FAMILY AND MEDICAL LEAVE ACT

The superintendent establishes this administrative regulation to assist staff in understanding their rights under the Family and Medical Leave Act (FMLA) and Board policy. The administrative regulation will be administered through the Department of Human Resources.

The following guidelines are consistent with Section 108 of the Family and Medical Leave Act Special Rules concerning employees of local educational agencies:

A. Pursuant to Board policy, a serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves:

1. Inpatient care, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or

2. Continuing treatment by a healthcare provider, including:

   a. A period of incapacity of more than three (3) consecutive full calendar days and any subsequent treatment or period of incapacity relating to the same condition, that also involves either in person treatment two (2) or more times by a healthcare provider within thirty (30) days of the first date of incapacity absent extenuating circumstances beyond the employee’s control, or in person treatment by a healthcare provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of a healthcare provider

      The first visit to the healthcare provider must occur within seven (7) days of the first date of incapacity.

   b. Any incapacity due to pregnancy or for prenatal care

   c. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition

   d. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective
e. Any period of absence to receive multiple treatments by a healthcare provider either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three (3) consecutive days in the absence of medical intervention or treatment

3. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomachs, minor ulcers, headaches other than migraines, routine dental or orthodontia problems, periodontal disease, etc., are conditions that do not meet this definition and do not qualify for FMLA leave. Conditions for which cosmetic treatment are administered are not “serious health conditions” unless inpatient hospital care is required or complications develop.

B. Eligible staff means an employee who has been employed by the district for at least twelve (12) months and who has worked at least 1,250 hours during the previous 12-month period. Staff would be eligible for up to 12 weeks of FMLA leave during any fiscal year (July 1-June 30).

C. Employee entitlement to service member FMLA

Service member FMLA provides eligible employees unpaid leave for one, or for a combination of the following reasons:

1. A “qualifying exigency” arising out of a covered family member’s (spouse, son, daughter, or parent) covered active duty or call to covered active duty in the United States Armed Forces including the National Guard and Reserves. Qualifying exigencies, as defined by federal regulations, include: a) short-notice deployment; b) military events and related activities; c) childcare and school activities; d) financial and legal arrangement; e) counseling; f) rest and recuperation (maximum fifteen (15) calendar days); g) post-deployment activities; h) caring for a military member’s parent who is incapable of self-care when the care is necessitated by a member’s covered active duty; and i) additional activities not encompassed in the other categories, but agreed to by the employer and employee. (See AR 1630.01C). Covered active duty means deployment with the Armed Forces to a foreign country.

2. To care for a covered family member, including next of kin as provided in the statute, who has incurred an injury or illness or aggravation of a pre-existing illness or injury while in the line of duty while on covered active duty in the United States Armed Forces, including the National Guard and Reserves, provided that such injury or illness may render the family member medically unfit to perform duties of the member’s office, grade, rank, or rating. Covered active duty means deployment with the Armed Forces to a foreign country. This leave is also available to care for veterans of the United States Armed Forces, including the National Guard and Reserves, provided the veteran was a
service member at any time within the five (5) years prior to the start of the treatment, recuperation, or therapy. In accordance with applicable regulations, a veteran’s serious injury or illness incurred or aggravated in the line of duty can also be manifested by: a) a physical or mental condition with a Veterans Affairs Service Disability Rating of 50% or greater and is the condition precipitating the need for leave; or b) a physical or mental condition that substantially impairs the ability to secure or substantially follow a gainful occupation, or would do so absent treatment; or 3) an injury, including psychological, for which the veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Care Givers.

3. An eligible employee may take up to twelve (12) work weeks of leave during any twelve (12) month period. Such leave shall be counted with regular FMLA leave time in calculating the twelve (12) weeks of allowable leave.

4. When leave is to care for an injured or ill service member: An eligible employee may take up to twenty-six (26) work weeks of leave during a single twelve (12) month period to care for the service member 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. This is a one-time benefit per service member. Leave to care for an injured or ill service member, when combined with other FMLA-qualifying leave, may not exceed twenty-six (26) weeks in a single twelve (12) month period.

5. Service member FMLA runs concurrent with other leave entitlements provided under federal, state and local law.

6. Any incapacity due to pregnancy or for prenatal care:

   An expectant mother is entitled to FMLA leave for incapacity due to pregnancy even if she does not receive treatment from a healthcare provider during the absence, and even if the absence does not last for more than three (3) consecutive, full calendar days.

7. Staff members are “eligible” if they have worked for the Board for at least twelve (12) months, and for at least 1,250 hours over the twelve (12) months prior to the leave request. Service time may be aggregated when the break in service is less than seven (7) years for military obligation or subject to recall under a collective bargaining agreement. All full-time administrators are deemed to meet the 1,250 hour requirement. All periods of absence from work due to or necessitated by USERRA-covered service is counted in determining an employee’s eligibility for FMLA leave.
D. In a case when the superintendent or his/her designee and the staff member agree, such leave may be taken intermittently or on a reduced schedule leave in the event of the birth, adoption, or foster care of a child. A staff member has the right, however, to take intermittent or reduced schedule (half day) leaves when medically necessary to care for a spouse, child, or parent who has a serious health condition, or if the staff member has a serious health condition. In both cases, the taking of such leave results in the total reduction of the twelve (12) weeks only by the amount of leave actually taken.

1. **Intermittent leave or leave on a reduced schedule for instructional employees**

   a. When instructional employees seek intermittent leave in connection with a family or personal illness (e.g., physical therapy or periodic care for a sick relative), and when such leave would constitute at least twenty percent (20%) of the total number of working days in the period during which the leave would extend, the school district may require the employee to elect to take leave in a block (not intermittently) for the entire period or to transfer to an available alternative position within the school system that is equivalent in pay, for which the employee is qualified, and which better accommodates the intermittent situation.

   b. The superintendent or his/her designee may require instructional staff requesting intermittent or reduced schedule leave for family or personal illness to elect to take the leave in a block (not intermittently) for the entire period or to transfer to an available alternative position within the district that is equivalent in pay, for which the employee is qualified, and which better accommodates the intermittent situation when the:

   - Leave is foreseeable based on planned medical treatment; and
   - Leave constitutes twenty percent (20%) of the total number of working days in the period during which the leave extends

E. If a leave is necessitated by the serious health condition of the staff member or his or her family member, and is foreseeable based on planned medical treatment, the staff member shall, whenever possible, provide the superintendent with thirty (30) days notice and shall schedule the treatment so as not to disrupt the regular operation of the district.

F. The Board may require that all accrued paid vacation, medical, sick, or personal leave be used to substitute for the family leave described in this policy. In cases in which the district has employed both husband and wife, and total amount of family leave is twelve (12) weeks for the couple, except when the leave is for personal illness and illness of a spouse or child.
G. In the case of a serious health condition of a family member, the staff member will provide the superintendent or his/her designee with medical certification from the physician of the staff member or his or her family member, which shall include:

1. The date the serious health condition began
2. The probable duration
3. Appropriate medical facts regarding the condition
4. A statement from the staff member is needed to care for the family member
5. An estimate of the amount of time needed for such care
6. Staff generated Health Insurance Portability and Accountability Act (HIPAA) – complaint authorization, which permits district review of medical records

H. Whenever the leave is necessitated by the staff member’s own health condition, a statement from his or her physician will be required which states that the staff member is unable to perform the functions of the position. Any leave or return from leave during the last five (5) weeks of an academic term shall be reviewed individually by the superintendent or his/her designee to ensure minimal disruption to the students’ program.

I. The Board reserves the right to obtain, at its expense, the opinion of a second healthcare provider and, in the event of conflict, the opinion of a third healthcare provider (jointly designated by employer and employee) whose decision shall be binding and final. Prior to returning to work, the staff member shall provide the district with a statement from his or her physician certifying that staff member is able to resume responsibilities for his or her position.

J. At the end of any leave described in this policy, the Board shall restore the staff member to his or her former position or to one that is equivalent in responsibility and compensation. During a family leave, the Board shall maintain the staff member’s current coverage under the district’s health insurance program, but the staff member shall not accrue any sick leave, vacation, or other benefits during the leave period, unless provided by collective bargaining agreement or other contractual agreement.

K. The Board is not required by the Act to restore the position of any staff member whose salary is among the highest ten percent (10%) of those paid by the Board when it deems that such staff member’s absence from the district will create a substantial disruption to district operations.

L. Should the staff member elect not to return to work at the end of the leave for reasons other than the continuation, recurrence, or onset of the health condition that gave rise to the leave or for circumstances beyond the control of the staff member, the staff member shall reimburse the district for the health insurance premiums paid by the district during the leave period.
M. Rules applicable to periods near the conclusion of an academic term

1. As a general rule, employees have the right to be restored to their job when they are ready to return to work. However, because the end of the semester is a critical time for curriculum review, developing final examinations, and evaluating students, the Act includes three special rules for instructional employees seeking to return from leave within the last three weeks:

   a. Leave more than five (5) weeks prior to end of term

   - If the employee begins any category of family and medical leave five (5) or more weeks prior to the end of the semester, and the period of leave is for more than three (3) weeks, then the school district can require an employee seeking to return within the last three (3) weeks to wait until the next semester.

   b. Leave less than five (5) weeks prior to the end of term

   - If the employee begins any category of family and medical leave (except personal sick leave) less than five (5) weeks before the end of the semester and the period of leave is greater than two (2) weeks, then the school district can require an employee seeking to return within the last two (2) weeks to wait until the next semester.

   c. Leave less than three (3) weeks prior to end of term

   - If the employee begins any category of family and medical leave (except personal sick leave) three (3) or fewer weeks before the end of the semester and the period of leave is greater than five (5) working days, the school district may require the employee to wait until the next semester.

N. Restoration to equivalent employment position

1. As a general rule, employees must be restored to an equivalent position and to equivalent conditions of employment. Because school districts may want to assign a returning teacher to a different course, grade level, school building, classroom size, etc., a special rule allows school board policies, practices, and collective bargaining agreements to control reassignment.

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ADMINISTRATIVE REGULATION

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