YOUNGSTOWN BOARD OF EDUCATION

- A G E N D A -

Monday, November 4, 2013
5:30 p.m. – Caucus
- Formal Meeting -
I. Ward Building
THE YOUNGSTOWN BOARD OF EDUCATION

Richard Atkinson, President
Marcia Haire-Ellis, Vice-President
Lock P. Beachum, Sr.
Rachel Hanni
Brenda Kimble
Andrea Mahone
Michael Murphy

Connie Hathorn, Ph.D., Superintendent
Douglas Hiscox, Deputy Superintendent
Karen Green, Asst. Superintendent
James Reinhard, Treasurer
Harry Evans, Business Manager

REGULAR BOARD MEETING
November 4, 2013
AGENDA

I. CALL TO ORDER

II. PLEDGE OF ALLEGIANCE

III. ROLL CALL

IV. EXECUTIVE SESSION (if necessary)

V. APPROVAL OF AGENDA

VI. COMMUNICATIONS/RECOGNITIONS

VII. REQUESTS TO ADDRESS THE BOARD (Citizens Participation)

VIII. BOARD REPORTS
    • Board Comments
    • Board Executive Facilities’ Report
    • Board President’s Report

IX. TREASURER’S REPORT

X. SUPERINTENDENT’S REPORT

XI. COMMITTEE REPORTS
    • Finance/Business/Non-Certificated
      Michael Murphy
    • Curriculum/Extra-Curricular/Sports
      Marcia Haire-Ellis
    • Certificated Personnel/Legal/Legislative/Policy
      Brenda Kimble

XII. UNFINISHED BUSINESS

XIII. NEW BUSINESS
MEETING AGENDA

BOARD OF EDUCATION:

RESOLUTION NO. 237-13
Resolution to Authorize Contract for Treasurer on a Full Time Basis, Rather than a Part Time Basis .......................................................... 1

OFFICE OF THE TREASURER:

OFFICE OF THE SUPERINTENDENT:

RESOLUTION NO. 238-13
Resolution to Adopt Policy on FMLA Leave (Administration) .................. 2

RESOLUTION NO. 239-13
Resolution to Approve Revised Policy on FMLA Leave (Professional Staff) ............ 3

RESOLUTION NO. 240-13
Resolution to Approve Revised Policy on FMLA Leave (Classified Staff) ............. 4

RESOLUTION NO. 241-13
Resolution to Approve Revised Policy on Health Services (Students) ................ 5

RESOLUTION NO. 242-13
Resolution to Approve Revised Policy on Student Accidents ......................... 6

RESOLUTION NO. 243-13
Resolution to Approve Revised Policy on Care of School Property .................... 7

Department of Business Affairs:

Department of Human Resources:

RESOLUTION NO. 244-13
Certificated Personnel: Appointments ....................................................... 8

RESOLUTION NO. 245-13
Certificated Personnel: Appointments for Choffin Adult Career and Technical and Delinquent Programs .................................................. 9

RESOLUTION NO. 246-13
Certificated Personnel: Appointments for Substitute and Permanent Substitute Teachers .................................................................................. 10

RESOLUTION NO. 247-13
Certificated Personnel: Leave of Absence and Resignation .......................... 11
RESOLUTION NO. 248-13
Classified Personnel: Appointments and Retirements ........................................12

Recommendations:

Comments:

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

YOUNGSTOWN BOARD OF EDUCATION
RESOLUTION NO. 237-13

RESOLUTION TO AUTHORIZE CONTRACT FOR TREASURER ON A FULL TIME BASIS, RATHER THAN A PART-TIME BASIS

WHEREAS, the Board of Education of the Youngstown City School District (the "Board") entered into an Employment Contract with James Reinhard effective April 15, 2013 to serve as Treasurer of the Board on a Part-Time basis at compensation not to exceed $70,000 per year; and

WHEREAS, the Board and the Treasurer have determined that the Treasurer is needed to serve on a Full-Time, rather than Part-Time, basis; and

WHEREAS, the Treasurer, a retiree under the School Employees Retirement System has agreed to serve on a Full-Time basis at an annual salary rate of $70,000; and

WHEREAS, the Treasurer and the Board desire to replace the Part-Time Contract of employment of the Treasurer with a Full-Time Contract of employment of the Treasurer effective November 1, 2013.

NOW THEREFORE BE IT RESOLVED, by the Board of Education of the Youngstown City School District that James Reinhard is hereby appointed by the Board to serve as Full-Time Treasurer effective November 1, 2013, pursuant to the terms and conditions of the Contract of Employment which has been negotiated by the Treasurer and the Board, the terms and conditions of which are incorporated herein by reference.

BE IT FURTHER RESOLVED, that the Part-Time Contract of Employment between the Board and the Treasurer which was effective April 15, 2013 shall be cancelled and replaced by the Full-Time Contract of Employment effective as of November 1, 2013.

BE IT FURTHER RESOLVED, that the Board President and the Chair of the Board Finance Committee are hereby authorized to sign the Contract of Employment with the Treasurer and to do all things necessary to effectuate his employment as provided in the Treasurer's Contract of Employment.
____________________ moved, seconded by __________________ that the foregoing resolution be adopted.

Ayes:
Nays:

11/04/13
YOUNGSTOWN CITY SCHOOL DISTRICT

TREASURER’S CONTRACT
(RC § 3313.22)

This contract of employment ("Contract") is entered into by between the Board of Education of the Youngstown City School District ("Board") and James Reinhard ("Treasurer") to be effective as of November 1, 2013.

RECITALS

A. The Board desires to employ the Treasurer and the Treasurer desires to be so employed, on a full-time basis, subject to the terms and conditions in this Agreement.

B. The Board and the Treasurer acknowledge that the Treasurer previously served as Treasurer for many years for other school districts and is currently retired pursuant to the School Employees Retirement System of Ohio ("SERS"); that until April 15, 2013, the Treasurer served the Academic Distress Commission of the Youngstown School District ("Commission"), an entity separate from the School District, as its fiscal monitor, and in that capacity, the Board came to appreciate and have confidence in the fiscal knowledge and abilities of the Treasurer. During the last several months in which the Treasurer served as fiscal monitor for the Commission, he provided guidance to the Board’s Interim Treasurer.

C. Effective April 15, 2013, the Board and the Treasurer entered into a Part-Time Treasurer’s Contract that was due to expire on July 31, 2014. The parties have determined that the District needs a full-time, rather than part-time, Treasurer and this Contract is entered into by the parties to replace the Part-Time Treasurer’s Contract upon the commencement of this Contract.

AGREEMENT

In consideration of the foregoing premises which are incorporated herein by reference, as well as the terms and conditions the following Agreement, the parties hereto agree as follows:

1. Duties. The Treasurer shall perform the duties of the Treasurer of the Board as prescribed by the laws of the State of Ohio and by the rules, regulations and position descriptions adopted by the Board, subject to the terms and conditions of this Agreement.

   a. The Treasurer will devote his “full-time”; skill, labor and attention to his employment during the term of this Contract. The Treasurer is permitted to
work up to, but no more than, one day per week at home, a detailed time sheet for which shall be presented by the Treasurer to the Superintendent or his designee for any such time worked at home by the Treasurer. Because the Treasurer resides in Canton, Ohio, a commute time of more than one hour each way to and from Youngstown, the Superintendent or his designee may approve the Treasurer working at home due to inclement weather which may result in working at home more than one day per week on occasion.

b. The Treasurer shall maintain in good standing his Ohio School Treasurer License during the term of this Contract.

c. Attached hereto is a copy of the current Board Policy which outlines the duties and responsibilities of the Treasurer. Also attached is a mutually agreed Four Point Focus to assist the parties in maintaining an effective and efficient focus of the Treasurer's performance.

2. **Compensation.** The Treasurer shall be compensated at the annual salary rate of $70,000.00 per Contract Year for all services rendered regardless of the location where they are performed. (A "Contract Year" is August 1 through July 31, and the $70,000 annual compensation shall be prorated to a lesser amount for any partial Contract Year of employment.)

3. **Term.**

a. This Contract commences on November 1, 2013, and it then replaces and supersedes the Part-Time Treasurer’s Contract between the parties.

b. If not terminated earlier by either the Board or the Treasurer as provided herein, this Contract shall expire on July 31, 2015. Statutory non-renewal provisions are expressly waived by the Treasurer here and in Section 6 below.

c. This Contract may be terminated by either party at any time upon 30-day prior written notice to the other party.

d. This Contract may also be terminated during its term by (1) the mutual agreement of the Treasurer and the Board, (2) the Treasurer’s resignation, disability or death, or (3) the Board pursuant to R.C. 3313.22 and R.C. 3319.16.
4. **SERS Contributions.** The Board shall pay the employer’s share of any SERS contributions as required by law. The Treasurer shall pay the employee’s share of any SERS contributions required by law.

5. **Deferred Compensation.** The Board shall pay in addition to the salary of the Treasurer the amount of One Thousand Five Hundred Dollars ($1,500.00) per month and contribute such amount to the Ohio Public Employees Deferred Compensation Program (“457 Plan”) for a participating account in his name. This payment is in lieu of the Board providing health insurance coverage to the Treasurer. However, if any law, including but not limited to the Affordable Care Act, requires the Treasurer to participate, or if the District’s health insurance coverage requires the Treasurer to participate, or if the Treasurer elects to participate, in the health insurance coverage of the District for single coverage, the amount paid for “457 Plan” purposes shall be reduced to the monthly dollar difference between family and single coverage premium; if the Treasurer participates in family coverage of the District, then the “457 Plan” payments by the Board shall cease.

6. **Waiver of Benefits.** In consideration of the Board’s decision to employ the Treasurer during his SERS retirement, the rights and benefits of employment enjoyed by regular full-time employees of the Board are hereby voluntarily waived and relinquished to the extent indicated below:

   a. There is no right to a multi-year contract unless otherwise specified in this Contract.

   b. This Contract expires at the end of its Term; no notice of non-renewal is required; and there is no automatic renewal of this Contract for failure to non-renew it.

   c. This Contract may be terminated at any time either by the Board or the Treasurer, for any reason, with or without cause, upon 30-days prior written notice.
d. The Board shall not be required to evaluate the Treasurer, but the Board may evaluate the Treasurer. No evaluation and no failure to evaluate the Treasurer will create any expectancy of continued employment.

e. 1. The Board shall provide no insurance benefits to the Treasurer unless the Treasurer is not eligible for SERS coverage, unless the Board is required by law or by its health insurance coverage to provide such coverage to the Treasurer, or unless the Treasurer elects to participate in such coverage. In any such event, then he shall be eligible for Board provided insurance benefits on the condition that he pays ten percent (10%) of a family premium or single premium, whichever he chooses, subject also to the deferred compensation reductions in Section 5 herein above.

2. In that the Treasurer is currently covered under his spouse's health insurance, he expressly waives coverage under the Board's benefits.

f. The Treasurer shall be eligible to accrue and use sick leave in accordance with Board policy, however, he shall not be eligible for and he waives any severance pay for unused sick leave upon termination or expiration of this Contract.

The Treasurer acknowledges that the foregoing waivers relinquish rights which he might otherwise enjoy pursuant to law or policy. The Treasurer specifically waives and releases any claims that provisions of this Contract constitute a violation of any laws relating to age discrimination, including but not limited to the Age Discrimination and Employment Act of 1967 (ADEA), 29 U.S. Code Section 621 and following sections, as amended.

The Treasurer understands that it is the Board's recommendation that he consult with an attorney before signing this Contract, and that he may revoke this Contract within 7 calendar days after signing it. In order for such revocation to be effective, written notice must be received by the Board no later than the close of business on the seventh (7th) day after the Treasurer has signed this Contract.

The Treasurer also understands that by law he is allowed twenty-one (21) calendar days after being presented with it to review this Contract before signing it. However, the Treasurer is hereby voluntarily releasing and waiving his right to this 21-day review period. The Treasurer is
NOT, however, waiving his right to revoke this Contract within 7 days after signing it, as described above.

7. **Vacation Leave.** The Treasurer shall be eligible to accrue and use two (2) days per month of vacation leave effective November 1, 2013 and he shall accrue two (2) days of vacation leave effective on the 1st day of each month thereafter for use during the Term of this Contract. Vacation shall be taken during the Contract Year in which it is earned. Accrued and unused vacation days may not be postponed and accumulated. However, an election may be made by the Treasurer to be paid at his per diem rate ($70,000 ÷ 260 days = $269.23 per diem) for up to and no more than ten (10) accrued and unused vacation days per Contract Year upon written notification to the Board President, such election to be made in July of each Contract Year of this Contract.

8. **Mileage Reimbursement.** No mileage reimbursement shall be paid to the Treasurer for commuting to and from work and residence. However, when travelling for Board business (i.e., in-district or out-of-district business or professional meetings) using his personal vehicle, the Treasurer shall be reimbursed at the Board-approved mileage rate pursuant to Board policy.

9. **Indemnification Clause.** Except for findings for recovery reflected in an adult report pursuant to ORC 117.28 the Board agrees that it shall defend, hold harmless and indemnify the Treasurer from any and all civil (not criminal charges) demands, claims, suits, actions and legal proceedings brought by another party, not by the Board, against the Treasurer in his individual capacity, or in his official capacity as agent and employee of the Board, provided the incident arose while the Treasurer was acting in good faith within the scope of his employment and official responsibilities, subject to the limits of the Board’s authority under law.
The Board's liability under this provision shall not exceed the amount provided by insurance purchased by the Board for this purpose or the amount appropriated by the Board for this purpose, whichever is greater, except that, in no case will individual Board Members be considered personally liable for indemnifying the Treasurer against such demands, claims, suits, actions, and legal proceedings.

10. **Savings Clause.** If any portion of this contract is deemed to be illegal due to conflict with state or federal law, the remainder of the contract shall remain in force and effect.

11. **No Conflict/Commission Approval.** The Board and the Treasurer acknowledge that the Treasurer is not otherwise regularly employed by the Board, nor is he a member of the Board. The Board and the Treasurer confirm that upon the effective date of his employment as Treasurer on April 15, 2013, he resigned his employment as Fiscal Monitor for the Commission. This Contract shall be contingent upon the Commission confirming in writing that this Contract has been disclosed to the Commission, that the Commission has approved this Contract, and that the Commission considers there to be no conflict of interest for the Treasurer to serve as Treasurer of the Board after having served as Monitor of the Commission.

12. **Termination of Prior Contract.** The parties by mutual agreement hereby terminate their "Part-Time Treasurer's Contract" which commenced on April 15, 2013, such termination to be effective simultaneously with the commencement date of this Contract, November 1, 2013, as authorized by a duly adopted resolution of the Board.

13. **Other Provisions.**

   A. This Contract shall be subject to, and construed according to the laws of the State of Ohio, and represents the entire understanding between the parties, containing all of the terms agreed upon by the parties. Any item or section hereof declared invalid or
unenforceable by a court of competent jurisdiction shall be severed, and the remaining terms shall continue in full force and effect.

B. The Contract may be modified by the parties. Any modification must be in writing, signed by all parties and approved by proper resolution of the Board.

C. This Contract contains the entire Contract between the parties, and any purported Contract not contained herein, either express or implied, shall not be recognized.

WHEREFORE, the parties or their duly authorized representatives have indicated their acceptance of the foregoing terms by signing this Contract below.

TREASURER:

________________________________________
James Reinhard, Treasurer
Date: ________________________________

BOARD of EDUCATION
YOUNGSTOWN CITY SCHOOL DISTRICT

By: ______________________________________________________________________
Richard Atkinson, President

By: ______________________________________________________________________
Michael Murphy, Board Member and Chair of Finance Committee
Date: ________________________________
The Public Schools
Youngstown, Ohio
Office of the Superintendent

RESOLUTION NO. 238-13

RESOLUTION TO ADOPT POLICY
ON FMLA LEAVE (Administration)

WHEREAS, the Board of Education of the Youngstown City School District, pursuant to 29U.S.C. 2601 et. seq., (as amended), 29 C.F.R. part 825, and 45 C.F.R. Part 160, 164, desires to enforce the laws and regulations regarding the Family and Medical Leave Act of 1993, as amended; and

WHEREAS, the Superintendent has developed and recommended to the Board of the attached policy entitled, "FMLA Leave."

NOW, THEREFORE, BE IT RESOLVED, by the Board of Education of the Youngstown City School District that the policy entitled, "FMLA Leave," recommended by the Superintendent, a copy of which is attached hereto and incorporated herein by this reference, is hereby ratified, approved and adopted by this Board.

_________________________ moved, seconded by ________________________ that the foregoing resolution be adopted.

Ayes:
Nays:

11/04/13
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 [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 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. A period of incapacity related to pregnancy need not involve a visit to the healthcare provider for each absence, and the absence need not last 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. [NOTE: If the essential job functions are not provided at this time, they must be provided with the Designation Notice Form.] 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 an eligible husband and wife 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 husband and wife 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 husband and wife 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 an eligible husband and wife 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:
The Public Schools
Youngstown, Ohio
Office of the Superintendent

RESOLUTION NO. 239-13

RESOLUTION TO APPROVE REVISED POLICY
ON FMLA LEAVE (Professional Staff)

WHEREAS, the Board of Education of the Youngstown City School District, pursuant to 29 U.S.C. 2601 et. seq., (as amended), 29 C.F.R. part 825, and 45 C.F.R. Part 160, 164, adopted a policy to enforce laws and regulations regarding the Family and Medical Leave Act of 1993, as amended; and

WHEREAS, the Board has caused its policy to be reviewed by the Superintendent and his designees to obtain a recommendation as to updating such policy with revisions as are necessary and appropriate; and

WHEREAS, the Superintendent has recommended that the Board adopt the revised policy entitled, “FMLA Leave” at Section 3430.01 of its Policy Manual.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Education of the Youngstown City School District hereby ratifies, approves and adopts the revised policy entitled “FMLA Leave” a copy of which is attached hereto and made a part hereof by this reference.

_____________________________ moved, seconded by ____________________ that the foregoing resolution be adopted.

Ayes:
Nays:

11/04/13
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 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. A period of incapacity related to pregnancy need not involve a visit to the healthcare provider for each absence, and the absence need not last 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. [NOTE: If the essential job functions are not provided at this time, they must be provided with the Designation Notice Form.] 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 an eligible husband and wife 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 husband and wife 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 husband and wife 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 an eligible husband and wife 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:
The Public Schools
Youngstown, Ohio
Office of the Superintendent

RESOLUTION NO. 240-13

RESOLUTION TO APPROVE REVISED POLICY
ON FMLA LEAVE (Classified Staff)

WHEREAS, the Board of Education of the Youngstown City School District, pursuant to 29 U.S.C. 2601 et. seq., (as amended) 29 C.F.R. part 825, and 45 C.F.R. Part 160, 164 adopted a policy to enforce laws and regulations regarding the Family and Medical Leave Act of 1993, as amended; and

WHEREAS, the Superintendent has caused its policy to be reviewed by the Superintendent and his designees to obtain a recommendation as to updating such policy with revisions as are necessary and appropriate; and

WHEREAS, the Superintendent has recommended that the Board adopt the revised policy entitled "FMLA Leave" at Section 4430.01 of its Policy Manual.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Education of the Youngstown City School District hereby ratifies, approves and adopts the revised policy entitled "FMLA Leave," a copy of which is attached hereto and made a part hereof by this reference.

_______________________ moved, seconded by ____________________ that the foregoing resolution be adopted.

Ayes:
Nays:

11/04/13
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 [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 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. A period of incapacity related to pregnancy need not involve a visit to the healthcare provider for each absence, and the absence need not last 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 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. [NOTE: If the essential job functions are not provided at this time, they must be provided with the Designation Notice Form.] 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 an eligible husband and wife 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 husband and wife 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 husband and wife 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 an eligible husband and wife 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
Revised: 3/8/11
Revised:
RESOLUTION TO APPROVE REVISED POLICY ON HEALTH SERVICES

WHEREAS, the Board of Education of the Youngstown City School District, pursuant to R.C. 2305.231, 3313.50, 3313.68 et. seq., A.C. 3301-35.03(D), and 20 U.S.C. 1232 (h), adopted a policy that may require students of the District to submit to periodic health examinations; and

WHEREAS, the Board has caused its policy to be reviewed by the Superintendent and his designees to obtain a recommendation as to updating such policy with revisions as are necessary and appropriate; and

WHEREAS, the Superintendent has recommended that the Board adopt the revised policy entitled, “Health Services” at Section 5310 of its Policy Manual.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Education of the Youngstown City School District hereby ratifies, approves and adopts the revised policy entitled “Health Services,” a copy of which is attached hereto and made a part hereof by this reference.

[Signature]

moved, seconded by [Signature] that the foregoing resolution be adopted.

Ayes:
Nays:

11/04/13
HEALTH SERVICES

The Board of Education may require students of the District to submit to periodic health examinations to:

A. protect the school community from the spread of communicable disease;

B. verify that each student's participation in health, safety, and physical education courses meets his/her individual needs;

C. verify that the learning potential of each child is not lessened by a remediable physical disability.

The District may provide or request parents to provide:

A. general physical examinations for athletics;

B. dental examinations;

C. tests for communicable disease;

D. vision and/or audiometric screening;

E. scoliosis tests.

The Board shall directly notify the parents of students, at least annually at the beginning of the school year, of the specific or approximate dates during the school year when any nonemergency, invasive physical examination or screening is scheduled or expected to be scheduled for students if the examination or screening is: (1) required as a condition of attendance; (2) administered by the school and scheduled by the school in advance; and (3) not necessary to protect the immediate health and safety of a specific student, or other students.

The term "invasive physical examination" means any medical examination that involves the exposure of private body parts, or any act during such examination that includes incision, insertion, or injection into the body, but does not include a hearing, vision, or scoliosis screening.

Unless the physical examination or screening is permitted or required by an applicable State law, parents may refuse to allow the Board to administer a nonemergency, invasive physical examination or screening upon written notification to the Board within ten (10) days after receipt of the Board's annual public notice.
Any student who has been removed from a physical education class, or athletic practice or competition, by a teacher, coach, or referee because s/he has exhibited signs, symptoms, or behaviors consistent with having sustained a concussion or head injury shall not be permitted to return to any physical education class, or athletic practice or competition, for which the teacher, coach, or referee is responsible until both of the following occur:

A. The student's condition is assessed by a physician or other healthcare provider authorized by the Board, in accordance with requirements set forth in R.C. 3313.539(E)(2), to assess such a student.

B. The student receives written clearance that it is safe to return to physical education class, or athletic practice or competition, from a physician or other healthcare provider authorized by the Board, in accordance with requirements set forth in R.C. 3313.539(E)(2) to grant such a clearance.

R.C. 2305.231, 3313.50, 3313.68 et seq., 3313.539
A.C. 3301-35-03 (D)
20 U.S.C. 1232(b)

Adopted: 8/24/04
Revised: 3/28/06
RESOLUTION NO. 242-13

RESOLUTION TO APPROVE REVISED POLICY ON STUDENT ACCIDENTS

WHEREAS, the Board of Education of the Youngstown City School District, pursuant to R.C.2305.23 (Good Samaritan) and 3313.20, adopted a policy to enforce the laws and regulations regarding student accidents; and

WHEREAS, the Board has caused its policy to be reviewed by the Superintendent and his designees to obtain a recommendation as to updating such policy with revisions as are necessary and appropriate; and

WHEREAS, the Superintendent has recommended that the Board adopt the revised policy entitled, "Student Accidents" at Section 5340 of its Policy Manual.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Education of the Youngstown City School District hereby ratifies, approves and adopts the revised policy entitled "Student Accidents," a copy of which is attached hereto and made a part hereof by this reference.

________________________ moved, seconded by ______________________ that the foregoing resolution be adopted.

Ayes:
Nays:

11/04/13
STUDENT ACCIDENTS

The Board of Education believes that school personnel have certain responsibilities in case of accidents which occur in school. Said responsibilities extend to the administration of first aid by persons trained to do so, summoning of medical assistance, notification of administrative personnel, notification of parents, and the filing of accident reports.

Employees should administer first aid within the limits of their knowledge of recommended practices. All employees should make an effort to increase their understanding of the proper steps to be taken in the event of an accident.

The Superintendent shall develop administrative guidelines to include the reporting of accidents, when appropriate.

On an annual basis, physical education teachers and coaches of intramural athletics shall review the Ohio Department of Health's concussion information sheet.

Physical education teachers and coaches of intramural athletics shall remove from P.E. class participation or the intramural athletic activity any student who exhibits signs, symptoms, or behaviors consistent with having sustained a concussion or head injury. The Principal shall notify parents or guardians about the possible concussion or head injury. See also Policy 2431 Interscholastic Athletics.

Any student who has been removed from a P.E. class, or intramural athletic practice or competition, by a teacher, coach, or referee because he/she has exhibited signs, symptoms, or behaviors consistent with having sustained a concussion or head injury shall not be permitted to return to any P.E. class, or intramural athletic practice or competition, for which the teacher, coach, or referee is responsible until both of the following occur:

A. The student's condition is assessed by a physician or other health care provider authorized by the Board, in accordance with requirements set forth in R.C. 3313.539(E)(2), to assess such a student.

B. The student receives written clearance that it is safe to return to the P.E. class, or intramural athletic practice or competition, from a physician or other health care provider authorized by the Board, in accordance with requirements set forth in R.C. 3313.539(E)(2), to grant a such a clearance.

R.C. 2305.23 (Good Samaritan), 3313.20, 3313.539

Adopted: 8/24/04
Revised:
The Public Schools  
Youngstown, Ohio  
Office of the Superintendent

RESOLUTION NO. 243-13

RESOLUTION TO APPROVE REvised POLICY  
ON CARE OF SCHOOL PROPERTY

WHEREAS, the Board of Education of the Youngstown City School District,  
pursuant to R.C. 2151.411, 3109.09, 3313.173, and 3313.642, adopted a policy to  
enforce the laws and regulations regarding care of school property; and

WHEREAS, the Board has caused its policy to be reviewed by the  
Superintendent and his designees to obtain a recommendation as to updating such policy  
with revisions as are necessary and appropriate; and

WHEREAS, the Superintendent has recommended that the Board adopt the  
revised policy entitled, “Care of School Property” at Section 5513 of its Policy Manual.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Education of the  
Youngstown City School District hereby ratifies, approves and adopts the revised policy  
entitled “Care of School Property,” a copy of which is attached hereto and made a part  
hereof by this reference.

_____________________________ moved, seconded by ________________________ that the  
foregoing resolution be adopted.

Ayes:
Nays:

11/04/13
CARE OF SCHOOL PROPERTY

The Board of Education believes that the schools should help students learn to respect property and develop feelings of pride in community institutions.

The Board charges each student with responsibility for the proper care of school property and the school supplies and equipment entrusted to his/her use.

Students who cause damage to school property shall be subject to disciplinary measures, and their parents shall be financially liable for such damage to the extent of the law, except that students eighteen (18) years of age or older shall also be liable for damage they cause.

The Board authorizes the imposition of fines for the loss, damage or destruction of school equipment, apparatus, musical instruments, library material, textbooks, and for damage to school buildings and reserves the right, to the extent permitted by law, to withhold a report card or credits from any student whose payment of such fine is in arrears.

The Board may report to the appropriate juvenile authorities any student whose damage of school property has been serious or chronic in nature.

The Superintendent shall develop administrative guidelines to implement this policy.

R.C. 2151.272, 2151.411, 3109.09, 3313.173, 3313.642

Adopted: 8/24/04
Revise:
DEPARTMENT OF HUMAN RESOURCES

The Public Schools
Youngstown, Ohio
Office of the Superintendent

RESOLUTION NO. 244-13

CERTIFICATED PERSONNEL:
APPOINTMENTS

RESOLVED, based upon the recommendation of the Assistant Superintendent of the Human Resources, the following appointments are being accepted for the 2013-14 school year:

APPOINTMENTS
Tutors Fund 001 – M.L. King Elementary - $22.35 per hour for YEA Members, $15.50 per hour for Non-YEA Members, not to exceed 25 hours per week:

Carla Booker

Tutors Fund 001 – Williamson Elementary - $22.35 per hour for YEA Members, $15.50 per hour for Non-YEA Members, not to exceed 25 hours per week:

Ida Carter
Veneta Thompson

Winter Sports Supplemental Contract Fund 001 – Percentages are based upon teacher’s base salary per YEA Agreement:

East High School 7-12

Sonya Cole 7th/8th Gr. Girls Basketball Coach $3,735.63 (12.5%)
Booker Newberry 7th/8th Gr. Girls Basketball Coach $3,735.63 (12.5%)

For the record: David Vagas, will be employed as a Tutor at McGuffey Elementary for the 2013-2014 school year.

__________________________moved, seconded by _________________________ that the foregoing resolution be adopted.

Ayes:  
Nays:  
11/04/13
DEPARTMENT OF HUMAN RESOURCES

The Public Schools
Youngstown, Ohio
Office of the Superintendent

RESOLUTION NO. 245-13

CERTIFICATED PERSONNEL:
APPOINTMENTS OF ADULT CAREER TECH AND DELINQUENT PROGRAMS

RESOLVED, based upon the recommendation of the Assistant Superintendent of Human Resources, the following appointments are being recommended for the 2013-14 school year:

APPOINTMENTS

Adult Career Technical Program Certified (Fund 012) - $22.05, to be used on an "as needed", not to exceed 25 hours per week:

Miquita Hosey

Neglected and Delinquent Youth Program Certified (Fund 572) - $22.05, to be used on an "as needed", not to exceed 25 hours per week:

Michael Harmon

______________ moved, seconded by __________________ that the foregoing resolution be adopted.

Ayes:
Nays:

11/04/2013
The Public Schools  
Youngstown, Ohio  
Office of the Superintendent

RESOLUTION NO. 246-13

CERTIFICATED PERSONNEL:  
APPOINTMENTS FOR SUBSTITUTE AND PERMANENT SUBSTITUTE TEACHERS

RESOLVED, based upon the recommendation of the Assistant Superintendent of Human Resources, the following appointments for substitute and permanent substitute teachers are being recommended for the 2013-14 school year:

APPOINTMENTS

Permanent Substitute Teacher (Fund 001) - To be paid $162.42 for Non-YEA members; Effective October 28, 2013:

Ronald Walcott

Permanent Substitute Teacher (Fund 001) - To be paid $162.42 for Non-YEA members; Effective November 5, 2013:

Aisha N. Butler  
Pamela Carr  
Barbara Curd  

David Ferreebee  
Margaret Palma

Substitute Teachers (Fund 001) – To be used on an “as needed basis” not to exceed 25 hours per week as follows:

- $70.00 a day or from day 1 to day 10 if in the same position
- $75.00 a day from day 11 to day 60 if in the same position
- $162.42 a day from day 61 to day 184 if in the same position

Jacqueline Brown  
Melissa D’Angelo  

Ericulo Henderson  
Alicia Lawrence
moved, seconded by ___________________ that the
foregoing resolution be adopted.

Ayes:
Nays

11/04/13
RESOLUTION NO. 247-13

CERTIFICATED PERSONNEL:
LEAVE OF ABSENCE AND RESIGNATION

RESOLVED, based upon the recommendation of the Assistant Superintendent of the Human Resources, the following leave of absence and resignation are being accepted for the 2013-14 school year:

LEAVES OF ABSENCE

Pursuant to the agreement with Youngstown Education Association (YEA) and the Board of Education, the following leaves of absence will be concurrent with the provisions of the Family and Medical Leave Act (FMLA) of 1993:

Kathy J. Houser-McGee      Ext. Medical       Eff. 11/06/13 through 01/03/14

Supplemental-Tutor

Mary Muldoon        Personal Reasons        Eff. 10/25/13

RESIGNATION

Mr. Richard Istenick previously retired under STRS from the East Palestine School System. As a retired teacher, Mr. Istenick subsequently worked for the Youngstown City School District as a Science Teacher. On August 1, 2013, Mr. Istenick submitted a letter stating that he would no longer be teaching for the Youngstown City School District.

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

Ayes:
Nays:

11/04/13
DEPARTMENT OF HUMAN RESOURCES

The Public Schools
Youngstown, Ohio
Office of the Superintendent

RESOLUTION NO. 248-13

CLASSIFIED PERSONNEL:
APPOINTMENTS AND RETIREMENTS

RESOLVED, based upon the recommendation of the Assistant Superintendent of Human Resources, the following appointments and retirements are being recommended for the 2013-14 school year:

APPOINTMENTS

Crossing Guard - (Fund 001) - $8.17 per hour; became effective September 3, 2013

Frank Garcia

Glenna Palmer

Substitute Security - (Fund 001) - $23.31 per hour; to be used on an “as needed” basis, not to exceed 25 hours per week:

Tracy Brown

William A. Morvay

Substitute Cook Helper - (Fund 006) - $7.85 per hour; to be used on an “as needed” basis, not to exceed 25 hours per week:

Dominique Iannucci

Substitute Bus Driver - (Fund 001) - $11.00 per hour; to be used on an “as needed” basis not to exceed 25 hours per week:

Francine Jackson
DEPARTMENT OF HUMAN RESOURCES

RETIREMENTS

Custodian

Andrew F. Malloy, Jr.  Retirement  Effective 1/01/14

Secretary

Charlette Copanic  Retirement  Effective 11/01/13

_________________________ moved, seconded by ___________________________ that the
foregoing resolution be adopted.

Ayes:
Nays

11/04/13