Tuesday, February 9, 2016
- 5:30 P.M. -
Board Room
- Formal Meeting -
I.L. Ward Building
REGULAR BOARD MEETING
February 9, 2016
AGENDA

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. APPROVAL OF AGENDA

V. APPROVAL OF MINUTES
   Regular
   January 26, 2016

VI. COMMUNICATIONS/RECOGNITIONS
   • Recognition of Previous Academic Distress Commission Members:
     ➢ Attorney Ronald Miller
     ➢ Pastor Kenneth Simon
   • Recognition Honoring All YCSD Counselors
   • Presentations:
     ➢ P.C. Bunn – William Baun
     ➢ Virtual Academy at Choffin – Joseph Meranto

VII. REQUESTS TO ADDRESS THE BOARD (Citizens Participation)

VIII. BOARD RECOMMENDATIONS/PRESENTATION  [ORANGE]
   • Resolution Recommending Safe Routes to School Project

IX. TREASURER'S RECOMMENDATIONS  [BLUE]

X. SUPERINTENDENT'S RECOMMENDATIONS
   • Superintendent’s Motions/Recommendations/Resolutions  [PURPLE]
   • Personnel Recommendations  [YELLOW]
   • Policy Recommendations  [PINK] (*First Reading)
     ➢ Policy 1630.01 – FMLA – Administration (Revised)
     ➢ Policy 3430.01 – FMLA – Professional Staff (Revised)
     ➢ Policy 4430.01 – FMLA – Classified Staff (Revised)
     ➢ Policy 8500 – Food Services (Revised)

XI. BOARD REPORTS

XII. TREASURER’S REPORT

XIII. SUPERINTENDENT’S REPORT
XIV. UNFINISHED BUSINESS
XV. NEW BUSINESS
XVI. EXECUTIVE SESSION
XVII. ADJOURNMENT
BOARD OF EDUCATION

The undersigned chair or presiding officer, under oath, certifies that a meeting of the Board of Education was held on________________________. The Board closed its meeting as permitted by the Open Meetings Act of Ohio. The only matters considered or discussed during the closed portion of executive session of its meeting are as checked below:

1._______ The appointment, employment, dismissal, discipline, promotion, demotion, or compensation of an employee or the investigation of charges or complaints against an employee, official, licensee or student, unless the employee, official, licensee or student requests a public hearing;

2._______ The purchase of property for public purposes or the sale of property at competitive bidding;

3._______ Conferences with the board’s attorney to discuss matters which are the subject of pending or imminent court action;

4._______ Preparing for, conducting, or reviewing negotiations or bargaining sessions with employees;

5._______ Matters required to be kept confidential by federal law or rules or state statutes;

6._______ Specialized details of security arrangements.

This _____ day of __________________, _______

________________________________________
Chair or Presiding Officer
THE YOUNGSTOWN BOARD OF EDUCATION
Brenda Kimble, President
Michael Murphy, Vice President
Dario Hunter
Corrine Sanderson
Ronald Shadd
Jerome Williams

Stephen Stohla, Interim Superintendent
Dr. Milton Walters, Asst. Superintendent
Harry Evans, Business Manager
Sherry Tyson, Treasurer

BOARD OF EDUCATION RECOMMENDATION
February 9, 2016

The Youngstown Board of Education recommends the following Resolution #02.09.16-01 – Safe Routes to School for approval:

RESOLUTION RECOMMENDING SAFE ROUTES TO SCHOOL PROJECT

RESOLUTION NO. 02.09.16-01

The following resolution is enacted by the Youngstown City School District, located in Mahoning County, Ohio, hereinafter referred to as the District, in the matter of the stated described project.

WHEREAS, the United States Congress has set aside monies for Safe Routes to School Projects through the State of Ohio, Department of Transportation; and

WHEREAS, Cities can apply for these monies and be selected for funding by the State of Ohio, Department of Transportation; and

WHEREAS, the City of Youngstown School Travel Plan is a required document to make the City of Youngstown eligible to apply for and receive federal funding; and

NOW, THEREFORE BE IT RESOLVED by Youngstown City School District, State of Ohio, that:

SECTION ONE: The District endorses the City of Youngstown School Travel Plan

SECTION TWO: The District supports the City of Youngstown’s efforts to seek funding through the Safe Routes to School program for infrastructure improvements surrounding the City’s schools

__________________________ moved, seconded by __________________________ that the foregoing resolution be adopted.

Ayes: ____________________________

Nays: ____________________________

Attested: ____________________________ _____________________________

(Clerk) (Officer)

Attested: ____________________________ _____________________________

(Title) (School Board President)

02/09/16
THE YOUNGSTOWN BOARD OF EDUCATION
Brenda Kimble, President

Stephen Stohla, Interim Superintendent
Dr. Milton A. Waters, Assistant Superintendent
Sherry Tyson, Treasurer

SUPERINTENDENT’S MOTIONS/RECOMMENDATIONS

February 9, 2016
I wish to recommend to the Board the following recommendation:

SUPERINTENDENT'S RECOMMENDATION
TO THE BOARD OF EDUCATION
February 9, 2016

Item 1: I recommend the Board approve the Memorandum of Understanding ("MOU") for a retirement bonus plan for the 2015-2016 School Year, totaling a potential gross amount not to exceed Ten Thousand Dollars ($10,000), made by and between the Board of Education of the Youngstown City School District ("Board") and the Youngstown Education Association, OEA-NEA ("YEA"), subject the terms and conditions of the attached MOU.
Memorandum of Understanding  
Between  
The Youngstown City School District  
and  
The Youngstown Education Association, OEA-NEA  
Regarding  
Retirement Bonus for 2015-2016 School Year

This Memorandum of Understanding ("MOU") is made by and between the Board of Education of the Youngstown City School District ("Board") and the Youngstown Education Association, OEA-NEA ("YEA").

RECITALS

A. The Board and the YEA are parties to a Collective Bargaining Agreement ("CBA") which contains various terms and conditions of employment for members of the bargaining unit represented by the YEA and employed by the Board.

B. The Board and the YEA desire to establish a one-time retirement bonus for eligible employees during the 2015-2016 school year.

AGREEMENT

In consideration of, and subject to, the terms and conditions (including the recitals hereinabove) stated in this MOU, the parties agree as follows:

1. Eligible employees shall be paid by the Board a one-time retirement bonus consisting of Five Thousand Dollars ($5,000.00) lump sum, plus $52.08 for each day school is in session and actually worked by the Employee between January 1, 2016 and May 27, 2016, totaling a potential gross amount not to exceed Ten Thousand Dollars ($10,000.00), which shall be paid on or before July 31, 2016, subject to all required payroll withholdings and deductions, upon the following terms and conditions.

2. To be an eligible employee for the one-time retirement bonus,
   
a) the employee shall, by February 12, 2016, give to the Board's treasurer,
   
(1) a written notification of intent to retire under STRS by the first workday of the 2016-2017 school year; and

(2) an irrevocable letter of resignation to be effective no sooner than the last day of the 2015-2016 school year; and
b) the Board must receive from STRS on or before the first workday of the 2016-2017 school year, written confirmation that the employee's retirement under STRS is effective to begin no later than the first workday of the 2016-2017 school year; and

c) the employee shall be at work through the end of the 2015-2016 school year; and

d) the Board must determine, in its sole discretion, upon the recommendation of its Superintendent and its Treasurer, that an appropriate number of employees met the eligibility requirements set forth in 2 a and 2 b above, and such number of eligible employees is financially beneficial to the Board. If the Board determines that such number is not financially beneficial to the Board, then the letters of resignation shall be considered withdrawn and of no force or effect, and the Board shall not be liable to pay any of such one-time retirement bonuses.

3. If, for any reason, the Academic Distress Commission and/or its Chief Executive Officer lawfully cause this MOU to be unenforceable, then the Board shall not be liable to pay any of such one-time bonuses and the resignations submitted by the employees shall be considered withdrawn and of no force or effect.

4. If the one-time retirement bonus provisions herein are effectuated by the Board and not otherwise cancelled or determined to be unenforceable, then the YEA shall waive the salary schedule placement limitations in Sections 8.014 A, E, and F of the CBA, thereby permitting the Board to provide recruitment incentives to obtain new teachers in areas of need by placing them on the salary schedule as determined by the Board upon recommendation by its Superintendent and Treasurer.

WHEREFORE, the Parties have signed this MOU, by and through their duly authorized representatives to be effective for the 2015-2016 school year, upon ratification by the membership of YEA and by the Board.

AGREED:

The Youngstown Education Association,
OEA-NEA

By: [Signature]
Larry Ellis, YEA President

Date: 2/8/16

Board of Education of the Youngstown City School District

By: [Signature]
Stephen A. Stohla, Interim Superintendent

Date: 2/8/16
SUPERINTENDENT'S

PERSONNEL RECOMMENDATIONS

Dr. Milton Walters, Asst. Superintendent & Human Resources

February 9, 2016
THE YOUNGSTOWN BOARD OF EDUCATION

Brenda Kimble, President
Michael Murphy, Vice-President
Jacqueline Adair
Dario Hunter
Corrine Sanderson
Ronald Shadd
Jerome Williams

Stephen Stohla, Interim Superintendent
Dr. Milton A. Walters, Assistant Superintendent
Sherry Tyson, Treasurer
Harry Evans, Business Manager

SUPERINTENDENT’S PERSONNEL RECOMMENDATIONS
TO THE BOARD OF EDUCATION
February 9, 2016

(All individuals have endorsed having no immediate family members employed by the Board unless otherwise specifically noted)

Item 1: I wish to recommend to the Board the following CERTIFICATED APPOINTMENTS for the 2015-2016 School Year:

Limited Contract Teacher: (Fund 001) – DTTC at Volney for the remainder of the 2015-2016 school year, $53,081.60-($20,594.26. prorated) effective February 10, 2016
Martha Romine

Limited Contract Teacher - (Fund 001) at McGuffey Elementary, Step 1 BA $33, 428.00-($12,786.66. prorated) (pending pre-employment requirements) effective February 10, 2016
Heather Shields
This position was posted on 1/15/2016 and closed on 1/27/2016

Limited Contract Teacher- (Fund 001) Step 1 BA $33,428.00-($12,786.66, prorated) (pending pre-employment requirements) East High School, effective February 10, 2016
Jessica Kirkwood
This position was posted on 9/8/2015 – closed 2/1/2016

Assistant Tutor –(Fund 572)- $15.50 per hour for Non-YEA Members, to be used on an as needed basis, not to exceed 25 hours per week, effective February 10, 2016 through May 20, 2016:
Joseph Yank

For the record:
Tutor
Amber Ciriello will work as an LLI Tutor at Harding – Fund 572, $25.00 per hour, not to exceed 25 hours per week; effective February 10, 2016

Substitute Teacher: (Fund 001) - To be used on an “as needed basis”; not to exceed 25 hours per week; effective 02/16/2016; to be paid as follows:

• 75.00 a day or from day 1 to day 10 in the same position
• $80.00 a day from day 11 to day 60 in the same position
• $172.36 a day from day 61 to day 183 in the same position
Walonda Burney
David Verrilli
Item 2: I wish to recommend to the Board the following **CERTIFICATED LEAVES OF ABSENCE for the 2015-16 School Year:**

**Teachers**
- Ann Bonder  Medical  Effective 12/18/2015-02/22/2016
- Donald Fuller  Medical  Effective 01/28/2016-04/28/2016
- Chelsea Kernan  Medical  Effective 01/13/2016-02/29/2016
- Beth Myers  Medical  Effective 02/04/2016-02/19/2016
- Carrie Roller  Medical  Effective 12/09/2015-02/08/2016

*For the record:*
**Teachers**
Corissa Freeman will be taking Medical Leave Effective 12/3/2015 – 03/01/2016

Item 3: I wish to recommend to the Board the following **CERTIFICATED RETIREMENTS for the 2015-16 School Year:**

**Teachers**
- Stella Camuso  Retirement  Eff. 6/30/2016
- Maureen Griswold  Retirement  Eff. 6/30/2016
- Norene Kenyhercz  Retirement  Eff. 6/30/2016
- Mark Halls  Retirement  Eff. 6/30/2016
- Dennis Mamone  Retirement  Eff. 6/30/2016
- Janis Pentz  Retirement  Eff. 6/30/2016

*For the record:*
**Teacher**
Alicia Anderson – Retirement date effective 6/01/2016

Item 4: I wish to recommend to the Board the following **CLASSIFIED APPOINTMENTS for the 2015-16 School Year:**

**Sub Custodial Helper** - (Fund 001) - To be used on an as needed basis, not to exceed 25 hours per week, effective date 2/16/16; to be paid $ 8.10 per hour.
Cory Thornton

**Sub Educational Assistant** - (Fund 001) - To be used on an as needed basis, not to exceed 25 hours per week, effective date 2/16/16; to be paid $ 8.10 per hour.
Myrna Alejandro-Torres

**Substitute Crossing Guard** – (Fund 001) - $8.67 per hour; on an as needed basis not to exceed 25 hours per week; Effective 02/08/2016
(On Going Job Posting on Applitrack)
Anthony Jones
Full time Secretary in Transportation (10 month) – (Fund 001) - Salary $22,634.00; prorated amount $8,037.76; Effective 02/08/2016
(Posting closed 01/19/2016)
Arnetta Shell

For the Record: Demetra Veal; Administrative Assistant to Assistant Superintendent, salary correction (Annual; $36,796.00/prorated amount $17,340.76) beginning 1/11/2016

Item 5: I wish to recommend to the Board the following CLASSIFIED NAME/TITLE CHANGE for the “Truancy Intervention Coordinators”:
From “Truancy Intervention Coordinators” to “Attendance Intervention Specialist”; effective 2/10/16

Item 6: I wish to recommend to the Board the following CLASSIFIED RESIGNATION for the 2015-16 School Year:

Custodial
Wendy Francosky Personal Reasons Effective Date: 2/15/16
SUPERINTENDENT’S RECOMMENDATIONS

POLICY RECOMMENDATIONS

February 9, 2016
SUPERINTENDENT'S POLICY RECOMMENDATIONS
TO THE BOARD OF EDUCATION
February 9, 2016

First Reading

Item 1: I wish to recommend to the Board of Education to approve the following revised policy:

- Policy 1630.01 – FMLA Leave - Administration (Revised)
- Policy 3430.01 – FMLA Leave – Professional Staff (Revised)
- Policy 4430.01 – FMLA Leave – Classified Staff (Revised)
- Policy 8500 – Food Services (Revised)
FMLA LEAVE

Qualifying Reasons for FMLA and Military Family Leave

In accordance with the Family and Medical Leave Act of 1993, as amended, ("FMLA"), eligible staff members may take up to twelve (12) work weeks of job-protected, unpaid leave, or substitute appropriate paid leave if the staff member has earned or accrued it, for the following reasons:

A. the birth and/or care of a newborn child of the staff member, within one (1) year of the child's birth;

B. the placement with the staff member of a child for adoption or foster care, within one (1) year of the child's placement;

C. the staff member is needed to provide physical and/or psychological care for a spouse, child or parent with a serious health condition;

D. the staff member's own serious health condition makes him/her unable to perform the functions of his/her position; or

E. any qualifying exigency (as defined in applicable Federal regulations) arising out of the fact that the staff member's spouse, son, daughter, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces ("Qualifying Exigency Leave"). Covered active duty is defined in AG 1630.01.

In addition, an eligible staff member who is a spouse, son, daughter, parent or next of kin of a covered service member with a serious injury or illness may take up to a total of twenty-six (26) work weeks of job-protected, unpaid leave, or substitute appropriate paid leave if the staff member has earned or accrued it, during a "single twelve (12) month period" to provide physical and/or psychological care for the covered service member ("Military Caregiver Leave") as described more fully in AG 1630.01.
Eligible Employees

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. All full-time instructional employees are deemed to meet the 1,250 hour requirement. Months and hours that employees who performed USERRA covered service would have worked if they had not been called up for military service counts towards the staff member's eligibility for FMLA leave. While the twelve (12) months of employment need not be consecutive, employment periods prior to a break in service of seven (7) years or more will not be counted unless the break is occasioned by the staff member's fulfillment of his/her USERRA-covered service obligation, or a written agreement exists concerning the Board's intention to rehire the staff member after the break in service.

Twelve (12) Month Period

Twelve (12) month period is defined as the twelve (12) month period measured forward from the date the staff member's first FMLA leave begins (i.e. the "leave year" is specific to each individual staff member).

Serious Health Condition

Serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a healthcare provider. As utilized in this policy, the term "incapacity" means an inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom. The term "treatment" includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. (Treatment does not include routine physical examinations, eye examinations, or dental examinations.)

A. Inpatient care means an overnight stay in a hospital, hospice, or residential medical-care facility, including any period of incapacity or subsequent treatment in connection with such inpatient care.
B. Continuing treatment by a healthcare provider, includes any one or more of
the following: 1.) "incapacity and treatment"; 2.) any incapacity experienced
by an expectant mother related to pregnancy, or for prenatal care; 3.) any
incapacity or treatment for such incapacity due to a chronic serious health
condition; 4.) a period of incapacity that is permanent or long-term due to a
condition for which treatment may not be effective (e.g. Alzheimer's, a
severe stroke, terminal stages of a disease); or 5.) any period of absence to
receive multiple treatments (including any period of recovery therefrom) by
a healthcare provider or by a provider of healthcare services under orders of,
or on referral by, a healthcare provider for a.) restorative surgery after an
accident, or other injury or b.) a condition that would likely result in a period
of incapacity of more than three (3) consecutive, full calendar days in the
absence of medical intervention or treatment, such as cancer (chemotherapy,
radiation, etc.), severe arthritis (physical therapy), or kidney disease
(dialysis).

1. "Incapacity and treatment" involves 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 a.) treatment two (2) or more times, within thirty (30)
days of the first day of incapacity, unless extenuating circumstances
exist, by a healthcare provider, by a nurse under direct supervision of
a healthcare provider, or by a provider of healthcare services (e.g.
physical therapist) under orders of, or on referral by, a healthcare
provider, or b.) treatment by a healthcare provider on at least one (1)
occasion that results in a regimen of continuing treatment under the
supervision of the healthcare provider.

a. Treatment by a healthcare provider as referenced above
involves an in-person visit to a healthcare provider. The first
(or only) in-person treatment visit must take place within
seven (7) days of the first day of incapacity. The healthcare
provider is responsible for determining whether additional
treatment visits or a regimen of continuing treatment is
necessary within the thirty (30) day period.
b. Regimen of continuing treatment includes a course of prescription medication (e.g. antibiotics), or therapy requiring special equipment to resolve or alleviate the health condition (e.g. oxygen).

c. A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a healthcare provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

2. **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.

3. A chronic serious health condition is one that: a.) requires periodic visits (i.e. at least twice a year) for treatment by a healthcare provider, or by a nurse under direct supervision of a healthcare provider; b.) continues over an extended period of time (including recurring episodes of a single underlying condition); and c.) may cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.). A visit to a healthcare provider is not necessary for each absence, and each absence need not last more than three (3) consecutive, full calendar days.

4. With regard to permanent or long-term conditions, the employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a healthcare provider.
C. Conditions for which cosmetic treatment are administered (e.g. most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or complications develop. 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 the definition of a serious health condition and do not qualify for FMLA leave.

**Intermittent and Reduced Schedule Leave**

The Superintendent may allow a staff member to take FMLA leave intermittently (i.e. leave in separate blocks of time for a single qualifying reason) or on a reduced schedule leave (i.e. reducing the employee's usual weekly or daily work schedule) for reason (A) or (B) on page one. A staff member is entitled to take FMLA leave on an intermittent or reduced schedule leave when medically necessary as indicated in reasons (C) and (D) on page one. A staff member may also take FMLA leave on an intermittent or reduced schedule leave for Qualifying Exigency Leave (i.e. reason (E) on page one). Finally, Military Caregiver Leave may be taken on an intermittent or reduced schedule leave when medically necessary. Regardless, the taking of FMLA leave intermittently or on a reduced schedule leave results in the total reduction of the twelve (12) or twenty-six (26) weeks only by the amount of leave actually taken. If the intermittent or reduced schedule leave is foreseeable based on planned medical treatment for the employee, a family member or a covered service member, the Superintendent may require the staff member to transfer temporarily, during the period the intermittent or reduced schedule leave is required, to an available alternative position for which the staff member is qualified and which better accommodates recurring periods of leave than the staff member's regular position. The alternative position shall have equivalent pay and benefits but not necessarily equivalent duties. The Superintendent may also transfer the staff member to a part-time job with the same hourly rate of pay and benefits, provided the staff member is not required to take more leave than is medically necessary. Instructional staff members (i.e. individuals whose principal function is to teach and instruct students in a class, a small group, or an individual setting) who request intermittent leave or a reduced schedule leave because of reasons (C) or (D) on page one or pursuant to Military Caregiver Leave and the leave would exceed twenty percent (20%) of the total number of working days over the period of anticipated leave must elect either to:

A. take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
B. transfer temporarily to an available alternative position offered by the Superintendent for which the instructional staff member is qualified, and that has equivalent pay and benefits and that better accommodates the recurring periods of leave than the staff member's regular position.

When leave is needed for planned medical treatment, the staff member must make a reasonable effort to schedule the treatment so as not to unduly disrupt the District's operations, subject to the approval of the healthcare provider.

If the Superintendent agrees to permit FMLA leave intermittently or on a reduced schedule leave for reason (A) or (B) on page one, the Board may also require the staff member to transfer temporarily, during the period the intermittent or reduced schedule leave is required, to an available alternative position for which the staff member is qualified and which better accommodates recurring periods of leave than does the staff member's regular position.

Staff Member Notice Requirements (Forms available at the U.S. Department of Labor Website: www.dol.gov)

Staff members seeking to use FMLA leave (including Military Caregiver Leave) are required to provide thirty (30) days advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than thirty (30) days in advance, the staff member must provide notice as soon as practicable - generally, either the same or next business day. When the need for leave is not foreseeable, the staff member must provide notice as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, staff members must comply with the Board's usual and customary notice and procedural requirements for requesting leave. Failure to provide timely notice may result in the leave being delayed or denied, and/or possible disciplinary action.

Staff members must provide "sufficient information" for the Superintendent to determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that the employee is incapacitated due to pregnancy, has been hospitalized overnight, is unable to perform the functions of the job, that the staff member or his/her qualifying family member is under the continuing care of a healthcare provider, that the requested leave is for a particular qualifying exigency related to a qualifying family member's covered active duty or call to covered active duty status, or that the leave is due to a qualifying family member who is a covered service member with a serious injury or illness. The information may also include the anticipated timing and duration of the leave.
When a staff member seeks leave for a FMLA-qualifying reason for the first time, the staff member need not expressly assert FMLA rights or even mention the FMLA. When an employee seeks leave, however, due to a FMLA-qualifying reason for which the District has previously provided the staff member FMLA-protected leave, the staff member must specifically reference either the qualifying reason for leave or the need for FMLA leave.

**Substitution of Paid Leave**

The staff member may request to "substitute" (i.e. run concurrently) any of his/her earned or accrued paid leave (e.g. sick leave, personal leave, vacation leave) for unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the District's normal leave policy. A staff member electing to use any type of paid leave concurrently with FMLA leave must follow the same terms and conditions of the Board's policy that apply to other employees for use of such leave. The staff member is always entitled to unpaid FMLA leave if s/he does not meet the Board's conditions for taking paid leave. On occasion the Board may waive any procedural requirements for the taking of any type of paid leave.

If the staff member has not earned or accrued adequate paid leave to encompass the entire twelve (12) work week period of FMLA leave or a twenty-six (26) work week period of Military Caregiver Leave, the additional weeks of leave to obtain the twelve (12) work weeks of FMLA leave or twenty-six (26) work weeks of Military Caregiver Leave the staff member is entitled to shall be unpaid. Whenever a staff member uses paid leave in substitution for unpaid FMLA leave/Military Caregiver Leave, such leave counts toward the twelve (12) work week/twenty-six (26) work week maximum leave allowance provided by this policy and Federal law.
District Notice Requirements (Forms available at the U.S. Department of Labor Website: www.dol.gov)

The Superintendent is directed to post the Department of Labor approved Notice explaining employees' rights and responsibilities under the FMLA. Additionally, this general notice shall be included in employee handbooks or other written guidance to staff members concerning benefits or leave rights or, in the alternative, distributed to each new staff member upon hiring.

When a staff member requests FMLA leave or the District acquires knowledge that leave may be for a FMLA purpose, the Superintendent shall notify the staff member of his/her eligibility to take leave, and inform the staff member of his/her rights and responsibilities under the FMLA (including the consequences of failing to meet those obligations). Along with the Notice of Rights and Responsibilities, the Superintendent will attach any medical certification that may be required, and a copy of the employee's essential job functions. If Superintendent determines the staff member is not eligible for FMLA leave, the Superintendent must state at least one (1) reason why the staff member is not eligible. Such notice may be given orally or in writing and should be given within five (5) business days of the request for FMLA leave, absent extenuating circumstances. When oral notice is given, it must be followed by written notice within five (5) business days. Staff member eligibility is determined (and notice provided) at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable twelve (12) month period. All FMLA absences for the same qualifying reason are considered a single leave and staff member eligibility as to that reason for leave does not change during the applicable twelve (12) month period. If at the time a staff member provides notice of a subsequent need for FMLA leave during the applicable twelve (12) month period due to a different FMLA-qualifying reason and the staff member's eligibility status has not changed, no additional eligibility notice is required. If, however, the staff member's eligibility status has changed, the Superintendent must notify the staff member of the change in eligibility status within five (5) business days, absent extenuating circumstances.

If the specific information provided by the Notice of Rights and Responsibilities changes, the Superintendent shall, within five (5) business days of receipt of the staff member's first notice of need for leave subsequent to any changes, provide written notice referencing the prior notice and setting forth any of the information in the Notice of Rights and Responsibilities that has changed.
When the Superintendent has sufficient information to determine that leave is being taken for a FMLA-qualifying reason (e.g. after receiving certification), the Superintendent shall notify the staff member whether the leave will be designated and counted as FMLA leave. Leave that qualifies as both Military Caregiver Leave and leave to care for a qualifying family member with a serious health condition (i.e. reason (C)) must be considered as Military Caregiver Leave in the first instance. This designation must be in writing and must be given within five (5) business days of the determination, absent extenuating circumstances. Additionally, when appropriate, the Superintendent shall notify the staff member of the number of hours, days and weeks that will be counted against the employee’s FMLA entitlement, and whether the employee will be required to provide a fitness-for-duty certification to return to work.

Only one Designation Notice is required for each FMLA-qualifying reason per applicable twelve (12) month period, regardless of whether the leave taken due to the qualifying reason will be a continuous block of leave or as intermittent or on a reduced schedule leave. If the Superintendent determines the leave will not be designated as FMLA-qualifying (e.g. if the leave is not for a reason covered by the FMLA or the staff member’s FMLA leave entitlement has been exhausted), the Superintendent shall notify the staff member of that determination. If the staff member is required to substitute paid leave for unpaid FMLA leave, or if paid leave taken under an existing leave plan is being counted as FMLA leave, the “Designation Notice” shall include this information. Additionally, the “Designation Notice” shall notify the staff member if s/he is required to present a fitness-for-duty certification to be restored to employment. Further, if the fitness-for-duty certification is required to address the staff member’s ability to perform the essential functions of his/her job, that will be indicated on the Designation Notice, and a list of the essential functions of the staff member’s position will be included.

If the information provided to the staff member in the Designation Notice changes, the Superintendent shall provide, within five (5) business days of receipt of the staff member’s first notice of need for leave subsequent to any change, written notice of the change.

In the case of intermittent or reduced-leave schedule leave, only one such notice is required unless the circumstances regarding the leave have changed.
Limits on FMLA When Both Spouses are Employed by the Board

When eligible *spouses* are both employed by the Board, they are limited to a combined total of twelve (12) workweeks of FMLA leave during any twelve (12) month period if the leave is taken for reason (A) or (B) on page one, or to care for the staff member’s parent who has a serious health condition.

Where the *spouses* both use a portion of the total twelve (12) week FMLA leave entitlement for reason (A) or (B) on page one, or to care for a parent, the *spouses* are each entitled to the difference between the amount s/he has taken individually and the twelve (12) weeks of FMLA leave for other purposes.

When eligible *spouses* are both employed by the Board, they are limited to a combined total of twenty-six (26) workweeks of Military Caregiver Leave during the “single twelve (12) month period” if the leave is taken for reason (A) or (B) on page one, or to care for the staff member’s parent who has a serious health condition, or to care for a covered service member with a serious injury or illness.

Certification

When FMLA leave is taken for either reason (C) or (D) on page one, the staff member must provide medical certification from the healthcare provider of the eligible staff member or his/her immediate family member. The staff member may either:

A. submit the completed medical certification to the Superintendent; or

B. direct the healthcare provider to transfer the completed medical certification directly to the Superintendent, which will generally require the staff member to furnish the healthcare provider with a HIPAA-compliant authorization.

If the staff member fails to provide appropriate medical certification, any leave taken by the employee shall not constitute FMLA leave.
When the need for FMLA leave is foreseeable and at least thirty (30) days notice has been provided, the staff member must provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the Superintendent within fifteen (15) calendar days after the staff member requests FMLA leave unless it is not practicable under the circumstances to do so despite the staff member’s diligent and good faith efforts.

The Board reserves the right to require second or third opinions (at the Board’s expense), and periodic recertification of a serious health condition. If a third opinion is sought, that opinion shall be binding and final. The staff member may either:

A. submit the opinion of the second healthcare provider, and the opinion of the third healthcare provider if applicable, to the Superintendent;

B. direct the second or third healthcare provider to transfer his/her opinion directly to the Superintendent, which will generally require the staff member to furnish the healthcare provider with a HIPAA-compliant authorization.

In the event that the staff member fails to provide the medical opinion of the second or third healthcare provider, if applicable, any leave taken by the staff member shall not constitute FMLA leave.

**Recertification**

Recertification may be required no more often than every thirty (30) days in connection with an absence by the staff member unless the condition will last for more than thirty (30) days. For conditions that are certified as having a minimum duration of more than thirty (30) days, the District will not request recertification until the specified period has passed, except that in all cases the staff member must submit recertification every six (6) months in connection with an absence by the employee. Additionally, the Superintendent may require a staff member to provide recertification in less than thirty (30) days if the staff member requests an extension of leave, the circumstances described in the previous certification have changed significantly, or if the District receives information that casts doubt upon the staff member’s stated reason for the absence or the continuing validity of the certification. Finally, staff members must provide a new medical certification each leave year for medical conditions that last longer than one (1) year.
Staff members requesting Qualifying Exigency Leave are required to submit to the Superintendent a copy of the covered military member’s active duty orders and certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought, including contact information if the leave involves meeting with a third party.

Staff members requesting Military Caregiver Leave are required to submit to the Superintendent certification completed by an authorized healthcare provider or a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member’s family.

The Board authorizes its healthcare provider, the Assistant Superintendent of Human Resources - but not the staff member’s direct supervisor, to authenticate or clarify a medical certification of a serious health condition, or an ITO or ITA (i.e. medical certification provided for reasons (C) or (D) on page one or Military Caregiver Leave). Additionally, the Superintendent is authorized to contact the individual or entity named in the Qualified Exigency Leave certification for purposes of verifying the existence and nature of the meeting.

A staff member who takes leave for reason (D) on page one, prior to returning to work, must provide the Superintendent with a fitness-for-duty certification that specifically addresses the staff member’s ability to perform the essential functions of his/her job. The fitness-for-duty certification shall only apply to the particular health condition that caused the staff member’s need for FMLA leave. If reasonable safety concerns exist, the Superintendent may, under certain circumstances, require a staff member to submit a fitness-for-duty certification before s/he returns to work from intermittent FMLA leave. The cost of the certification shall be borne by the staff member.

**Job Restoration & Maintenance of Health Benefits**

Upon return from FMLA leave, the Board shall restore the staff member to his/her former position, or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment. During FMLA leave, the Board shall maintain the staff member’s current coverage under the Board’s group health insurance program on the same conditions as coverage would have been provided if the staff member had been continuously working during the leave period. If the staff member was paying all or part of the premium payments prior to going on FMLA leave, the staff member must continue to pay his/her share during the leave.
Any leave or return from leave during the last five (5) weeks of an academic term shall be reviewed individually by the Superintendent to minimize disruption to the students’ program.

The staff member shall not accrue any sick leave, vacation, or other benefits during a period of unpaid FMLA leave.

The use of FMLA leave shall not result in the loss of any employment benefit that the staff member earned or was entitled to before using FMLA leave ( ), nor shall it be counted against the staff member under a no fault attendance policy. If a bonus or other payment, however, is based on the achievement of a specified goal such as hours worked or perfect attendance, and the employee does not meet the goal due to FMLA leave, payment shall be denied unless it is paid to an employee on equivalent leave status for a reason that does not qualify as FMLA leave.

A staff member shall have no greater right to restoration or to other benefits and conditions of employment than if the employee had been continuously employed.

If the staff member fails to return to work at the end of the leave for reasons other than the continuation, recurrence, or onset of a serious health condition that entitles the staff member to leave pursuant to reasons (C) or (D) on page one or Military Caregiver Leave, or for circumstances beyond the control of the staff member, the staff member shall reimburse the Board for the health insurance premiums paid by the Board during the unpaid FMLA leave period.

Generally, a staff member may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave.

A staff member who fraudulently obtains FMLA leave is not protected by this policy’s job restoration or maintenance of health benefits provisions.

The Superintendent shall prepare any guidelines that are appropriate for this policy and verify that the policy is posted properly.

Copies of this policy shall be available to staff members upon request.

29 U.S.C. 2601 et seq. (as amended)
29 C.F.R. Part 825
45 C.F.R. Part 160, 164

Adopted: 11/4/13

Revised:
FMLA LEAVE

Qualifying Reasons for FMLA and Military Family Leave

In accordance with the Family and Medical Leave Act of 1993, as amended, ("FMLA"), eligible staff members may take up to twelve (12) work weeks of job-protected, unpaid leave, or substitute appropriate paid leave if the staff member has earned or accrued it, for the following reasons:

A. the birth and/or care of a newborn child of the staff member, within one (1) year of the child's birth;

B. the placement with the staff member of a child for adoption or foster care, within one (1) year of the child's placement;

C. the staff member is needed to provide physical and/or psychological care for a spouse, child or parent with a serious health condition;

D. the staff member's own serious health condition makes him/her unable to perform the functions of his/her position; or

E. any qualifying exigency (as defined in applicable Federal regulations) arising out of the fact that the staff member's spouse, son, daughter, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces ("Qualifying Exigency Leave"). Covered active duty is defined in AG 3430.01.

In addition, an eligible staff member who is a spouse, son, daughter, parent or next of kin of a covered service member with a serious injury or illness may take up to a total of twenty-six (26) work weeks of job-protected, unpaid leave, or substitute appropriate paid leave if the staff member has earned or accrued it, during a "single twelve (12) month period" to provide physical and/or psychological care for the covered service member ("Military Caregiver Leave") as described more fully in AG 3430.01.
Eligible Employees

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. All full-time instructional employees are deemed to meet the 1,250 hour requirement. Months and hours that employees who performed USERRA covered service would have worked if they had not been called up for military service counts towards the staff member's eligibility for FMLA leave. While the twelve (12) months of employment need not be consecutive, employment periods prior to a break in service of seven (7) years or more will not be counted unless the break is occasioned by the staff member's fulfillment of his/her USERRA-covered service obligation, or a written agreement [NOTE: this includes a collective bargaining agreement] exists concerning the Board's intention to rehire the staff member after the break in service.

Twelve (12) Month Period

Twelve (12) month period is defined as the twelve (12) month period measured forward from the date the staff member's first FMLA leave begins (i.e. the "leave year" is specific to each individual staff member).

Serious Health Condition

Serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a healthcare provider. As utilized in this policy, the term "incapacity" means an inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom. The term "treatment" includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. (Treatment does not include routine physical examinations, eye examinations, or dental examinations.)

A. Inpatient care means an overnight stay in a hospital, hospice, or residential medical-care facility, including any period of incapacity or subsequent treatment in connection with such inpatient care.
B. Continuing treatment by a healthcare provider, includes any one or more of the following: 1.) "incapacity and treatment"; 2.) any incapacity related to pregnancy, or for prenatal care; 3.) any incapacity **experienced by an expectant mother** or treatment for such incapacity due to a chronic serious health condition; 4.) a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g. Alzheimer's, a severe stroke, terminal stages of a disease); or 5.) any period of absence to receive multiple treatments (including any period of recovery therefrom) by a healthcare provider or by a provider of healthcare services under orders of, or on referral by, a healthcare provider for a.) restorative surgery after an accident, or other injury or b.) a condition that would likely result in a period of incapacity of more than three (3) consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

1. "Incapacity and treatment" involves 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 a.) treatment two (2) or more times, within thirty (30) days of the first day of incapacity, unless extenuating circumstances exist, by a healthcare provider, by a nurse under direct supervision of a healthcare provider, or by a provider of healthcare services (e.g. physical therapist) under orders of, or on referral by, a healthcare provider, or b.) treatment by a healthcare provider on at least one (1) occasion that results in a regimen of continuing treatment under the supervision of the healthcare provider.

a. Treatment by a healthcare provider as referenced above involves an in-person visit to a healthcare provider. The first (or only) in-person treatment visit must take place within seven (7) days of the first day of incapacity. The healthcare provider is responsible for determining whether additional treatment visits or a regimen of continuing treatment is necessary within the thirty (30) day period.
2. **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.

3. A chronic serious health condition is one that: a.) requires periodic visits (i.e. at least twice a year) for treatment by a healthcare provider, or by a nurse under direct supervision of a healthcare provider; b.) continues over an extended period of time (including recurring episodes of a single underlying condition); and c.) may cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.). A visit to a healthcare provider is not necessary for each absence, and each absence need not last more than three (3) consecutive, full calendar days.

4. With regard to permanent or long-term conditions, the employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a healthcare provider.
C. Conditions for which cosmetic treatment are administered (e.g. most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or complications develop. 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 the definition of a serious health condition and do not qualify for FMLA leave.

**Intermittent and Reduced Schedule Leave**

The Superintendent may allow a staff member to take FMLA leave intermittently (i.e. leave in separate blocks of time for a single qualifying reason) or on a reduced schedule leave (i.e. reducing the employee's usual weekly or daily work schedule) for reason (A) or (B) on page one. A staff member is entitled to take FMLA leave on an intermittent or reduced schedule leave when medically necessary as indicated in reasons (C) and (D) on page one. A staff member may also take FMLA leave on an intermittent or reduced schedule leave for Qualifying Exigency Leave (i.e. reason (E) on page one). Finally, Military Caregiver Leave may be taken on an intermittent or reduced schedule leave when medically necessary. Regardless, the taking of FMLA leave intermittently or on a reduced schedule leave results in the total reduction of the twelve (12) or twenty-six (26) weeks only by the amount of leave actually taken. If the intermittent or reduced schedule leave is foreseeable based on planned medical treatment for the employee, a family member or a covered service member, the Superintendent may require the staff member to transfer temporarily, during the period the intermittent or reduced schedule leave is required, to an available alternative position for which the staff member is qualified and which better accommodates recurring periods of leave than the staff member's regular position. The alternative position shall have equivalent pay and benefits but not necessarily equivalent duties. The Superintendent may also transfer the staff member to a part-time job with the same hourly rate of pay and benefits, provided the staff member is not required to take more leave than is medically necessary. Instructional staff members (i.e. individuals whose principal function is to teach and instruct students in a class, a small group, or an individual setting) who request intermittent leave or a reduced schedule leave because of reasons (C) or (D) on page one or pursuant to Military Caregiver Leave and the leave would exceed twenty percent (20%) of the total number of working days over the period of anticipated leave must elect either to:

A. take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
B. transfer temporarily to an available alternative position offered by the Superintendent for which the instructional staff member is qualified, and that has equivalent pay and benefits and that better accommodates the recurring periods of leave than the staff member's regular position.

When leave is needed for planned medical treatment, the staff member must make a reasonable effort to schedule the treatment so as not to unduly disrupt the District's operations, subject to the approval of the healthcare provider.

If the Superintendent agrees to permit FMLA leave intermittently or on a reduced schedule leave for reason (A) or (B) on page one, the Board may also require the staff member to transfer temporarily, during the period the intermittent or reduced schedule leave is required, to an available alternative position for which the staff member is qualified and which better accommodates recurring periods of leave than does the staff member's regular position.

Staff Member Notice Requirements (Forms available at the U.S. Department of Labor Website: www.dol.gov)

Staff members seeking to use FMLA leave (including Military Caregiver Leave) are required to provide thirty (30) days advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than thirty (30) days in advance, the staff member must provide notice as soon as practicable - generally, either the same or next business day. When the need for leave is not foreseeable, the staff member must provide notice as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, staff members must comply with the Board’s usual and customary notice and procedural requirements for requesting leave. Failure to provide timely notice may result in the leave being delayed or denied, and/or possible disciplinary action.

Staff members must provide "sufficient information" for the Superintendent to determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that the employee is incapacitated due to pregnancy, has been hospitalized overnight, is unable to perform the functions of the job, that the staff member or his/her qualifying family member is under the continuing care of a healthcare provider, that the requested leave is for a particular qualifying exigency related to a qualifying family member's covered active duty or call to covered active duty status, or that the leave is due to a qualifying family member who is a covered service member with a serious injury or illness. The information may also include the anticipated timing and duration of the leave.
When a staff member seeks leave for a FMLA-qualifying reason for the first time, the staff member need not expressly assert FMLA rights or even mention the FMLA. When an employee seeks leave, however, due to a FMLA-qualifying reason for which the District has previously provided the staff member FMLA-protected leave, the staff member must specifically reference either the qualifying reason for leave or the need for FMLA leave.

**Substitution of Paid Leave**

The staff member may request to "substitute" (i.e. run concurrently) any of his/her earned or accrued paid leave (e.g. sick leave, personal leave, vacation leave,) for unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the District's normal leave policy. A staff member electing to use any type of paid leave concurrently with FMLA leave must follow the same terms and conditions of the Board's policy that apply to other employees for use of such leave. The staff member is always entitled to unpaid FMLA leave if s/he does not meet the Board's conditions for taking paid leave. On occasion the Board may waive any procedural requirements for the taking of any type of paid leave.

If the staff member has not earned or accrued adequate paid leave to encompass the entire twelve (12) work week period of FMLA leave or a twenty-six (26) work week period of Military Caregiver Leave, the additional weeks of leave to obtain the twelve (12) work weeks of FMLA leave or twenty-six (26) work weeks of Military Caregiver Leave the staff member is entitled to shall be unpaid. Whenever a staff member uses paid leave in substitution for unpaid FMLA leave/Military Caregiver Leave, such leave counts toward the twelve (12) work week/twenty-six (26) work week maximum leave allowance provided by this policy and Federal law.

**District Notice Requirements** (Forms available at the U.S. Department of Labor Website: www.dol.gov)

The Superintendent is directed to post the Department of Labor approved Notice explaining employees' rights and responsibilities under the FMLA. Additionally, this general notice shall be included in employee handbooks or other written guidance to staff members concerning benefits or leave rights or, in the alternative, distributed to each new staff member upon hiring.
When a staff member requests FMLA leave or the District acquires knowledge that leave may be for a FMLA purpose, the Superintendent shall notify the staff member of his/her eligibility to take leave, and inform the staff member of his/her rights and responsibilities under the FMLA (including the consequences of failing to meet those obligations). Along with the Notice of Rights and Responsibilities, the Superintendent will attach any medical certification that may be required, and a copy of the employee's essential job functions. If Superintendent determines the staff member is not eligible for FMLA leave, the Superintendent must state at least one (1) reason why the staff member is not eligible. Such notice may be given orally or in writing and should be given within five (5) business days of the request for FMLA leave, absent extenuating circumstances. When oral notice is given, it must be followed by written notice within five (5) business days. Staff member eligibility is determined (and notice provided) at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable twelve (12) month period. All FMLA absences for the same qualifying reason are considered a single leave and staff member eligibility as to that reason for leave does not change during the applicable twelve (12) month period. If at the time a staff member provides notice of a subsequent need for FMLA leave during the applicable twelve (12) month period due to a different FMLA-qualifying reason and the staff member's eligibility status has not changed, no additional eligibility notice is required. If, however, the staff member's eligibility status has changed, the Superintendent must notify the staff member of the change in eligibility status within five (5) business days, absent extenuating circumstances.

If the specific information provided by the Notice of Rights and Responsibilities changes, the Superintendent shall, within five (5) business days of receipt of the staff member's first notice of need for leave subsequent to any changes, provide written notice referencing the prior notice and setting forth any of the information in the Notice of Rights and Responsibilities that has changed.

When the Superintendent has sufficient information to determine that leave is being taken for a FMLA-qualifying reason (e.g. after receiving certification), the Superintendent shall notify the staff member whether the leave will be designated and counted as FMLA leave. Leave that qualifies as both Military Caregiver Leave and leave to care for a qualifying family member with a serious health condition (i.e. reason (C)) must be considered as Military Caregiver Leave in the first instance. This designation must be in writing and must be given within five (5) business days of the determination, absent extenuating circumstances. Additionally, when appropriate, the Superintendent shall notify the staff member of the number of hours, days and weeks that will be counted against the employee's FMLA entitlement, and whether the employee will be required to provide a fitness-for-duty certification to return to work.
Only one Designation Notice is required for each FMLA-qualifying reason per applicable twelve (12) month period, regardless of whether the leave taken due to the qualifying reason will be a continuous block of leave or as intermittent or on a reduced schedule leave. If the Superintendent determines the leave will not be designated as FMLA-qualifying (e.g. if the leave is not for a reason covered by the FMLA or the staff member’s FMLA leave entitlement has been exhausted), the Superintendent shall notify the staff member of that determination. If the staff member is required to substitute paid leave for unpaid FMLA leave, or if paid leave taken under an existing leave plan is being counted as FMLA leave, the “Designation Notice” shall include this information. Additionally, the “Designation Notice” shall notify the staff member if s/he is required to present a fitness-for-duty certification to be restored to employment. Further, if the fitness-for-duty certification is required to address the staff member’s ability to perform the essential functions of his/her job, that will be indicated on the Designation Notice, and a list of the essential functions of the staff member’s position will be included.

If the information provided to the staff member in the Designation Notice changes, the Superintendent shall provide, within five (5) business days of receipt of the staff member’s first notice of need for leave subsequent to any change, written notice of the change.

In the case of intermittent or reduced-leave schedule leave, only one such notice is required unless the circumstances regarding the leave have changed.

**Limits on FMLA When Both Spouses are Employed by the Board**

When *spouses* are both employed by the Board, they are limited to a combined total of twelve (12) workweeks of FMLA leave during any twelve (12) month period if the leave is taken for reason (A) or (B) on page one, or to care for the staff member’s parent who has a serious health condition.

Where the *spouses* both use a portion of the total twelve (12) week FMLA leave entitlement for reason (A) or (B) on page one, or to care for a parent, the *spouses* are each entitled to the difference between the amount s/he has taken individually and the twelve (12) weeks of FMLA leave for other purposes.

When *spouses* are both employed by the Board, they are limited to a combined total of twenty-six (26) workweeks of Military Caregiver Leave during the “single twelve (12) month period” if the leave is taken for reason (A) or (B) on page one, or to care for the staff member’s parent who has a serious health condition, or to care for a covered service member with a serious injury or illness.
Certification

When FMLA leave is taken for either reason (C) or (D) on page one, the staff member must provide medical certification from the healthcare provider of the eligible staff member or his/her immediate family member. The staff member may either:

A. submit the completed medical certification to the Superintendent; or

B. direct the healthcare provider to transfer the completed medical certification directly to the Superintendent, which will generally require the staff member to furnish the healthcare provider with a HIPAA-compliant authorization.

If the staff member fails to provide appropriate medical certification, any leave taken by the employee shall not constitute FMLA leave.

When the need for FMLA leave is foreseeable and at least thirty (30) days notice has been provided, the staff member must provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the Superintendent within fifteen (15) calendar days after the staff member requests FMLA leave unless it is not practicable under the circumstances to do so despite the staff member’s diligent and good faith efforts.

The Board reserves the right to require second or third opinions (at the Board’s expense), and periodic recertification of a serious health condition. If a third opinion is sought, that opinion shall be binding and final. The staff member may either:

A. submit the opinion of the second healthcare provider, and the opinion of the third healthcare provider if applicable, to the Superintendent;

B. direct the second or third healthcare provider to transfer his/her opinion directly to the Superintendent, which will generally require the staff member to furnish the healthcare provider with a HIPAA-compliant authorization.

In the event that the staff member fails to provide the medical opinion of the second or third healthcare provider, if applicable, any leave taken by the staff member shall not constitute FMLA leave.
Recertification

Recertification may be required no more often than every thirty (30) days in connection with an absence by the staff member unless the condition will last for more than thirty (30) days. For conditions that are certified as having a minimum duration of more than thirty (30) days, the District will not request recertification until the specified period has passed, except that in all cases the staff member must submit recertification every six (6) months in connection with an absence by the employee. Additionally, the Superintendent may require a staff member to provide recertification in less than thirty (30) days if the staff member requests an extension of leave, the circumstances described in the previous certification have changed significantly, or if the District receives information that casts doubt upon the staff member’s stated reason for the absence or the continuing validity of the certification. Finally, staff members must provide a new medical certification each leave year for medical conditions that last longer than one (1) year.

Staff members requesting Qualifying Exigency Leave are required to submit to the Superintendent a copy of the covered military member’s active duty orders and certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought, including contact information if the leave involves meeting with a third party.

Staff members requesting Military Caregiver Leave are required to submit to the Superintendent certification completed by an authorized healthcare provider or a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member’s family.

The Board authorizes its healthcare provider, the Assistant Superintendent of Human Resources – but not the staff member’s direct supervisor - to authenticate or clarify a medical certification of a serious health condition, or an ITO or ITA (i.e. medical certification provided for reasons (C) or (D) on page one or Military Caregiver Leave). Additionally, the Superintendent is authorized to contact the individual or entity named in the Qualified Exigency Leave certification for purposes of verifying the existence and nature of the meeting.

A staff member who takes leave for reason (D) on page one, prior to returning to work, must provide the Superintendent with a fitness-for-duty certification that specifically addresses the staff member’s ability to perform the essential functions of his/her job. The fitness-for-duty certification shall only apply to the particular health condition that caused the staff member’s need for FMLA leave. If reasonable safety concerns exist, the Superintendent may, under certain circumstances, require a staff member to submit a fitness-for-duty certification before s/he returns to work from intermittent FMLA leave. The cost of the certification shall be borne by the staff member.
Job Restoration & Maintenance of Health Benefits

Upon return from FMLA leave, the Board shall restore the staff member to his/her former position, or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment. During FMLA leave, the Board shall maintain the staff member’s current coverage under the Board’s group health insurance program on the same conditions as coverage would have been provided if the staff member had been continuously working during the leave period. If the staff member was paying all or part of the premium payments prior to going on FMLA leave, the staff member must continue to pay his/her share during the leave.

Any leave or return from leave during the last five (5) weeks of an academic term shall be reviewed individually by the Superintendent to minimize disruption to the students’ program.

The staff member shall not accrue any sick leave, vacation, or other benefits during a period of unpaid FMLA leave.

The use of FMLA leave shall not result in the loss of any employment benefit that the staff member earned or was entitled to before using FMLA leave ( ), nor shall it be counted against the staff member under a no fault attendance policy. If a bonus or other payment, however, is based on the achievement of a specified goal such as hours worked or perfect attendance, and the employee does not meet the goal due to FMLA leave, payment shall be denied unless it is paid to an employee on equivalent leave status for a reason that does not qualify as FMLA leave.

A staff member shall have no greater right to restoration or to other benefits and conditions of employment than if the employee had been continuously employed.

If the staff member fails to return to work at the end of the leave for reasons other than the continuation, recurrence, or onset of a serious health condition that entitles the staff member to leave pursuant to reasons (C) or (D) on page one or Military Caregiver Leave, or for circumstances beyond the control of the staff member, the staff member shall reimburse the Board for the health insurance premiums paid by the Board during the unpaid FMLA leave period.

Generally, a staff member may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave.
A staff member who fraudulently obtains FMLA leave is not protected by this policy's job restoration or maintenance of health benefits provisions.

The Superintendent shall prepare any guidelines that are appropriate for this policy and verify that the policy is posted properly.

Copies of this policy shall be available to staff members upon request.

29 U.S.C. 2601 et seq. (as amended)
29 C.F.R. Part 825
45 C.F.R. Part 160, 164

Adopted: 8/24/04
Revised: 3/8/11
Revised: 11/4/13
Revised:
FMLA LEAVE

Qualifying Reasons for FMLA and Military Family Leave

In accordance with the Family and Medical Leave Act of 1993, as amended, ("FMLA"), eligible staff members may take up to twelve (12) work weeks of job-protected, unpaid leave, or substitute appropriate paid leave if the staff member has earned or accrued it, for the following reasons:

A. the birth and/or care of a newborn child of the staff member, within one (1) year of the child's birth;

B. the placement with the staff member of a child for adoption or foster care, within one (1) year of the child's placement;

C. the staff member is needed to provide physical and/or psychological care for a spouse, child or parent with a serious health condition;

D. the staff member's own serious health condition makes him/her unable to perform the functions of his/her position; or

E. any qualifying exigency (as defined in applicable Federal regulations) arising out of the fact that the staff member's spouse, son, daughter, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces ("Qualifying Exigency Leave"). Covered active duty is defined in AG 4430.01.

In addition, an eligible staff member who is a spouse, son, daughter, parent or next of kin of a covered service member with a serious injury or illness may take up to a total of twenty-six (26) work weeks of job-protected, unpaid leave, or substitute appropriate paid leave if the staff member has earned or accrued it, during a "single twelve (12) month period" to provide physical and/or psychological care for the covered service member ("Military Caregiver Leave") as described more fully in AG 4430.01.
Eligible Employees

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. Months and hours that employees who performed USERRA-covered service would have worked if they had not been called up for military service counts towards the staff member's eligibility for FMLA leave. While the twelve (12) months of employment need not be consecutive, employment periods prior to a break in service of seven (7) years or more will not be counted unless the break is occasioned by the staff member's fulfillment of his/her USERRA-covered service obligation, or a written agreement exists concerning the Board's intention to rehire the staff member after the break in service.

Twelve (12) Month Period

Twelve (12) month period is defined as the twelve (12) month period measured forward from the date the staff member's first FMLA leave begins (i.e. the "leave year" is specific to each individual staff member).

Serious Health Condition

Serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a healthcare provider. As utilized in this policy, the term "incapacity" means an inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom. The term "treatment" includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. (Treatment does not include routine physical examinations, eye examinations, or dental examinations.)

A. Inpatient care means an overnight stay in a hospital, hospice, or residential medical-care facility, including any period of incapacity or subsequent treatment in connection with such inpatient care.
B. Continuing treatment by a healthcare provider, includes any one or more of the following: 1.) "incapacity and treatment"; 2.) any incapacity related to pregnancy, or for prenatal care; 3.) any incapacity experienced by an expectant mother or treatment for such incapacity due to a chronic serious health condition; 4.) a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g. Alzheimer's, a severe stroke, terminal stages of a disease); or 5.) any period of absence to receive multiple treatments (including any period of recovery therefrom) by a healthcare provider or by a provider of healthcare services under orders of, or on referral by, a healthcare provider for a.) restorative surgery after an accident, or other injury or b.) a condition that would likely result in a period of incapacity of more than three (3) consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), or kidney disease (dialysis).

1. "Incapacity and treatment" involves 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 a.) treatment two (2) or more times, within thirty (30) days of the first day of incapacity, unless extenuating circumstances exist, by a healthcare provider, by a nurse under direct supervision of a healthcare provider, or by a provider of healthcare services (e.g. physical therapist) under orders of, or on referral by, a healthcare provider, or b.) treatment by a healthcare provider on at least one (1) occasion that results in a regimen of continuing treatment under the supervision of the healthcare provider.

a. Treatment by a healthcare provider as referenced above involves an in-person visit to a healthcare provider. The first (or only) in-person treatment visit must take place within seven (7) days of the first day of incapacity. The healthcare provider is responsible for determining whether additional treatment visits or a regimen of continuing treatment is necessary within the thirty (30) day period.
b. Regimen of continuing treatment includes a course of prescription medication (e.g. antibiotics), or therapy requiring special equipment to resolve or alleviate the health condition (e.g. oxygen).

c. A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a healthcare provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

2. 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.

3. A chronic serious health condition is one that: a.) requires periodic visits (i.e. at least twice a year) for treatment by a healthcare provider, or by a nurse under direct supervision of a healthcare provider; b.) continues over an extended period of time (including recurring episodes of a single underlying condition); and c.) may cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.). A visit to a healthcare provider is not necessary for each absence, and each absence need not last more than three (3) consecutive, full calendar days.

4. With regard to permanent or long-term conditions, the employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a healthcare provider.
C. Conditions for which cosmetic treatment are administered (e.g. most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or complications develop. 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 the definition of a serious health condition and do not qualify for FMLA leave.

**Intermittent and Reduced Schedule Leave**

The Superintendent may allow a staff member to take FMLA leave intermittently (i.e. leave in separate blocks of time for a single qualifying reason) or on a reduced schedule leave (i.e. reducing the employee's usual weekly or daily work schedule) for reason (A) or (B) on page one. A staff member is entitled to take FMLA leave on an intermittent or reduced schedule leave when medically necessary as indicated in reasons (C) and (D) on page one. A staff member may also take FMLA leave on an intermittent or reduced schedule leave for Qualifying Exigency Leave (i.e. reason (E) on page one). Finally, Military Caregiver Leave may be taken on an intermittent or reduced schedule leave when medically necessary. Regardless, the taking of FMLA leave intermittently or on a reduced schedule leave results in the total reduction of the twelve (12) or twenty-six (26) weeks only by the amount of leave actually taken. If the intermittent or reduced schedule leave is foreseeable based on planned medical treatment for the employee, a family member or a covered service member, the Superintendent may require the staff member to transfer temporarily, during the period the intermittent or reduced schedule leave is required, to an available alternative position for which the staff member is qualified and which better accommodates recurring periods of leave than the staff member's regular position. The alternative position shall have equivalent pay and benefits but not necessarily equivalent duties. The Superintendent may also transfer the staff member to a part-time job with the same hourly rate of pay and benefits, provided the staff member is not required to take more leave than is medically necessary.

When leave is needed for planned medical treatment, the staff member must make a reasonable effort to schedule the treatment so as not to unduly disrupt the District's operations, subject to the approval of the healthcare provider.
If the Superintendent agrees to permit FMLA leave intermittently or on a reduced schedule leave for reason (A) or (B) on page one, the Board may also require the staff member to transfer temporarily, during the period the intermittent or reduced leave is required, to an available alternative position for which the staff member is qualified and which better accommodates recurring periods of leave than does the staff member's regular position.

**Staff Member Notice Requirements** (Forms available at the U.S. Department of Labor Website: www.dol.gov)

Staff members seeking to use FMLA leave (including Military Caregiver Leave) are required to provide thirty (30) days advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than thirty (30) days in advance, the staff member must provide notice as soon as practicable - generally, either the same or next business day. When the need for leave is not foreseeable, the staff member must provide notice as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, staff members must comply with the Board's usual and customary notice and procedural requirements for requesting leave. Failure to provide timely notice may result in the leave being delayed or denied, and/or possible disciplinary action.

Staff members must provide "sufficient information" for the Superintendent to determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that the employee is incapacitated due to pregnancy, has been hospitalized overnight, is unable to perform the functions of the job, that the staff member or his/her qualifying family member is under the continuing care of a healthcare provider, that the requested leave is for a particular qualifying exigency related to a qualifying family member's covered active duty or call to covered active duty status, or that the leave is due to a qualifying family member who is a covered service member with a serious injury or illness. The information may also include the anticipated timing and duration of the leave.

When a staff member seeks leave for a FMLA-qualifying reason for the first time, the staff member need not expressly assert FMLA rights or even mention the FMLA. When an employee seeks leave, however, due to a FMLA-qualifying reason for which the District has previously provided the staff member FMLA-protected leave, the staff member must specifically reference either the qualifying reason for leave or the need for FMLA leave.
Substitution of Paid Leave

The staff member may request "substitute" (i.e. run concurrently) any of his/her earned or accrued paid leave, (e.g. sick leave, personal leave, vacation leave) for unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the District's normal leave policy. A staff member electing to use any type of paid leave concurrently with FMLA leave must follow the same terms and conditions of the Board's policy that apply to other employees for use of such leave. The staff member is always entitled to unpaid FMLA leave if s/he does not meet the Board's conditions for taking paid leave. On occasion the Board may waive any procedural requirements for the taking of any type of paid leave.

If the staff member has not earned or accrued adequate paid leave to encompass the entire twelve (12) work week period of FMLA leave or a twenty-six (26) work week period of Military Caregiver Leave, the additional weeks of leave to obtain the twelve (12) work weeks of FMLA leave or twenty-six (26) work weeks of Military Caregiver Leave the staff member is entitled to shall be unpaid. Whenever a staff member uses paid leave in substitution for unpaid FMLA leave/Military Caregiver Leave, such leave counts toward the twelve (12) work week/twenty-six (26) work week maximum leave allowance provided by this policy and Federal law.

District Notice Requirements (Forms available at the U.S. Department of Labor Website: www.dol.gov)

The Superintendent is directed to post the Department of Labor approved Notice explaining employees' rights and responsibilities under the FMLA. Additionally, this general notice shall be included in employee handbooks or other written guidance to staff members concerning benefits or leave rights or, in the alternative, distributed to each new staff member upon hiring.

When a staff member requests FMLA leave or the District acquires knowledge that leave may be for a FMLA purpose, the Superintendent shall notify the staff member of his/her eligibility to take leave, and inform the staff member of his/her rights and responsibilities under the FMLA (including the consequences of failing to meet those obligations). Along with the Notice of Rights and Responsibilities, the Superintendent will attach any medical certification that may be required, and a copy of the employee's essential job functions. If Superintendent determines the staff member is not eligible for FMLA leave, the Superintendent must state at least one (1) reason why the staff member is not eligible. Such notice may be given orally or in writing and should be given within five (5) business days of the request for FMLA leave, absent extenuating circumstances. When oral
notice is given, it must be followed by written notice within five (5) business days. Staff member eligibility is determined (and notice provided) at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable twelve (12) month period. All FMLA absences for the same qualifying reason are considered a single leave and staff member eligibility as to that reason for leave does not change during the applicable twelve (12) month period. If at the time a staff member provides notice of a subsequent need for FMLA leave during the applicable twelve (12) month period due to a different FMLA-qualifying reason and the staff member's eligibility status has not changed, no additional eligibility notice is required. If, however, the staff member's eligibility status has changed, the Superintendent must notify the staff member of the change in eligibility status within five (5) business days, absent extenuating circumstances.

If the specific information provided by the Notice of Rights and Responsibilities changes, the Superintendent shall, within five (5) business days of receipt of the staff member's first notice of need for leave subsequent to any changes, provide written notice referencing the prior notice and setting forth any of the information in the Notice of Rights and Responsibilities that has changed.

When the Superintendent has sufficient information to determine that leave is being taken for a FMLA-qualifying reason (e.g. after receiving certification), the Superintendent shall notify the staff member whether the leave will be designated and counted as FMLA leave. Leave that qualifies as both Military Caregiver Leave and leave to care for a qualifying family member with a serious health condition (i.e. reason (C)) must be considered as Military Caregiver Leave in the first instance. This designation must be in writing and must be given within five (5) business days of the determination, absent extenuating circumstances. Additionally, when appropriate, the Superintendent shall notify the staff member of the number of hours, days and weeks that will be counted against the employee's FMLA entitlement, and whether the employee will be required to provide a fitness-for-duty certification to return to work.

Only one Designation Notice is required for each FMLA-qualifying reason per applicable twelve (12) month period, regardless of whether the leave taken due to the qualifying reason will be a continuous block of leave or as intermittent or on a reduced schedule leave. If the Superintendent determines the leave will not be designated as FMLA-qualifying (e.g. if the leave is not for a reason covered by the FMLA or the staff member's FMLA leave entitlement has been exhausted), the Superintendent shall notify the staff member of that determination. If the staff member is required to substitute paid leave for unpaid FMLA leave, or if paid leave taken under an existing leave plan is being counted as FMLA leave, the "Designation Notice" shall include this information. Additionally, the "Designation Notice" shall notify the staff member if s/he is required to present a fitness-for-duty certification to be restored to employment. Further, if the fitness-for-duty certification is required to address the staff member's ability to perform the essential functions of his/her job, that will be indicated on the
Designation Notice, and a list of the essential functions of the staff member’s position will be included.

If the information provided to the staff member in the Designation Notice changes, the Superintendent shall provide, within five (5) business days of receipt of the staff member’s first notice of need for leave subsequent to any change, written notice of the change.

In the case of intermittent or reduced schedule leave, only one such notice is required unless the circumstances regarding the leave have changed.

**Limits on FMLA When Both Spouses are Employed by the Board**

When eligible *spouses* are both employed by the Board, they are limited to a combined total of twelve (12) workweeks of FMLA leave during any twelve (12) month period if the leave is taken for reason (A) or (B) on page one, or to care for the staff member’s parent who has a serious health condition.

Where the *spouses* both use a portion of the total twelve (12) week FMLA leave entitlement for reason (A) or (B) on page one, or to care for a parent, the *spouses* are each entitled to the difference between the amount s/he has taken individually and the twelve (12) weeks of FMLA leave for other purposes.

When eligible *spouses* are both employed by the Board, they are limited to a combined total of twenty-six (26) workweeks of Military Caregiver Leave during the “single twelve (12) month period” if the leave is taken for reason (A) or (B) on page one, or to care for the staff member’s parent who has a serious health condition, or to care for a covered service member with a serious injury or illness.

**Certification**

When FMLA leave is taken for either reason (C) or (D) on page one, the staff member must provide medical certification from the healthcare provider of the eligible staff member or his/her immediate family member. The staff member may either:

A. submit the completed medical certification to the Superintendent; or

B. direct the healthcare provider to transfer the completed medical certification directly to the Superintendent, which will generally require the staff member to furnish the healthcare provider with a HIPAA-compliant authorization.

If the staff member fails to provide appropriate medical certification, any leave taken by the employee shall not constitute FMLA leave.
When the need for FMLA leave is foreseeable and at least thirty (30) days notice has been provided, the staff member must provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the Superintendent within fifteen (15) calendar days after the staff member requests FMLA leave unless it is not practicable under the circumstances to do so despite the staff member’s diligent and good faith efforts.

The Board reserves the right to require second or third opinions (at the Board’s expense), and periodic recertification of a serious health condition. If a third opinion is sought, that opinion shall be binding and final. The staff member may either:

A. submit the opinion of the second healthcare provider, and the opinion of the third healthcare provider if applicable, to the Superintendent;

B. direct the second or third healthcare provider to transfer his/her opinion directly to the Superintendent, which will generally require the staff member to furnish the healthcare provider with a HIPAA-compliant authorization.

In the event that the staff member fails to provide the medical opinion of the second or third healthcare provider, if applicable, any leave taken by the staff member shall not constitute FMLA leave.

**Recertification**

Recertification may be required no more often than every thirty (30) days in connection with an absence by the staff member unless the condition will last for more than thirty (30) days. For conditions that are certified as having a minimum duration of more than thirty (30) days, the District will not request recertification until the specified period has passed, except that in all cases the staff member must submit recertification every six (6) months in connection with an absence by the employee. Additionally, the Superintendent may require a staff member to provide recertification in less than thirty (30) days if the staff member requests an extension of leave, the circumstances described in the previous certification have changed significantly, or if the District receives information that casts doubt upon the staff member’s stated reason for the absence or the continuing validity of the certification. Finally, staff members must provide a new medical certification each leave year for medical conditions that last longer than one (1) year.
Staff members requesting Qualifying Exigency Leave are required to submit to the Superintendent a copy of the covered military member’s active duty orders and certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought, including contact information if the leave involves meeting with a third party.

Staff members requesting Military Caregiver Leave are required to submit to the Superintendent certification completed by an authorized healthcare provider or a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member’s family.

The Board authorizes its healthcare provider, the Assistant Superintendent of Human Resources - but not the staff member’s direct supervisor - to authenticate or clarify a medical certification of a serious health condition, or an ITO or ITA (i.e. medical certification provided for reasons (C) or (D) on page one or Military Caregiver Leave). Additionally, the Superintendent is authorized to contact the individual or entity named in the Qualified Exigency Leave certification for purposes of verifying the existence and nature of the meeting.

A staff member who takes leave for reason (D) on page one, prior to returning to work, must provide the Superintendent with a fitness-for-duty certification that specifically addresses the staff member’s ability to perform the essential functions of his/her job. The fitness-for-duty certification shall only apply to the particular health condition that caused the staff member’s need for FMLA leave. If reasonable safety concerns exist, the Superintendent may, under certain circumstances, require a staff member to submit a fitness-for-duty certification before s/he returns to work from intermittent FMLA leave. The cost of the certification shall be borne by the staff member.

**Job Restoration & Maintenance of Health Benefits**

Upon return from FMLA leave, the Board shall restore the staff member to his/her former position, or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment. During FMLA leave, the Board shall maintain the staff member’s current coverage under the Board’s group health insurance program on the same conditions as coverage would have been provided if the staff member had been continuously working during the leave period. If the staff member was paying all or part of the premium payments prior to going on FMLA leave, the staff member must continue to pay his/her share during the leave.

The staff member shall not accrue any sick leave, vacation, or other benefits during a period of unpaid FMLA leave.
The use of FMLA leave shall not result in the loss of any employment benefit that the staff member earned or was entitled to before using FMLA leave ( ), nor shall it be counted against the staff member under a no fault attendance policy. If a bonus or other payment, however, is based on the achievement of a specified goal such as hours worked or perfect attendance, and the employee does not meet the goal due to FMLA leave, payment shall be denied unless it is paid to an employee on equivalent leave status for a reason that does not qualify as FMLA leave.

A staff member shall have no greater right to restoration or to other benefits and conditions of employment than if the employee had been continuously employed.

If the staff member fails to return to work at the end of the leave for reasons other than the continuation, recurrence, or onset of a serious health condition that entitles the staff member to leave pursuant to reasons (C) or (D) on page one or Military Caregiver Leave, or for circumstances beyond the control of the staff member, the staff member shall reimburse the Board for the health insurance premiums paid by the Board during the unpaid FMLA leave period.

Generally, a staff member may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave.

A staff member who fraudulently obtains FMLA leave is not protected by this policy’s job restoration or maintenance of health benefits provisions.

The Superintendent shall prepare any guidelines that are appropriate for this policy and verify that the policy is posted properly.

Copies of this policy shall be available to staff members upon request.

29 U.S.C. 2601 et seq. (as amended)
29 C.F.R. Part 825
45 C.F.R. Part 160, 164

Adopted: 8/24/04
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The Board of Education shall provide cafeteria facilities in all school facilities where space and facilities permit, and will provide food service for the purchase and consumption of lunch for all students. The Board shall annually encumber the funds needed to operate the program.

The food-service program shall comply with Federal and State regulations pertaining to the selection, preparation, consumption, and disposal of food and beverages, including but not limited to the current USDA Dietary Guidelines for Americans and the USDA Smart Snacks in School nutrition standards, as well as to the fiscal management of the program.

The Board shall approve and implement nutrition standards governing the types of food and beverages that may be sold on the premises of its schools and shall specify the time and place each type of food or beverage may be sold. In adopting such standards, the Board shall:

A. consider the nutritional value of each food or beverage;

B. consult with a dietitian licensed under Revised Code Chapter 4759, a dietetic technician registered by the commission on dietetic registration, or a school nutrition specialist certified or credentialed by the school nutrition association; and

C. consult and incorporate to the maximum extent possible the dietary guidelines for Americans jointly developed by the United States Department of Agriculture (USDA) and the United States Department of Health and Human Services; and

D. consult and incorporate the USDA Smart Snacks in School nutrition guidelines.

No food or beverage may be sold on any school premises except in accordance with the standards approved by the Board.
In addition, as required by law, a food safety program that is based on the principles of the Hazard Analysis and Critical Control Point (HACCP) system shall be implemented with the intent of preventing food-borne illnesses. For added safety and security, access to the facility and the food stored and prepared therein shall be limited to food service program staff and others authorized persons.

The Board shall provide a Federal food service program for students during summer intervention programs that are mandated under Federal law. If the Board determines that it is unable to provide a Federal food service program during the summer, for financial reasons, the Board will communicate that decision to its residents in a manner it determines to be appropriate.

During all times while the food service program is operating and students are being served food, at least one (1) employee shall be present in the area in which the food is being consumed who has received instruction in methods to prevent choking and demonstrated an ability to perform the Heimlich maneuver.

Substitutions to the standard meal requirements shall be made, at no additional charge, for students for whom a health care provider who has prescriptive authority in the State of Ohio has provided medical certification that the student has a disability that restricts his/her diet, in accordance with the criteria set forth in 7 CFR Part 15b. To qualify for such substitutions the medical certification must identify:

A. the students disability and the major life activity affected by the disability;

B. an explanation of why the disability affects the student’s diet; and

C. the food(s) to be omitted from the student’s diet and the food or choice of foods that must be submitted (e.g., caloric modifications or use of liquid nutritive formula).

Lunches sold by the school may be purchased by students and staff members and community residents in accordance with administrative guidelines established by the Superintendent. Lunches may be made available, free of charge, to senior citizens who are serving as volunteers to the District.

The operation and supervision of the food-service program shall be the responsibility of the Chief of Food Service. In accordance with Federal law, the Chief of Maintenance and Business Affairs shall take such actions as are necessary to obtain a minimum of two (2) food safety inspections per school year, which are conducted by the State or local governmental agency responsible for food safety inspections. The report of the most recent inspection will be posted in a publicly visible location, and a copy of the report will be available upon request.
Please note: Schools participating in more than one (1) child nutrition program are only required to obtain two (2) food safety inspections per school year if the nutrition programs offered use the same facilities for the preparation and service of meals. Also, the requirement for two (2) inspections does not apply to schools that only offer the Special Milk Program.

A periodic review of the food-service accounts shall be made by the Chief of Food Service. Any surplus funds from the National School Lunch Program shall be used to reduce the cost of the service to students or to purchase cafeteria equipment. Surplus funds from a-la-carte foods may accrue to the food-service program.

With regard to the operation of the school food service program, the Superintendent shall require:

A. the maintenance of sanitary, neat premises free from fire and health hazards;

B. the preparation of food that complies with Federal food safety regulations;

C. the purchase of food and supplies in accordance with law State and Federal law, USDA regulations, and Board policy; (see Policy 1130, Policy 1214, Policy 3113, Policy 3214, Policy 4113, Policy 4214, and Policy 6460)

D. the accounting and disposition of food-service funds pursuant to Federal and State law and USDA regulations;

E. the safekeeping and storage of food and food equipment pursuant to USDA regulations;

F. the regular maintenance and replacement of equipment.

In accordance with the nutritional standards adopted by the Board, the placement of vending machines in any classroom where students are provided instruction, unless the classroom is also used to serve meals to students, is prohibited.

No foods or beverages, other than those associated with the District's food-service program, are to be sold during food-service hours. The District shall serve only nutritious food in accordance with the nutritional standards adopted by the Board in compliance with the current USDA Dietary Guidelines for Americans and the USDA Smart Snacks in School nutrition guidelines. Foods and beverages in competition with the District's food-service program must comply with the current USDA Dietary Guidelines for Americans and the USDA Smart Snacks in School nutrition guidelines, and may only be sold in accordance with Board Policy 8550.
The Superintendent will require that the food service program serve foods in the schools of the District that are wholesome and nutritious and reinforce the concepts taught in the classroom.

The Superintendent is responsible for implementing the food service program in accordance with the adopted nutrition standards and shall provide a report regarding the District’s compliance with the standards at one of its regular meetings annually.

R.C. 3313.81, 3313.811-815
A.C. 3301-91
42 U.S.C. 1758

OMB Circular No. A-87USDA Smart Snacks in School Food Guidelines (effective July 1, 2014)

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