

4011

Family Medical Leave Act Policy

The school district shall provide leave to its employees in accordance with the Family and Medical Leave Act ("FMLA"). The board intends this policy to provide certain procedures the district and its employees shall follow in connection with FMLA leave. This policy neither adds to nor attempts to limit the rights to which an employee is entitled under the FMLA. All terms used herein shall have the meaning ascribed to them under the FMLA.

I. Qualifying for Leave

A. Qualified Employees

1. To be eligible for *unpaid* leave under this policy, an employee must:
 - a. Make the request for leave at a time when the school district employs 50 or more workers;
 - b. Have been working for the school district for at least 12 months prior to the request; and
 - c. Have worked a minimum of 1,250 hours during the 12-month period immediately preceding the commencement of the leave.
2. The applicable 12-month period for computing an employee's entitlement to FMLA leave shall be the 12-month period measured forward from the date such employee's first FMLA leave begins.

B. Qualified Circumstances Necessitating Leave

1. The school district will grant an eligible employee up to a total of 12 workweeks of *unpaid* leave under the following conditions:
 - a. for birth of a son or daughter, and to care for the newborn child;

- b. for placement of a son or daughter with the employee for adoption or foster care;
 - c. to care for the employee's spouse, son, daughter, or parent with a serious health condition;
 - d. because of a serious health condition that makes the employee unable to perform the functions of his or her job; or
 - e. because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty (or has been notified of an impending call or order to active duty) in the armed forces in support of a contingency operation.
2. The school district will grant an eligible employee who is the spouse, son, daughter, parent or next of kin of a covered servicemember a total of 26 workweeks of ***unpaid*** leave during a 12-month period to care for the servicemember. The leave described in this paragraph shall only be available during a single 12-month period.
3. During the single 12-month period described in paragraph I(B)(2), an eligible employee shall be entitled to a combined total of 26 workweeks of leave under paragraphs I(B)(1) and I(B)(2). Nothing in this paragraph shall limit the availability of leave under paragraph I(B)(1) during any other 12-month period.

C. Limitations on Leave

- 1. Leave for birth or placement for adoption or foster care must conclude within 12 months of the birth or placement.
- 2. In any case in which a husband and wife both employed by the school district are entitled to FMLA leave:

- a. the aggregate number of workweeks of FMLA leave to which both are entitled is limited to 12 during any 12-month period if such leave is taken (i) because of the birth of a son or daughter of the employee and in order to care for such son or daughter; (ii) because of the placement of a son or daughter with the employee for adoption or foster care; or (iii) to care for a sick parent who has a serious health condition; and
- b. the aggregate number of workweeks of FMLA leave to which both that husband and wife are entitled is limited to 26 during the single 12-month period in which leave is taken to care for a covered servicemember and the husband and wife employees are both either the son, daughter, parent, or next of kin of such covered servicemember, if the leave is taken for this reason or a combination of this reason and one of the three reasons described in paragraph I(C)(2)(a). If the leave taken by the husband and wife includes leave described in paragraph I(C)(2)(a), the limitation in paragraph I(C)(2)(a) shall apply to the leave described in I(C)(2)(a).

D. Qualifying Notice and Certification

Employees seeking to use FMLA leave will be required to provide:

1. 30-day advance notice when the need to take the leave is foreseeable, provided that if (a) the leave is for the need of treatment which is required to begin in less than thirty days or (b) the leave is for the reason set forth in paragraph I(B)(1)(e), then the employee shall provide notice to the school district as is reasonable and practical;
2. medical certification supporting the need for leave due to a serious health condition affecting the employee or family member or to care for a covered servicemember;

3. second or third medical opinions and periodic recertifications (at the school district's expense);
4. certification supporting the need for leave because of a qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is on active duty (or has been notified of an impending call or order to active duty) in the armed forces in support of a contingency operation; and
5. periodic reports during leave, at a frequency reasonably requested by the superintendent, regarding the employee's status and intent to return to work.

E. Scheduling Leave

1. When leave is needed to care for a family member, for the employee's own illness, or to care for a covered servicemember, and such leave is foreseeable based on planned medical treatment, the employee must attempt to schedule treatment so as not to unduly disrupt the school district's operations.
2. Leave Taken at the End of the Semester
 - a. If an employee begins leave five or more weeks prior to the end of a semester and (i) the period of leave is for at least three weeks and (ii) the employee would return to work during the three-week period before the end of the semester, the school district may require the employee to take leave until the end of the semester.

- b. If an employee begins leave (except leave for reasons described in paragraphs I(B)(1)(d) and I(B)(1)(e)) less than five weeks before the end of the semester and (i) the period of leave is greater than two weeks and (ii) the employee would return to work during the two-week period before the end of the semester, the school district may require the employee to take leave until the end of the semester.
- c. If an employee begins leave (except leave for reasons described in paragraphs I(B)(1)(d) and I(B)(1)(e)) three or fewer weeks before the end of the semester and the period of leave is greater than five working days, the school district may require the employee to take leave until the end of the semester.

II. Relationship with District During Leave

A. Leave to Be Unpaid

All leave provided to employees under the provisions of the FMLA and this policy shall be unpaid leave.

B. Substitution of Paid Leave

- 1. The school district requires employees to substitute any accrued paid vacation leave, paid personal leave, paid family leave, paid medical leave or paid sick leave for FMLA leave. However, nothing in this policy shall require the school district to provide paid sick or medical leave in any situation in which the school district would not normally provide such paid leave.
- 2. If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the leave will not count against the number of workweeks of FMLA leave to which the employee is entitled.

3. Any paid leave which is substituted for FMLA leave will be subtracted from the number of workweeks of unpaid leave provided by the FMLA and this policy.

C. Group Health Plan Benefits

1. The school district will continue group health plan benefits on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA leave period.
2. Any share of health plan premiums which have been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period.

D. Intermittent or Reduced-Schedule Leave

1. Leave may be taken under this policy intermittently or on a reduced-leave schedule under certain circumstances.
 - a. When leave is taken because of a birth or because of a placement of a child for adoption or foster care, an eligible employee may take leave intermittently or on a reduced-leave schedule only with the agreement of the school district. In such a case, the superintendent shall have the authority to approve or disapprove such intermittent or reduced leave schedule, in the superintendent's sole discretion.
 - b. When leave is taken to care for a sick family member, for an employee's own serious health condition, or to care for a covered servicemember, an eligible employee may

take leave intermittently or on a reduced-leave schedule when medically necessary.

- c. When leave is taken by an eligible employee because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is on active duty (or has been notified of an impending call or order to active duty) in the armed forces in support of a contingency operation, the employee may take leave intermittently or on a reduced-leave schedule.
 - d. Intermittent or reduced leave shall not result in a reduction in the employee's total amount of leave beyond the amount of leave actually taken.
 - e. When an instructional employee seeks to take intermittent leave in connection with a family or personal illness (e.g. physical therapy or periodic care for a sick relative) or to care for a covered servicemember, and when such leave would constitute at least 20 percent 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, instead of 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 leave.
2. If an eligible employee requests intermittent leave or leave on a reduced-leave schedule that is foreseeable based on planned medical treatment, including during a period of recovery from a serious health condition, the school district may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular

position. Such alternative position must have equivalent pay and benefits as the employee's permanent position.

III. Return From Leave

A. Restoration to Position

1. On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.
2. Any leave taken under this policy will not result in the loss of any employment benefits accrued prior to the date on which the leave commenced.
3. An eligible employee is not entitled to accrual of any seniority or employment benefits during any period of leave, or any right, benefit, or position of employment other than to which the employee would have been entitled had the employee not taken leave.

B. Denial of Restoration

1. The school district reserves the right to deny restoration to any eligible employee who is a "key employee" (that is an employee who is salaried and among the highest paid 10% of the employees of the school district) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the school district.
2. If the school district intends to deny restoration to such an employee, it will:
 - a. notify the employee of his/her status as a "key employee" in response to the employee's notice of intent to take FMLA leave;

- b. notify the employee as soon as the school district decides it will deny job restoration and explain the reasons for this decision;
- c. offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; and
- d. make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration.

C. Failure to Return from Leave

If an employee fails to return from FMLA leave after the period of leave to which the employee is entitled has expired, the employee shall reimburse the district for any premiums the employer paid for maintaining health insurance coverage for the employee during the employee's FMLA leave unless the reason the employee does not return is due to: (1) the continuation, recurrence, or onset of the serious health condition which entitled the employee to FMLA leave and the employee provides the district with sufficient certification from the proper health care provider of such continuation, recurrence, or onset of the serious health condition or (2) other circumstances beyond the employee's control.

IV. Notice to Employees

- A. The school district will post in conspicuous places where employees are employed notices explaining the FMLA and providing information concerning the procedures for filing complaints of FMLA violations with the U.S. Wage and Hour Division.
- B. When an employee provides notice of the need for FMLA leave, the school district shall provide the employee with a copy of the "section 301(c) notice" which is attached to this policy.

- C. To the extent that any provision in this policy is in any manner inconsistent with the provisions of the Act or the regulations promulgated there under, the Act and regulations shall prevail over the provisions of this policy. The school district reserves the right to modify this policy from time to time in its sole discretion.

- D. Employees may direct any questions or concerns regarding FMLA leave to the superintendent.

Adopted on: **November 15, 2010**

Revised on: _____

Reviewed on: _____