver Leave and Qualifying Exigency Leave under FMLA, “child” means the employee’s child on covered active duty regardless of that child’s age.
- c. For the purposes of OFLA, “child” means a biological or adopted child, a child in foster care or stepchild of the employee, the child of the employee’s domestic partner, or a child with whom the employee is or was in a relationship of “in loco parentis”.
- d. For the purposes of parental and sick child leave under OFLA, the child must be under the age of 18 or an adult dependent child substantially limited by a physical or mental impairment.

3. In loco parentis:

- a. For the purposes of FMLA, “in loco parentis” means persons with day-to-day responsibility to care for or financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
- b. For the purposes of OFLA, “in loco parentis” means person in the place of the parent, having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

4. Next of kin:

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<sup>12</sup> “Affinity” means a relationship for which there is a significant personal bond that, when examined under the totality of the circumstances, is like a family relationship. This bond may be demonstrated by, but is not limited to the following factors, with no single factor being determinative:

- a. Shared personal financial responsibility, including shared leases, common ownership of real or personal property, joint liability for bills or beneficiary designations;
- b. Emergency contact designation of the employee by the other individual in the relationship or the emergency contact designation of the other individual in the relationship by the employee;
- c. The expectation to provide care because of the relationship or the prior provision of care;
- d. Cohabitation and its duration and purpose;
- e. Geographic proximity; and
- f. Any other factor that demonstrates the existence of a family-like relationship.

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For the purposes of FMLA , “next of kin” means the nearest blood relative other than the servicemember’s spouse, parent or child in the following order of priority (unless otherwise designated in writing by the servicemember):

- a. Blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions;
- b. Siblings;
- c. Grandparents;
- d. Siblings of parents and their spouses; and
- e. First cousins.

5. Covered servicemembers:

For the purposes of FMLA, “covered servicemember” means a current 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 a covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.

6. Covered veteran:

For the purposes of FMLA, “covered veteran” means an individual who was:

- a. A member of the Armed Forces (including a member of the National Guard or Reserves);
- b. Discharged or released under conditions other than dishonorable; and
- c. Discharged within the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

7. Public health emergency:

For OFLA a public health emergency means;

- a. A public health emergency declared under ORS 433.441.
- b. An emergency declared under ORS 401.165 if related to a public health emergency as defined in ORS 433.442.

## Leave Period

For the purposes of calculating an employee’s leave period, the district will use ~~[the calendar year] [any fixed 12-month “leave year”]~~ **[the 12-month period measured forward from the date the employee’s leave begins] [a “rolling” 12-month period measured backward from the date the employee uses any family and medical leave][and/or a period of 52 consecutive weeks beginning on the Sunday immediately preceding the date on which family leave commences]**<sup>{13}</sup>. The same method for calculating the one-year period for FMLA and OFLA leave entitlement shall be used for all employees. However, in all instances, the leave period for the purposes of OMFLA and Military Caregiver Leave

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<sup>{13}</sup> Beginning July 1, 2024, districts are required to use the final bracketed option for OFLA purposes. See SB 999 (2023). Prior to making a change to the leave period calculation, 60 days’ notice must be provided to employees. FMLA continues to measure the leave year as 12 months, which could result in slight differences for some employees.

under FMLA shall be dependent on the start of any such leave regardless of the district's designated leave period described above.

## **Leave Duration**

For the purposes of FMLA, an eligible employee is generally entitled to a total of 12 weeks of qualified leave during the district's designated leave period<sup>14</sup>. Spouses who work for the district may be limited to a combined 12 weeks of FMLA leave during the district's designated leave period when the purpose of the leave is for the birth of a child or to care for a child after birth, placement of an adopted child or child in foster care, the care for an adopted child or child in foster care after placement, or to care for the employee's parent's serious medical condition. Except in specific and unique instances, all qualified leave under FMLA counts toward an employee's leave entitlement within the designated leave period.

For the purposes of OFLA, an eligible employee is generally entitled to a total of 12 weeks of qualified leave during the designated leave period. However, an employee may be entitled to an additional, full 12 weeks of parental leave during the designated leave period following the birth of a child regardless of how much OFLA qualified leave the employee has taken prior to the birth of such child during the designated leave period. Likewise, an employee who uses the full 12 weeks of parental leave during the designated leave period, will be entitled to an additional 12 weeks of sick child leave under OFLA.<sup>15</sup> Unlike FMLA, OFLA does not combine the leave entitlement for spouses working for the district. However, under OFLA, family members who work for the district may be restricted from taking concurrent OFLA qualified leave.<sup>16</sup>

For the purposes of OMFLA, an eligible employee is entitled to 14 days of leave per call or order to active duty or notification of a leave from deployment. When an employee also meets the eligibility requirements of OFLA, the duration of the OMFLA leave counts toward that employee's leave entitlement during the designated leave period.

Except as otherwise noted above, qualified leave under FMLA and OFLA for an eligible employee will run concurrently during the designated leave period.

For the purpose of tracking the number of leave hours an eligible employee is entitled and/or has used during each week of the employee's leave, leave entitlement is calculated by multiplying the number of

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<sup>14</sup> An eligible employee taking Military Caregiver Leave under FMLA is entitled to up to 26 weeks of leave in the 12-month period beginning with the first day of such leave and regardless of any FMLA leave taken previously during the district's leave period. However, once the 12-month period begins for the purposes of Military Caregiver Leave under FMLA, any subsequent FMLA qualified leave, regardless of reason for such leave, will count toward the employee's 26-week entitlement under Military Caregiver Leave under FMLA.

<sup>15</sup> Sick child leave under OFLA need not be provided if another family member, including a noncustodial biological parent, is willing and able to care for the child.

<sup>16</sup> Exceptions to the ability to require family members from taking OFLA qualified leave at different times are when 1) employee is caring for the other employee who has a serious medical condition; 2) one employee is caring for a child with a serious medical condition when the other employee is suffering a serious medical condition; 3) each family member is suffering a serious medical condition; 4) each family member wants to take Bereavement Leave under OFLA; and 5) the employer allows the family members to take concurrent leave.

hours the eligible employee normally works per week by 12<sup>17</sup>. If an employee's schedule varies from week-to-week, a weekly average of the hours worked over the 12 months worked prior to the beginning of the leave period shall be used for calculating the employee's normal workweek<sup>18</sup>. If an employee takes intermittent or reduced work schedule leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of leave to which the employee is entitled.

### **Intermittent Leave**

With the exception of parental leave which must be taken in one continuous block of time, an eligible employee is permitted under FMLA and OFLA to take intermittent leave for any qualifying reason.

Intermittent leave is taken in multiple blocks of time (i.e., hours, days, weeks, etc.) rather than in one continuous block of time and/or requiring an altered or reduced work schedule. For OFLA this includes but is not limited to sick child leave taken requiring an altered or reduced work schedule because the intermittent or recurring closure of a child's school or child care provider due to a statewide public health emergency declared by a public health official.

When an exempt employee is eligible for both OFLA and FMLA leave, and the employee takes intermittent leave in blocks of less than one day, if done in accordance with 29 CFR § 825.206, the district may reduce the employee's salary for the part-day absence without the loss of the employee's exempt status in accordance with OAR 839-020-0004(30)(a).

When an exempt employee is eligible for OFLA but not FMLA leave, and the employee takes intermittent leave in blocks of less than one day, the district will jeopardize the employee's exempt status if the district reduces the employee's salary for the party-day absence.

An employee's FMLA and/or OFLA intermittent leave time is determined by calculating the difference between the employee's normal work schedule and the number of hours the employee actually works during the leave period. The result of such calculation is credited against the eligible employee's leave entitlement.

Holidays or days in which the district is not in operation, are not counted against the eligible employee's intermittent OFLA leave period unless the employee was scheduled and expected to work on any such day.

### **Alternate Work Assignment**

The district may transfer an employee recovering from a serious health condition to an alternate position which accommodates the serious health condition provided:

1. The employee accepts the position voluntarily and without coercion;

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<sup>17</sup> For example, an employee normally employed to work 30 hours per week is entitled to 12 times 30 hours, or a total of 360 hours of leave.

<sup>18</sup> For example, an employee working an average of 25 hours per week is entitled to 12 times 25 hours, or a total of 300 hours of leave.

2. The transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits;
3. The transfer is compliant with any applicable collective bargaining agreement;
4. The transfer is compliant with state and federal law, including but not limited to the applicable protections provided for in FMLA and/or OFLA; and
5. The transfer is not used to discourage the employee from taking FMLA and/or OFLA leave for a serious health condition or to create a hardship for the employee.

The district may transfer an eligible employee who is on intermittent OFLA leave to another position with the same or different duties to accommodate the leave, provided:

1. The employee accepts the transfer position voluntarily and without coercion;
2. The transfer is temporary, lasts no longer than necessary to accommodate the leave and has equivalent pay and benefits;
3. The transfer is compliant with any applicable collective bargaining agreements;
4. The transfer is compliant with state and federal law, including but not limited to the applicable protections provided for in FMLA and/or OFLA;
5. The transfer to an alternate position is used only when there is no other reasonable option available that would allow the employee to use intermittent leave or reduced work schedule; and
6. The transfer is not used to discourage the employee from taking intermittent or reduced work schedule leave, or to create a hardship for the employee.

If an eligible employee is transferred to an alternative position to accommodate the employee's serious health condition, and as a result the employee works fewer hours than the employee was working in the original position, the employee's OFLA leave time is determined by calculating the difference between the employee's normal work schedule and the number of hours the employee actually works during the leave period.

When an employee is transferred to alternate position as described above but such transfer does not result in a reduced schedule, time worked in any such alternate position shall not be considered for the purpose of OFLA leave. An employee working in an alternate position retains the right to return to the employee's original position unless all OFLA leave taken in that leave year plus the period of time worked in the alternate position exceeds 12 weeks.

### **Special Rules for School Employees**

For the purposes of FMLA, "instructional employee" means those whose principal function is to teach and instruct students in a class, a small group or an individual setting. Athletic coaches, driving instructors and special education assistants, such as interpreters for the hearing impaired, are included in this definition. This definition does not apply to teacher assistants or aides who do not have as their principal job actual teaching or instructing, counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers or bus drivers.

For the purposes of OFLA, “school employee” means employees employed principally as instructors in public kindergartens, elementary schools, secondary schools or education service districts.

FMLA and/or OFLA leave that is taken for a period that ends with the school year and begins with the next semester is considered consecutive rather than intermittent. In any such situation, the eligible school employee will receive any benefits during the break period that employees would normally receive if they had been working at the end of the school year.

1. Foreseeable Intermittent Leave Exceeding 20 Percent of Working Days

When the qualified leave is foreseeable, will encompass more than 20 percent of the eligible school employee’s regular work schedule during the leave period, and the purpose of such leave is to care for a family member with a serious medical condition, for a servicemember with a serious medical condition or because of the employee’s own serious medical condition, the district may require the eligible school employee to:

- a. Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
- b. Temporarily transfer the eligible school employee to an alternate position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than the employee’s original position.

2. Limitation on Leave Near the End of the School Year

When an eligible school employee requests leave near the end of the school year, the district may require the following:

- a. When the qualified leave begins more than five weeks before the end of the school year:
  - (1) For the purposes of FMLA leave, the eligible school employee may be required to continue taking leave until the end of the school year provided:
    - (a) The leave will last at least three weeks; and
    - (b) The employee would return to work during the three-week period before the end of the term.
  - (2) For the purposes of OFLA leave, if the reason for the leave is because of the eligible school employee’s own serious health condition, the eligible school employee may be required to remain on leave until the end of the school year, provided:
    - (a) The leave will last at least three weeks; and
    - (b) The employee’s return to work would occur within three weeks of the end of the school year.
- b. For the purposes of FMLA and/or OFLA leave, when the qualified leave begins within five weeks of the end of the school year and the purpose of such leave is parental leave, for the serious health condition of a family member or for the serious health condition of a servicemember, the eligible school employee may be required to remain on leave until the end of the school year provided:

- (1) The leave will last more than two weeks; and
- (2) The employee would return to work during the two-week period before the end of the school year.

c. For the purposes of FMLA and/or OFLA leave, when the qualified leave begins within three weeks of the end of the school year and the purpose of such leave is parental leave, for the serious health condition of a family member or for the serious health condition of a servicemember, the eligible school employee may be required to remain on leave until the end of the school year provided the length of the leave will last more than five working days.

If the district requires an eligible school employee to remain on leave until the end of the school year as described above, additional leave required by the employer until the end of the school year shall not count against the eligible school employee's leave entitlement.

### **Paid/Unpaid Leave**

FMLA and OFLA do not require the district to pay an eligible employee who is on a qualified leave. Paid Family Medical Leave Insurance (PFMLI) leave taken via Paid Leave Oregon or an equivalent plan will run concurrently with OFLA and FMLA when taken for the same purpose. Subject to any related provisions in any applicable collective bargaining agreement [**an employee may elect to use applicable available accrued paid leave including personal and sick leave, or available accrued vacation leave during the leave period.**]<sup>19</sup> This includes when an employee is being paid through PFMLI. The district will notify the eligible employee that the requested leave has been designated as FMLA and/or OFLA leave and ask the employee about the use of available accrued paid leave.

Eligible employees who request OMFLA leave shall not be required to use any available accrued paid time off during the OMFLA leave period.

### **Benefits and Insurance**

When an eligible employee returns to work following a FMLA or OFLA qualified leave, the employee must be reinstated to the same position the employee held when the leave commenced, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

During an OFLA qualified leave an eligible employee does not accrue seniority or other benefits that would have accrued while the employee was working, unless the terms of a collective bargaining agreement, other agreement or other district policy provide otherwise.<sup>20</sup> The eligible employee is also subject to layoff to the same extent similarly situated employees not taking OFLA leave are subject unless the terms of an applicable collective bargaining agreement, other agreement or the district's policies provide otherwise.

For the purposes of FMLA and OFLA, the district will continue to pay the employer portion of the eligible employee's group health insurance contribution (if applicable) during the qualified leave period. The

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<sup>19</sup> {Coordinate with any language regarding use of accrued leave during PFMLI from GDBDF/GDBDF or any equivalent plan information.}

<sup>20</sup> See also ORS 342.934(4)(d) in reduction force situations.

eligible employee is required to pay the employee portion of any such group health insurance contribution as a condition of continued coverage.

For the purposes of FMLA qualified leave, the district's obligation to maintain the employee's group health insurance coverage will cease if the employee's contribution is remitted more than 30 calendar days late. The district will provide written notice that the premium payment is more than 30 calendar days late. Such notice will be provided within 15 calendar days before coverage is to cease.

For the purposes of OMFLA, the eligible employee is entitled to a continuation of benefits.

### **Fitness-for-Duty Certification**

Prior to the reinstatement of an employee following a leave which was the result of the employee's own serious health condition, the district may require the employee to obtain and present a Fitness-for-Duty Certification. If the district is going to require a fitness-for-duty certification upon return to work, the district must notify the employee of such requirement when the leave is designated as FMLA and/or OFLA leave. Failure to provide the certification may result in a delay or denial of reinstatement.

For the purposes of FMLA qualified leave, any costs associated with obtaining the fitness-for-duty certification shall be borne by the employee.

For the purposes of OFLA qualified leave, any out-of-pocket costs associated with obtaining the fitness-for-duty certification shall be borne by the district.

If the leave is qualified under both FMLA and OFLA, any out-of-pocket costs associated with obtaining the fitness-for-duty certification shall be borne by the district.

### **Application**

Under federal and state law, an eligible employee requesting FMLA and/or OFLA leave shall provide at least 30 days' notice prior to the leave date if the leave is foreseeable. The notice shall be written and include the anticipated start date, duration and reasons for the requested leave. When appropriate, the eligible employee must make a reasonable effort to schedule treatment, including intermittent leave and reduced leave, so as not to unduly disrupt the operation of the district.

The district may request additional information to determine that the requested leave qualifies as FMLA and/or OFLA leave. The district may designate the employee as provisionally on FMLA and/or OFLA leave until sufficient information is received to properly make a determination. An eligible employee able to give advance notice of the need to take FMLA and/or OFLA leave must follow the district's known, reasonable and customary procedures for requesting any kind of leave.

For the purposes of FMLA, if advance notice is not possible, an employee eligible for FMLA leave must provide notice as soon as practicable. "As soon as practicable," for the purpose of FMLA leave, means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. In most situations, as soon as practicable will be within one business day of an employee becoming aware of the need. Failure of an employee to provide the required notice for FMLA leave may result in the district delaying the employee's leave up to 30 days after the notice is ultimately given.

For the purposes of OFLA, an eligible employee is required to provide oral or written notice within 24 hours of commencement of the leave in unanticipated or emergency leave situations. The employee may designate a family member or friend to notify the district during that period of time. Failure of an employee to provide the required notice for leave covered by OFLA may result in the district deducting up to three weeks from the employee's unused OFLA leave in that one-year leave period. The employee may be subject to disciplinary action for not following the district's notice procedures.

When an employee fails to give advance notice for both the FMLA and OFLA above, the district must choose the remedy that is most advantageous to the employee.<sup>21</sup>

In all cases, proper documentation must be submitted no later than three working days following the employee's return to work.

### **Medical Certification**

The district may require an eligible employee to provide medical documentation, when appropriate<sup>22</sup>, to support the stated reason for such leave. The district will provide written notification to an employee of this requirement within five working days of the employee's request for leave. If the employee provides less than 30 days' notice, the employee is required to submit such medical certification no later than 15 calendar days after receipt of the district's notification that medical certification is required.

Any additional certifications, including second and third opinions, will be in accordance with applicable law.

### **Posted Notice**

The district will post the Bureau of Labor and Industries Family Leave notice in each building or worksite that is accessible to and regularly frequented by employees.<sup>23</sup> The district will also post a notice explaining the provisions of FMLA and providing information concerning the procedures for filing complaints.<sup>24</sup>

### **Record Keeping**

The district will maintain all records as required by federal and state laws including dates leave is taken by employees, identified separately from other leave; hours/days of leave; copies of general and specific notices to employees, including Board policy(ies) and regulations; premium payments of employee health benefits while on leave and records of any disputes with employees regarding granting of leave.

Medical documentation will be maintained separately from personnel files as confidential medical records.

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<sup>21</sup> See OAR 839-009-0250(4)(c).

<sup>22</sup> Medical documentation is not allowed in every situation. Review current laws and guidance for more information.

<sup>23</sup> [https://www.oregon.gov/boli/employers/Documents/BOLI\\_Printable\\_FamilyMedLv.pdf](https://www.oregon.gov/boli/employers/Documents/BOLI_Printable_FamilyMedLv.pdf); electronic posting is not sufficient to satisfy this requirement, but may be used to supplement the physical posting.

<sup>24</sup> <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/fmlaen.pdf>; electronic posting is sufficient as long as it is posted prominently where it can be readily seen by employees and applicants for employees. The poster and the text must be large enough to be easily read and contain fully legible text.

## Federal vs. State Law

Both federal and state law contain provisions regarding leave for family illness. Federal regulations state an employer must comply with both laws; that the federal law does not supersede any provision of state law that provides greater family leave rights than those established pursuant to federal law; and that OFLA and FMLA leave entitlements run concurrently. State law requires that FMLA and OFLA leave entitlements run concurrently when possible.

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# Phoenix-Talent Schools District 4

Code: GCBDA/GDBDA-AR(1)  
Adopted: 1/14/21  
Revised/Readopted: 6/16/22  
Orig. Code(s): GCBDA/GDBDA-AR(1)

## Family Leave

(see new version)

The federal Family and Medical Leave Act (FMLA) applies to districts with 50 or more employees within 75 miles of the employee's work site, based on employment during each working day during any of the 20 or more workweeks in the calendar year in which the leave is to be taken, or in the calendar year preceding the year in which the leave is to be taken. The 50 employee test does not apply to educational institutions for determining employee eligibility.

The Oregon Family Leave Act (OFLA) and the Oregon Military Family Leave Act (OMFLA) applies to districts that employ 25 or more part-time or full-time employees in Oregon, based on employment during each working day during any of the 20 or more workweeks in the calendar year in which the leave is to be taken, or in the calendar year immediately preceding the year in which the leave is to be taken.

### Employee Eligibility

FMLA applies to employees who have worked for the district for at least 12 months (not necessarily consecutive) and worked for at least 1,250 hours during the 12-month period immediately preceding the start of the leave.

An employee who has previously qualified for and has taken some portion of FMLA leave may request additional FMLA leave within the same leave year. In such instances, the employee need not requalify as an eligible employee, if the additional leave applied for is in the same leave year and for the same condition.

OFLA applies to employees who work an average of 25 hours or more per week during the 180 calendar days or more immediately prior to the first day of the start of the requested leave.<sup>1</sup> For parental leave purposes, an employee becomes eligible upon completing at least 180 days immediately preceding the date on which the parental leave begins. There is no minimum average number of hours worked per week when determining employee eligibility for parental leave.

An employee of a covered employer is eligible to take leave for purposes of OFLA during a period of time covered by a public health emergency except:

1. An employee who worked for the covered employer for fewer than 30 days immediately before the date on which the family leave would commence; or

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<sup>1</sup> The requirements of OFLA do not apply to any employer offering eligible employees a nondiscriminatory cafeteria plan, as defined by section 125 of the Internal Revenue Code of 1986, which provides as one of its options employee leave at least as generous as the leave required by OFLA.

2. An employee who worked for the covered employer for an average of fewer than 25 hours per week in the 30 days immediately before the date on which the family leave would commence.

An employee of a covered employer is eligible to take leave for purposes of OFLA if the employee:

1. Separates from employment with the covered employer, irrespective of any reason:
  - a. Is eligible to take leave OFLA at the time the employee separates; and
  - b. Is reemployed by the covered employer within 180 days of separation from employment; or
2. Is eligible to take OFLA leave:
  - a. At the beginning of a temporary cessation of scheduled hours of 180 days or less; and
  - b. Returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.

Any OFLA leave taken by the employee within any one-year period continues to count against the length of time of OFLA leave the employee is entitled. The amount of time that an employee is deemed to have worked for a covered employer prior to a break in service due to a separation from employment or a temporary cessation of scheduled hours shall be restored to the employee when the employee is reemployed by the employer within 180 days of separation from employment or when the employee returns to work at the end of the temporary cessation of scheduled hours of 180 days or less.

An employee who has previously qualified for and has taken some portion of OFLA leave, may request additional OFLA leave within the same leave year. In such instances, the employee must requalify as an eligible employee for each additional leave requested unless one of the following exceptions apply:

1. A female employee who has taken 12 weeks of pregnancy disability leave need not requalify leave in the same leave year for any other purpose;
2. An employee who has taken 12 weeks of parental leave need not requalify to take an additional 12 weeks in the same leave year for sick child leave; and
3. An employee granted leave for a serious health condition for the employee or a family member need not requalify if additional leave is taken in this leave year for the same reason.

OMFLA applies to employees who work an average of at least 20 hours per week. There is no minimum number of days worked when determining employee eligibility for OMFLA.

In determining if an employee has been employed for the preceding 180 calendar days, when applicable, the employer must consider days, e.g., paid or unpaid, an employee is maintained on payroll for any part of a work week. Full-time public school teachers who have been maintained on payroll by a district for 180 consecutive calendar days are thereafter deemed to have been employed for an average of at least 25 hours per week during the 180 days immediately preceding the start date of the OFLA leave. This provision is eligible for rebuttal if for example, the employee was on a nonpaid sabbatical.

In determining average workweek, the employer must count the actual hours worked using the Fair Labor Standards Act (FLSA) guidelines.

## Qualifying Reason

Eligible employees may access FMLA leave for the following reasons:

1. Serious health condition of the employee or the employee's covered family member:
  - a. Inpatient care;
  - b. Continuing treatment;
  - c. Chronic conditions;
  - d. Permanent, long-term or terminal conditions;
  - e. Multiple treatments;
  - f. Pregnancy and prenatal care.
2. Parental leave<sup>2</sup> (separate from eligible leave as a result of a child's serious health condition):
  - a. Bonding with and the care for the employee's newborn (within 12 months following birth);
  - b. Bonding with and the care for a newly adopted or newly placed foster child under the age of 18 (within 12 months of placement);
  - c. Care for a newly adopted or newly placed foster child over 18 years of age who is incapable of self-care because of a physical or mental impairment (within 12 months of placement);
  - d. Time to effectuate the legal process required for placement of a foster child or the adoption of a child.
3. Military Caregiver Leave: leave for the care for spouse, son, daughter or next-of-kin who is a covered service member/veteran with a serious injury or illness;
4. Qualifying Exigency Leave: leave arising out of the foreign deployment of the employee's spouse, son, daughter or parent.

Eligible employees may access OFLA for the following reasons:

1. Serious health condition of the employee or the employee's covered family member:
  - a. Inpatient care;
  - b. Continuing treatment;
  - c. Chronic conditions;
  - d. Permanent, long-term or terminal conditions;
  - e. Multiple treatments;
  - f. Pregnancy and prenatal care.
2. Parental leave (separate from eligible leave as a result of the child's serious health condition):
  - a. Bonding with and the care for the employee's newborn (within 12 months following birth);
  - b. Bonding with and the care for a newly adopted or newly placed foster child under the age of 18 (within 12 months of placement);
  - c. Care for a newly adopted or newly placed foster child over 18 years of age who is incapable of self-care because of a physical or mental impairment (within 12 months of placement);

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<sup>2</sup> Parental leave must be taken in one continuous block of time within 12 months of the triggering event.

- d. Time to effectuate the legal process required for placement of a foster child or the adoption of a child.
3. Sick Child Leave: leave for non-serious health conditions of the employee’s child. For OFLA, sick child leave includes absence to care for an employee’s child whose school or child care provider has been closed<sup>3</sup> in conjunction with a statewide public health emergency declared by a public health official.<sup>4</sup>
  4. Bereavement Leave: leave related to the death of a covered family member.<sup>5</sup>
  5. Eligible employees may access OMFLA for the purpose of spending time with a spouse or same-gender domestic partner who is in the military and has been notified of an impending call or order to active duty, or who has been deployed during a period of military conflict.
  6. The eligibility of an employee who takes multiple leaves for different qualified reasons during the same district designated leave period may be reconfirmed at the start of each qualified leave requested.

**Definitions**

1. Family member:
  - a. For the purposes of FMLA, “family member” means:
    - (1) Spouse<sup>6</sup>;
    - (2) Parent;
    - (3) Child; or
    - (4) Persons who are “in loco parentis”.
  - b. For the purposes of OFLA, “family member” means:
    - (1) Spouse;
    - (2) Registered, same-gender domestic partner;
    - (3) Parent;
    - (4) Parent-in-law;

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<sup>3</sup> “Closure” for the purpose of sick child leave during a statewide public health emergency declared by a public health official means a closure that is ongoing, intermittent, or recurring and restricts physical access to the child’s school or child care provider. OAR 839-009-0210(4).

<sup>4</sup> The district may request verification of the need for sick child leave due to a closure during a statewide emergency. Verification may include:

1. The name of the child being cared for;
2. The name of the school or child care provider that has closed or become unavailable; and
3. A statement from the employee that no other family member of the child is willing and able to care for the child; and With the care of a child older than 14, a statement that special circumstances exist requiring the employee to provide care to the child during daylight hours.

<sup>5</sup> Bereavement leave under OFLA must be completed within 60 days of when the employee received notice of the death.

<sup>6</sup> “Spouse” means individuals in a marriage, including “common law” marriage and same-sex marriage. ~~For OFLA, spouse also includes same sex individuals with a Certificate of Registered Domestic Partnership.~~



- (5) Parent of employee’s registered, same-gender domestic partner;
- (6) Child;
- (7) Child of employee’s registered, same-gender domestic partner;
- (8) Grandchild;
- (9) Grandparent; or
- (10) Persons who are “in loco parentis”.

2. Child:

- a. For the purposes of FMLA, “child” means a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing “in loco parentis”, who is either under the age of 18, or who is 18 years of age or older and who is incapable of self-care because of a physical or mental impairment.
- b. For the purposes of Military Caregiver Leave and Qualifying Exigency Leave under FMLA, “child” means the employee’s son or daughter on covered active duty regardless of that child’s age.
- c. For the purposes of OFLA, “child” means a biological, adopted, foster child or stepchild of the employee, the child of the employee’s same-gender domestic partner, or a child with whom the employee is or was in a relationship of “in loco parentis”.
- d. For the purposes of parental and sick child leave under OFLA, the child must be under the age of 18 or an adult dependent child substantially limited by a physical or mental impairment.

3. In loco parentis:

- a. For the purposes of FMLA, “in loco parentis” means persons with day-to-day responsibility to care for and financially support a child, or, in the case of an employee, who had such responsibility for the employee when the employee was a child. A biological or legal relationship is not necessary.
- b. For the purposes of OFLA, “in loco parentis” means person in the place of the parent having financial or day-to-day responsibility for the care of a child. A legal or biological relationship is not required.

4. Next of kin:

For the purposes of FMLA and Military Caregiver Leave under FMLA, “next of kin” means the nearest blood relative other than the servicemember’s spouse, parent, son or daughter in the following order of priority (unless otherwise designated in writing by the servicemember):

- a. Blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions;
- b. Brothers or sisters;
- c. Grandparents;
- d. Aunts and uncles; and
- e. First cousins.

5. Covered servicemembers:

For the purposes of Military Caregiver Leave under FMLA, “covered servicemember” means a current member of the Armed Forces, including a member of the National Guard or Reserves, who is

receiving medical treatment, recuperation or therapy, or is in outpatient status, or is on the temporary disability retired list for a serious injury or illness.

6. Covered veteran:

For the purposes of Military Caregiver Leave under FMLA, “covered veteran” means a veteran who is undergoing medical treatment, recuperation or therapy for a serious injury or illness provided they were:

- a. A member of the Armed Forces (including a member of the National Guard or Reserves);
- b. Discharged or released under conditions other than dishonorable; and
- c. Discharged within the five-year period before the eligible employee first takes FMLA, Military Caregiver Leave.

7. Public health emergency:

For OFLA a public health emergency means;

- a. A public health emergency declared under ORS 433.441.
- b. An emergency declared under ORS 401.165 if related to a public health emergency as defined in ORS 433.442.

### Leave Period

For the purposes of calculating an employee’s leave period, the district will a “rolling” 12-month period measured backward from the date the employee uses any family and medical leave. The same method for calculating the 12-month period for FMLA and OFLA leave entitlement shall be used for all employees. However, in all instances, the leave period for the purposes of OMFLA and Military Caregiver Leave under FMLA shall be dependent on the start of any such leave regardless of the district’s designated 12-month leave period described above.

### Leave Duration

For the purposes of FMLA, an eligible employee is generally entitled to a total of 12 weeks of qualified leave during the district’s designated leave period<sup>7</sup>. Spouses who work for the district may be limited to a combined 12 weeks of FMLA leave during the district’s designated leave period when the purpose of the leave is for the birth of a child or to care for a child after birth, placement of an adopted or foster child or the care for an adopted or foster child after placement, or to care for the employee’s parent’s serious medical condition. Except in specific and unique instances, all qualified leave under FMLA counts toward an employee’s leave entitlement within the district’s designated leave period.

For the purposes of OFLA, an eligible employee is generally entitled to a total of 12 weeks of qualified leave during the district’s designated leave period. However, an eligible employee is entitled to an

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<sup>7</sup> An eligible employee taking Military Caregiver Leave under FMLA is entitled to up to 26 weeks of leave in the 12-month period beginning with the first day of such leave and regardless of any FMLA leave taken previously during the district’s leave period. However, once the 12-month period begins for the purposes of Military Caregiver Leave under FMLA, any subsequent FMLA qualified leave, regardless of reason for such leave, will count toward the employee’s 26-week entitlement under Military Caregiver Leave under FMLA.

additional, full 12 weeks of parental leave during the district's designated leave period following the birth of a child regardless of how much OFLA qualified leave the employee has taken prior to the birth of such child during the district's designated leave period. Likewise, an employee who uses the full 12 weeks of parental leave during the district designated leave period, will be entitled to an additional 12 weeks of sick child leave under OFLA during the district's designated leave period for the purpose of caring for a child(ren) with a non-serious health condition requiring home care.<sup>8</sup> Unlike FMLA, OFLA does not combine the leave entitlement for spouses working for the district. However, under OFLA, family members who work for the district may be restricted from taking concurrent OFLA qualified leave.<sup>9</sup>

For the purposes of OMFLA, an eligible employee is entitled to 14 days of leave per call or order to active duty or notification of a leave from deployment. When an employee also meets the eligibility requirements of OFLA, the duration of the OMFLA leave counts toward that employee's leave entitlement during the district's designated leave period.

Except as otherwise noted above, qualified leave under FMLA and OFLA for an eligible employee will run concurrently during the district's designated leave period.

For the purpose of tracking the number of leave hours an eligible employee is entitled and/or has used during each week of the employee's leave, leave entitlement is calculated by multiplying the number of hours the eligible employee normally works per week by 12<sup>10</sup>. If an employee's schedule varies from week-to-week, a weekly average of the hours worked over the 12 weeks worked prior to the beginning of the leave period shall be used for calculating the employee's normal workweek<sup>11</sup>. If an employee takes intermittent or reduced work schedule leave, only the actual number of hours of leave taken may be counted toward the 12 weeks of leave to which the employee is entitled.

### **Intermittent Leave**

With the exception of parental leave which must be taken in one continuous block of time, an eligible employee is permitted under FMLA and OFLA to take intermittent leave for any qualifying reason.

Intermittent leave is taken in multiple blocks of time (i.e., hours, days, weeks, etc.) rather than in one continuous block of time and/or requires a modified or reduced work schedule. For OFLA this includes but not limited to sick child leave taken requiring an altered or reduced work schedule because the intermittent or recurring closure of a child's school or child care provider due to a statewide public health emergency declared by a public health official.

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<sup>8</sup> Sick child leave under OFLA need not be provided if another family member, including a noncustodial biological parent, is willing and able to care for the child.

<sup>9</sup> Exceptions to the ability to require family members from taking OFLA qualified leave at different times are when 1) employee is caring for the other employee who has a serious medical condition; 2) one employee is caring for a child with a serious medical condition when the other employee is suffering a serious medical condition; 3) each family member is suffering a serious medical condition; 4) each family member wants to take Bereavement Leave under OFLA; and 5) the employer allows the family members to take concurrent leave.

<sup>10</sup> For example, an employee normally employed to work 30 hours per week is entitled to 12 times 30 hours, or a total of 360 hours of leave.

<sup>11</sup> For example, an employee working an average of 25 hours per week is entitled to 12 times 25 hours, or a total of 300 hours of leave.

When an employee is eligible for OFLA leave, but not FMLA leave, the employer:

1. May allow an exempt employee, as defined by state and federal law, with accrued paid time off to take OFLA leave in blocks of less than a full day; but
2. May not reduce the salary of an employee who is taking intermittent leave when they do not have accrued paid leave available. To do so would result in the loss of exemption under state law.

An employee's FMLA and/or OFLA intermittent leave time is determined by calculating the difference between the employee's normal work schedule and the number of hours the employee actually works during the leave period. The result of such calculation is credited against the eligible employee's leave entitlement.

Holidays or days in which the district is not in operation, are not counted against the eligible employee's intermittent OFLA leave period unless the employee was scheduled and expected to work on any such day.

### **Alternate Work Assignment**

The district may transfer an employee recovering from a serious health condition to an alternate position which accommodates the serious health condition provided:

1. The employee accepts the position voluntarily and without coercion;
2. The transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits;
3. The transfer is compliant with any applicable collective bargaining agreement;
4. The transfer is compliant with state and federal law, including but not limited to the protections provided for in FMLA and/or OFLA; and
5. The transfer is not used to discourage the employee from taking FMLA and/or OFLA leave for a serious health condition or to create a hardship for the employee.

The district may transfer an eligible employee who is on a foreseeable intermittent FMLA and/or OFLA leave to another position with the same or different duties to accommodate the leave, provided:

1. The employee accepts the transfer position voluntarily and without coercion;
2. The transfer is temporary, lasts no longer than necessary and has equivalent pay and benefits;
3. The transfer is compliant with any applicable collective bargaining agreements;
4. The transfer is compliant with state and federal law, including but not limited to the protections provided for in FMLA and/or OFLA;
5. The transfer to an alternate position is used only when there is no other reasonable option available that would allow the employee to use intermittent leave or reduced work schedule; and



## 2. Limitation on Leave Near the End of the School Year

When an eligible school employee requests leave near the end of the school year, the district may require the following:

- a. When the qualified leave begins more than five weeks before the end of the school year:
  - (1) For the purposes of FMLA leave, the eligible school employee may be required to continue taking leave until the end of the school year provided:
    - (a) The leave will last at least three weeks; and
    - (b) The employee would return to work during the three-week period before the end of the term.
  - (2) For the purposes of OFLA leave, if the reason for the leave is because of the eligible school employee's own serious health condition, the eligible school employee may be required to remain in leave until the end of the school year, provided:
    - (a) The leave will last at least three weeks; and
    - (b) The employee's return to work would occur within three weeks of the end of the school year.
- b. For the purposes of FMLA and/or OFLA leave, when the qualified leave begins within five weeks of the end of the school year and the purpose of such leave is parental leave, for the serious health condition of a family member or for the serious health condition of a servicemember, the eligible school employee may be required to remain on leave until the end of the school year provided:
  - (1) The leave will last more than two weeks; and
  - (2) The employee would return to work during the two-week period before the end of the school year.
- c. For the purposes of FMLA and/or OFLA leave, when the qualified leave begins within three weeks of the end of the school year and the purpose of such leave is parental leave, for the serious health condition of a family member or for the serious health condition of a servicemember, the eligible school employee may be required to remain on leave until the end of the school year provided the length of the leave will last more than five working days.

If the district requires an eligible school employee to remain on leave until the end of the school year as described above, additional leave required by the employer until the end of the school year shall not count against the eligible school employee's leave entitlement.

### **Paid/Unpaid Leave**

FMLA and OFLA do not require the district to pay an eligible employee who is on a qualified leave. Subject to any related provisions in any applicable collective bargaining agreement, the district requires the eligible employee to use any available accrued sick leave, vacation or personal leave days (or other available paid time established by Board policy(ies) and/or collective bargaining agreement) in the order specified by the district and before taking FMLA and/or OFLA leave without pay during the leave period.

The district will notify the eligible employee that the requested leave has been designated as FMLA and/or OFLA leave and, if required by the district, that available accrued paid leave shall be used during the leave period. In the event the district is aware of an OFLA or FMLA qualifying exigency, the district shall notify the eligible employee of its intent to designate the leave as such regardless of whether a request has been made by the eligible employee. Such notification will be given to the eligible employee prior to the commencement of the leave or within two working days of the employee's notice of an unanticipated or emergency leave, whichever is sooner.

When the district does not have sufficient information to make a determination of whether the leave qualifies as FMLA or OFLA leave, the district will provide the required notice promptly when the information is available but no later than two working days after the district has received the information. Oral notices will be confirmed in writing no later than the following payday. If the payday is less than one week after the oral notice is given, written notice will be provided no later than the subsequent payday.

Eligible employees who request OMFLA leave shall not be required to use any available accrued paid time off during the OMFLA leave period.

### **Benefits and Insurance**

When an eligible employee returns to work following a FMLA or OFLA qualified leave, the employee must be reinstated to the same position the employee held when the leave commenced, or to an equivalent position with equivalent benefits, pay and other terms and conditions of employment.

During an OFLA qualified leave an eligible employee does not accrue seniority or other benefits that would have accrued while the employee was working, unless the terms of a collective bargaining agreement, other agreement or other employer's policy provide otherwise<sup>12</sup>. The eligible employee is also subject to layoff to the same extent similarly situated employees not taking OFLA leave are subject unless the terms of an applicable collective bargaining agreement, other agreement or the district's policies provide otherwise.

For the purposes of FMLA and OFLA, the district will continue to pay the employer portion of the eligible employee's group health insurance contribution (if applicable) during the qualified leave period. The eligible employee is required to pay the employee portion of any such group health insurance contribution as a condition of continued coverage.

For the purposes of FMLA qualified leave, the district's obligation to maintain the employee's group health insurance coverage will cease if the employee's contribution is remitted more than 30 calendar days late. The district will provide written notice that the premium payment is more than 30 calendar days late. Such notice will be provided within 15 calendar days before coverage is to cease.

For the purposes of OMFLA, the eligible employee is entitled to a continuation of benefits.

### **Fitness-for-Duty Certification**

Prior to the reinstatement of an employee following a leave which was the result of the employee's own serious health condition, the district may require the employee to obtain and present a Fitness-for-Duty

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<sup>12</sup> See also ORS 342.934(4)(d) in reduction force situations.

Certification. The certification will specifically address the employee's ability to perform the essential functions of the employee's job as they relate to the health condition that was the reason for the leave. If the district is going to require a fitness-for-duty certification upon return to work, the district must notify the employee of such requirement when the leave is designated as FMLA and/or OFLA leave. Failure to provide the certification may result in a delay or denial of reinstatement.

For the purposes of FMLA qualified leave, any costs associated with obtaining the fitness-for-duty certification shall be borne by the employee.

For the purposes of OFLA qualified leave, any out-of-pocket costs associated with obtaining the fitness-for-duty certification shall be borne by the district.

If the leave is qualified under both FMLA and OFLA, any out-of-pocket costs associated with obtaining the fitness-for-duty certification shall be borne by the district.

### **Application**

Under federal and state law, an eligible employee requesting FMLA and/or OFLA leave shall provide at least 30 days' notice prior to the leave date if the leave is foreseeable. The notice shall be written and include the anticipated start date, duration and reasons for the requested leave. When appropriate, the eligible employee must make a reasonable effort to schedule treatment, including intermittent leave and reduced leave, so as not to unduly disrupt the operation of the district.

The district may request additional information to determine that the requested leave qualifies as FMLA and/or OFLA leave. The district may designate the employee as provisionally on FMLA and/or OFLA leave until sufficient information is received to properly make a determination. An eligible employee able to give advance notice of the need to take FMLA and/or OFLA leave must follow the employer's known, reasonable and customary procedures for requesting any kind of leave.

For the purposes of FMLA, if advance notice is not possible, an employee eligible for FMLA leave must provide notice as soon as practicable. "As soon as practicable," for the purpose of FMLA leave, means the employee must comply with the employer's normal call-in procedures except in limited and under unique circumstances. Failure of an employee to provide the required notice for FMLA leave may result in the district delaying the employee's leave up to 30 days after the notice is ultimately given.

For the purposes of OFLA, an eligible employee is required to provide oral or written notice within 24 hours of commencement of the leave in unanticipated or emergency leave situations. The employee may designate a family member or friend to notify the district during that period of time. Failure of an employee to provide the required notice for leave covered by OFLA may result in the district deducting up to three weeks from the employee's unused OFLA leave in that one-year leave period. The employee may be subject to disciplinary action for not following the district's notice procedures.

When an employee fails to give advance notice for both the FMLA and OFLA above, the district must choose the remedy that is most advantageous to the employee.

In all cases, proper documentation must be submitted no later than three working days following the employee's return to work.

## **Medical Certification**

The district shall require an eligible employee to provide medical documentation, when appropriate, to support the stated reason for such leave, other than to care for a child who requires home care due to the closure of the child's school or child care provider as a result of a public health emergency. The district will provide written notification to an employee of this requirement within five working days of the employee's request for leave. If the employee provides less than 30 days' notice, the employee is required to submit such medical certification no later than 15 calendar days after receipt of the district's notification that medical certification is required.

The district may request re-certification of a condition when the minimum duration of a certification expires if continued leave is requested. If the certification does not indicate a duration or indicates that it is ongoing, the district may request re-certification at least every six months in connection with an absence.

Under federal law, a second medical opinion may be required whenever the district has reason to doubt the validity of the initial medical opinion. The health care provider may be selected by the district. The provider shall not be employed by the district on a regular basis. Should the first and second medical certifications differ, a third opinion may be required. The district and the employee will mutually agree on the selection of the health care provider for a third medical certification. The third opinion will be final. Second and third opinions and the actual travel expenses for an employee to obtain such opinions will be paid for by the district.

## **Second and Third Opinions**

1. For the purposes of FMLA, the district may designate a second health care provider, but that person cannot be utilized by the district on a regular basis except in rural areas where health care is extremely limited. If the opinions of the employee's and the district's designated health care provider(s) differ, the district may require a third opinion at the district's expense. The third health care provider must be designated or approved jointly by the employee and the district. This third opinion shall be final and binding.
2. For the purposes of OFLA, and except for leave related to sick child leave under OFLA, the district may require the employee to obtain a second opinion from a health care provider designated by the district. If the first and second verifications conflict, the employer may require the two health care providers to jointly designate a third health care provider for the purpose of providing a verification. This third verification shall be final and binding.

## **Notification**

Any notice required by federal and state laws explaining employee rights and responsibilities will be posted in all staff rooms and the district office. Additional information may be obtained by contacting the personnel director.

## **Record Keeping/Posted Notice**

The district will maintain all records as required by federal and state laws including dates leave is taken by employees, identified separately from other leave; hours/days of leave; copies of general and specific notices to employees, including Board policy(ies) and regulations; premium payments of employee health benefits while on leave and records of any disputes with employees regarding granting of leave.

Medical documentation will be maintained separately from personnel files as confidential medical records.

The district will post notice of FMLA<sup>13</sup> and OFLA<sup>14</sup> leave requirements.

### **Federal vs. State Law**

Both federal and state law contain provisions regarding leave for family illness. Federal regulations state an employer must comply with both laws; that the federal law does not supersede any provision of state law that provides greater family leave rights than those established pursuant to federal law; and that OFLA and FMLA leave entitlements run concurrently. State law requires that FMLA and OFLA leave entitlements run concurrently when possible.

For example, due to differences in regulations, an eligible employee who takes OFLA leave after 180 days of employment, but before they are eligible for FMLA leave, is still eligible to take a full 12 workweeks of FMLA leave after meeting FMLA's eligibility requirements. Thereafter, any eligible leave period will run concurrently, when appropriate.



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<sup>13</sup> ~~Poster available at <https://www.dol.gov/agencies/whd/fmla/posters>.~~

<sup>14</sup> ~~Poster available at <https://www.oregon.gov/boli/employers/pages/required-worksite-postings.aspx>.~~

# Phoenix-Talent Schools District 4

Code: LBE  
Adopted: 2/04/21  
Revised/Readopted: 9/15/22  
Orig. Code(s): LBE

## Public Charter Schools\*\*

Public charter schools may be established as a new public school or a virtual public school, from one or more existing public schools in the district or a portion of the school, or from an existing alternative education program. A public charter school may not convert an existing tuition-based private school into a charter school, affiliate itself with a nonpublic sectarian school or religious institution, or encompass all the schools in the district unless the district is composed of only one school.

Public charter schools shall demonstrate a commitment to the mission and diversity of public education while adhering to the following goals:

1. Increase student learning and achievement;
2. Increase choices of learning opportunities for students;
3. Better meet individual student academic needs and interests;
4. Build stronger working relationships among educators, parents and other community members;
5. Encourage the use of different and innovative learning methods;
6. Provide opportunities in small learning environments for flexibility and innovation;
7. Create new professional opportunities for teachers;
8. Establish additional forms of accountability for schools; and
9. Create innovative measurement tools.

An applicant must submit a complete public charter school proposal that meets the requirements of Oregon law, and includes other information required by the district in the application process.

**The public charter school will be located and operated within the sponsoring district except where authorized by law.**

The public charter school employer will be determined with each proposal. If the district is the employer, the terms of the current collective bargaining agreement will be examined to determine which parts of the agreement apply. If the district is not the sponsor of the public charter school, the district shall not be the employer and will not collectively bargain with public charter school employees.

The district will determine if it has any vacant or unused buildings and make a list of such buildings; buildings may be made available for public charter school use, subject to Board approval and Board policy.

Public charter school students may, upon request, be allowed to participate in district programs such as physical education, instrumental and vocal music offerings, or other selected options if space and materials are available.<sup>1</sup> Students must adhere to state law, Board policies, regulations, and rules concerning student conduct and discipline.

Public charter school students in grades K-8 may participate in their resident district’s activities that are offered before or after regular school hours. Public charter school students in grades 9-12 may participate in their resident district’s available activities that are sanctioned by the Oregon School Activities Association (OSAA) when the requirements found in Oregon law are met.

The district will not provide instructional materials, lesson plans, or curriculum guides for use in a public charter school.

The superintendent will develop administrative regulations to include, but not limited to, the proposal process, review, and appeal procedures, and program evaluation, renewal, and termination.

END OF POLICY

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**Legal Reference(s):**

[ORS 327.077](#)

[ORS 327.109](#)

[ORS 332.107](#)

[ORS 338](#)

[ORS 339.141](#)

[ORS 339.147](#)

[ORS 339.450](#)

[ORS 339.460](#)

[OAR 581-026-0005 - 0710](#)

Every Student Succeeds Act, 20 U.S.C. §§ 6311-6322 (2018).

[Senate Bill 767](#) (2023).

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<sup>1</sup> This does not apply to the Oregon law related to OSAA-sanctioned activity participation.

# Phoenix-Talent Schools District 4

Code: LBEA  
Adopted: 2/04/21  
Revised/Readopted: 9/15/22  
Orig. Code(s): LBEA

## Resident Student Denial for Virtual Public Charter School Attendance\*\*

The district is not required to approve a transfer of a resident student, when more than three percent of the students residing in the district are attending a virtual public charter school not sponsored by the district.

The district will semiannually, by October 1 and April 1, calculate the percentage of the number of students residing in the district, who are attending enrolled in a virtual public charter school not sponsored by the district. When the established percentage is more than three percent, the district will not approve additional students enrollment to such a virtual public charter school, subject to the requirements in Oregon Administrative Rule (OAR) 581-026-0305(2).

A The district may send a notice of approval or disapproval to a parent must give<sup>†</sup> of a student who has sent a notice to the district of intent to enroll their the student in a virtual public charter school not sponsored by the district, before enrolling their student in such a school and notice of actual enrollment.

If the district is not approving the enrollment, the (See OAR 581-026-0305(3)). The district must may respond with a decision to not give an approval or disapproval to a parent within 10 calendar eight business days of receipt of the notice of intent from the parent. Such decision must include:

1. The percentage of students in the district that attend virtual public charter schools that are not sponsored by the district, based on recent calculations;
2. The right to appeal the decision to the State Board of Education;
3. A list of two or more other online options available to the student; and

A copy of OAR 581-026-0305 and OAR 581-026-0310.

The district is only required to use data that is reasonably available to the district, including but not limited to the following for such calculation:

1. The number of students residing in the district enrolled in the schools within the district;
2. The number of students residing in the district enrolled in public charter schools located in the district;
3. The number of students residing in the district enrolled in virtual public charter schools;
4. The number of home-schooled students who reside in the district and who have registered with the educational service district; and

<sup>†</sup> "Parent" means parent, legal guardian or person in "parental relationship" as defined in Oregon Revised Statute (ORS) 339.133.

5. The number of students who reside in the district enrolled in private schools located within the school district.

A parent may appeal a decision of a district to not approve a student enrollment to a virtual public charter school to the State Board of Education under OAR 581-026-0310.

If the student was enrolled in a virtual public charter school while living in another district and has maintained continuous enrollment in such school since moving into, and residing in this district, approval is not required.

END OF POLICY

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**Legal Reference(s):**

[ORS 332.107](#)

[ORS 338.125](#)

[OAR 581-026-0305](#)

[OAR 581-026-0310](#)

[House Bill 3024](#) (2023).



# PHOENIX-TALENT SCHOOLS

EXCELLENCE *for* EVERYONE

Board Work Session - 5:00 PM  
Thursday, January 18, 2024  
District Office

ZOOM Meeting Link:

[https://us02web.zoom.us/j/86045839519?pwd%3DWTByYi9hVzVyRHNvUE9QdkM2a2Radz09&sa=D&source=calendar&ust=1703347377748863&usg=AOvVaw3uB\\_Vn9fDbnHXYGlqF1YQw](https://us02web.zoom.us/j/86045839519?pwd%3DWTByYi9hVzVyRHNvUE9QdkM2a2Radz09&sa=D&source=calendar&ust=1703347377748863&usg=AOvVaw3uB_Vn9fDbnHXYGlqF1YQw)

Meeting ID: 860 4583 9519 Passcode: 307403

*This meeting is a work session only.*  
**No public comment or action will be taken by the Board during this session.**

## AGENDA

1. Call to Order – 5:00 p.m.
2. Superintendent Evaluation
3. Board Self Evaluation
4. Safe Zone Solutions
4. Questions and Answers
5. Adjournment

Phoenix-Talent School District #4 is an Equal Opportunity Employer and, in accordance with Federal and State Legislation, does not discriminate on the basis of race, sex, religion, age, national origin, or marital status, physical or mental disability in employment practices or education programs. **If you need special accommodations for language interpretation or because of a disability**, please contact the District Office Executive Assistant two days prior to meeting at 541-535-1511 Voice/TD.