

## **FAMILY AND MEDICAL LEAVE**

Consistent with the federal Family and Medical Leave Act of 1993 (“FMLA”), as amended, the Board of Education recognizes the right of eligible employees to take up to twelve (12) weeks of unpaid leave during any twelve (12) month period for certain family and medical reasons (“Basic FMLA Leave”), and to take up to 26 weeks of unpaid leave in a single 12-month period to care for a military covered servicemember who has a serious injury or illness incurred in the line of duty (“Military Caregiver FMLA Leave”). Any such leave shall be provided in accordance with FMLA, applicable District policies and collective bargaining agreements.

### **Eligibility**

In order to be eligible for leave under FMLA, a District employee must (a) have worked for the District for at least 12 months; and (b) have worked at least 1,250 hours in the immediately preceding 12 months.

In accordance with FMLA, a full-time classroom teacher is presumed to meet the 1,250 hour requirement, in the absence of evidence to the contrary. “Teacher” is defined by FMLA and includes an employee employed principally in an instructional capacity whose principal function is to teach and instruct students. The term “teacher” does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily non-instructional employees.

### **Benefits During Leave**

Under the law, FMLA leave is unpaid. However, FMLA permits employees to choose, or employers to require employees, to use accrued paid leave while taking FMLA leave. Where an employee chooses, or the District requires an employee, to use accrued paid leave while taking leave under FMLA, such employee must comply with the terms of any applicable collective bargaining agreement or other applicable paid leave policy.

The District shall maintain group health insurance coverage for any employee on FMLA leave, whenever such insurance was provided before the leave was taken, on the same terms as if the employee had continued to work. If necessary, arrangements will be made for employees to pay their share of insurance premiums while on leave.

### **Family and Medical Leave**

Eligible employees must be taking Basic FMLA Leave for one of the following reasons:

(a) For the birth of the employee’s child, to care for the child after birth or for placement with the employee of a child for adoption or foster care, within one year after the child’s birth, adoption or placement;

(b) To care for a spouse, child or parent with a serious health condition;

(c) For the serious health condition of the employee that makes the employee unable to perform the essential functions of his/her job; and

(d) For specific qualifying exigencies arising when an employee's spouse, child or parent is on covered active military duty, or is called to covered active military duty.

Eligible employees must be taking Military Caregiver FMLA Leave to care for a covered servicemember (as defined by FMLA) who is the employee's spouse, child, parent, or other next-of-kin, and who has a serious injury or illness incurred in the line of duty.

During each single 12-month period, an eligible employee is limited to a combined total of 26 weeks of Basic FMLA Leave and Military Caregiver FMLA Leave, of which no more than 12 weeks may be attributable to Basic FMLA Leave.

In certain instances, spouses who are both employed by the District may be entitled to only an aggregate total of 12 or 26 weeks of leave under this policy, as applicable.

### **Period for Leave**

**Effective July 1, 2011, the twelve-month leave period shall be measured forward from the date an employee's first FMLA leave begins.**

### **Notification by Employee and Certification**

An employee must notify the Superintendent of Schools of a request for leave pursuant to this policy at least thirty (30) days prior to the date when the leave is to begin, when the leave is foreseeable. If the leave is not foreseeable, notice must be given as early as is practical. FMLA leave may be denied if an employee fails to comply with this notice requirement.

Employees must provide sufficient information in order for the District to determine if the requested leave qualifies under FMLA, and the anticipated timing and duration of such leave. Employees also may be required to provide a medical certification and periodic recertification supporting the need for leave.

### **Notification of Eligibility & Designation of FMLA Leave**

Absent extenuating circumstances, the District will notify an employee in writing of his/her eligibility for leave under FMLA within five business days after the employee submits his/her request for leave, or after the District is otherwise aware of the employee's need for such leave. Such notice will specify any additional information required as well as the employee's rights and responsibilities while on such leave. If the District determines that an employee is not eligible for leave under FMLA, the District will notify the employee and provide a reason for the ineligibility.

The District also will inform an employee if his/her leave will be designated as leave under FMLA and the amount of leave counted against the employee's FMLA leave

entitlement. If the District determines that the requested leave is not FMLA leave, the District will notify the employee and provide a reason.

#### Intermittent Leave

In certain circumstances, FMLA leave may be taken intermittently or on a reduced schedule basis, rather than in one block. Intermittent leave is leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday.

An eligible employee may use intermittent or reduced schedule leave:

(a) Because of the employee's own serious health condition, to care for a parent or child with a serious health condition, or for Military Caregiver FMLA Leave if there is a medical need for such leave and such medical need can be best accommodated through leave on an intermittent or reduced schedule basis; or

(b) For Basic FMLA Leave due to qualifying exigencies arising when an employee's spouse, child or parent is on covered active military duty, or is called to covered active military duty.

An eligible employee may take intermittent leave or reduced schedule leave after the birth, adoption or placement of a healthy child, only if the District agrees. Special rules apply if a teacher desires to take intermittent or reduced schedule leave.

Employees requesting intermittent or reduced schedule leave must attempt to schedule their leave so as not to disrupt the District's operations. The District may, in certain circumstances, assign an employee to an alternative position with equivalent pay and benefits that better accommodates the employee's intermittent or reduced leave schedule.

#### Restoration/Return from Leave

Except as otherwise provided by FMLA, an employee who takes leave under FMLA will be able to return to the same job or a similar job with equivalent pay, benefits and other employment terms. The taking of FMLA leave cannot result in the loss of any benefit that accrued prior to the start of such leave.

Seniority benefits do not accrue to the employee during any period of unpaid FMLA leave.

In addition, special rules apply if a teacher desires to take FMLA leave near the end of an academic term.

Prior to returning from FMLA leave, the District may require that an employee present a certification of fitness to return to work when the absence was caused by the employee's serious health condition.

Failure to Return

The District may recover the health care premiums paid during the leave if the employee fails to return from the leave. However, recovery cannot occur if the employee fails to return because of the continuation, recurrence, or onset of a serious health condition or due to circumstances beyond the control of the employee.

Effect on Existing Agreements

All eligible employees' entitlement under the Family and Medical Leave Act may be superseded only by a collective bargaining agreement which contains greater leave benefits than this policy.

Enforcement

FMLA makes it unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided under FMLA, or to discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under FMLA. FMLA does not affect any Federal or State law prohibiting discrimination. An employee who disagrees with any determination by the District regarding a request for leave, or who believes that he or she has been retaliated against for requesting or taking FMLA leave, may file a complaint with the U.S. Department of Labor or commence a private lawsuit.

Notice of Policy

The District shall post a notice prepared or approved by the Secretary of Labor stating the pertinent provisions of FMLA, including information concerning enforcement of the law. A copy of this Board Policy shall be distributed to current employees and to each new employee upon hire.

Ref: Family and Medical Leave Act of 1993, 29 U.S.C. §§2601-2654  
29 C.F.R. Part 825

Adoption date: \_\_\_\_\_