

**4011**  
**Family and Medical Leave Act Policy**

This policy is intended to help employees understand their rights under the provisions of the Family and Medical Leave Act of 1993 ("FMLA" or "Act"). The policy does not constitute a contract between the school district and its employees and shall be applicable only when the district is a "covered employer" within the meaning of the Act. The district intends to afford to its employees all rights that are provided by the Act; however, this policy does not add to those rights, and the district reserves to itself all rights provided to covered employers under the Act.

**I. Definitions**

**A. Serious Health Condition**

For purposes of this policy, a "serious health condition" means an illness, injury, impairment of physical or mental conditions that involves:

1. any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility; or
2. any period of incapacity requiring absence of more than three calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
3. continuing treatment by (or under the supervision of) a health care provider for a chronic or long-term health condition that is incurable or so serious that, if not treated, would likely result in a period of incapacity of more than three calendar days, and for prenatal care.

**B. Health Care Provider**

For purposes of this policy, the term "health care provider" means:

1. doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctor practices; or

2. podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice, and performing within the scope of their practice, under state law;
3. nurse practitioners and nurse-midwives authorized to practice, and performing within the scope of their practice, as defined under state law; or
4. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.

## **II. 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**

The school district will grant an eligible employee up to a total of 12 workweeks of ***unpaid*** leave under the following conditions:

1. for birth of a son or daughter, and to care for the newborn child;

2. for placement with the employee of a son or daughter for adoption or foster care;
3. to care for the employee's spouse, son, daughter, or parent with a serious health condition; or
4. because of a serious health condition that makes the employee unable to perform the functions of his or her job.

**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. If both spouses are employed by the school district and both are eligible for FMLA leave, they are jointly entitled to a **combined** total of 12 workweeks of family leave for the birth or placement of a child for adoption or foster care.
3. Leave is not available to care for an employee's in-laws (e.g., son-in-law, mother-in-law and the like).

**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;
2. medical certification supporting the need for leave due to a serious health condition affecting the employee or an immediate family member;
3. second or third medical opinions and periodic recertifications (at the school district's expense); and
4. periodic reports during FMLA leave regarding the employee's status and intent to work.

## **E. Scheduling Leave**

1. When leave is needed to care for an immediate family member or the employee's own illness, and is for 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 a) the period of leave is for at least three weeks and b) 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 personal sick leave, less than five weeks before the end of the semester and a) the period of leave is greater than two weeks and b) 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 personal sick leave, 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.

## **III. Relationship with District During Leave**

### **A. Leave to Be Unpaid**

All leave provided to employees under the provisions of the Family and Medical Leave Act 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 or paid sick leave for FMLA leave. However, nothing in this policy shall require the school district to provide paid sick 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 12 weeks of FMLA leave to which the employee is entitled.
3. Any paid leave which is substituted for FMLA leave will be subtracted from the 12 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 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.
  - b. When leave is taken to care for a sick family member or for an employee's own serious health condition, leave may be taken intermittently or on

- a reduced-leave schedule when medically necessary.
  - c. 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.
  - d. 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), 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.

#### **IV. 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**

The school district will recover its share of health plan premiums during a period of unpaid FMLA leave from an employee if the employee fails to return to work after the employee's FMLA leave entitlement has been exhausted or expires, unless the reason the employee does not return is due to the continuation, recurrence, or onset of a serious health condition which would entitle the employee to leave

under FMLA; or other circumstances beyond the employee's control.

**V. Notice to Employees**

- A.** The school district will post WH Publication 1420 in conspicuous places where employees are employed.
- 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.

Adopted on: \_\_\_\_\_

Revised on: \_\_\_\_\_

Reviewed on: \_\_\_\_\_