

1 All eligible employees will be provided leave as required by the federal Family and Medical
2 Leave Act of 1993 (FMLA), as amended, and applicable state laws and State Board of Education
3 policies. The FMLA allows eligible employees to take job-protected, unpaid leave, or to
4 substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12
5 workweeks (or 26 workweeks in certain cases) in any 12-month period for certain qualifying
6 conditions or events. The employee may continue to participate in the school system's group
7 insurance plan while on FMLA leave.

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9 This policy is intended for guidance only and is not intended to alter or expand the school
10 system's responsibilities beyond the requirements of law. If any provision of this policy is
11 inconsistent with federal law or regulation, the federal rule must take precedence. The
12 superintendent is authorized to develop additional regulations for FMLA leave consistent with
13 the requirements of the law and this policy. Employees can find more information about FMLA
14 leave in the *North Carolina Public Schools Benefits and Employment Policy Manual*.

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16 The [Transylvania County Board of Education \(the "board"\)](#) strictly prohibits interfering with,
17 restraining, or denying the ability of any employee to exercise any right provided by the FMLA.
18 The board also strictly prohibits any type of discrimination against or discharge of an employee
19 who has filed a complaint in regard to the FMLA. A copy of this policy will be provided to each
20 employee upon hiring.

21 22 **A. DEFINITIONS**

23 24 **1. Serious Health Condition**

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26 A serious health condition is an illness, injury, impairment, or physical or mental
27 condition that involves either an overnight stay in a medical care facility or
28 continuing treatment by a health care provider for a condition that either prevents
29 the employee from performing the functions of the employee's job or prevents the
30 qualified family member from participating in school or other daily activities.

31 32 **2. Continuing Treatment**

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34 Subject to certain conditions, the continuing treatment requirement in the above
35 definition of "serious health condition" may be met by a period of incapacity of
36 more than three consecutive calendar days combined with at least two visits to a
37 health care provider or one visit and a regimen of continuing treatment or
38 incapacity due to pregnancy or a chronic condition. Other conditions may meet
39 the definition of continuing treatment.

40 41 **3. Other Terms**

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43 Unless otherwise noted, all terms in this policy must be defined in accordance
44 with 29 C.F.R. pt. 825.

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B. ELIGIBILITY

Generally, employees are eligible for unpaid FMLA leave if they have:

1. been employed by the school system for at least 12 months (not necessarily consecutively); and
2. worked at least 1,250 hours during the previous 12 months.

Further information about these requirements can be found in the Code of Federal Regulations at 29 C.F.R. 825.110.

C. QUALIFYING CONDITIONS

Except in cases of leave to care for a covered servicemember with a serious illness or injury, an eligible employee is entitled to a total of 12 workweeks of FMLA leave during any 12-month period for any one or more of the following reasons:

1. the birth and first-year care of the employee's child;
2. adoption or foster placement of a child with the employee;
3. a serious health condition of the employee or the employee's spouse, child, or parent;
4. a qualifying exigency (see Section F) arising out of the fact that the spouse or a son, daughter, or parent of the employee has been deployed, or is on notice of an impending deployment to a foreign country as a member of the regular Armed Forces on active duty or as a member of the Reserve components of the Armed Forces under a federal call or order to active duty in support of a contingency operation; or
5. to care for a covered servicemember with a serious illness or injury ("covered servicemember" and "serious injury or illness" are defined in federal regulation 29 C.F.R. 825.127). An employee who is a spouse, son, daughter, parent, or next of kin of the servicemember may take leave for a period of up to 26 workweeks under this provision.

D. DETERMINING THE 12-MONTH LEAVE PERIOD

The 12-month period during which an employee is eligible for FMLA leave will be from July 1 to June 30. Exception: The period for leave to care for a covered servicemember

88 with a serious injury or illness begins on the first day the employee takes leave for this
89 reason and ends 12 months later.

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91 **E. ENTITLEMENT TO LEAVE**

92 Eligible employees may take leave as follows:

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- 95 1. **Medical leave for serious health conditions:** A combined total of 12 workweeks
96 during a 12-month period. The leave may be taken intermittently or on a reduced
97 leave schedule as is medically necessary.
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 - 99 2. **Family leave for pregnancy, birth of a child, or placement of a child for
100 foster care or adoption:** A combined total of 12 consecutive workweeks during a
101 12-month period. Eligibility for FMLA leave expires 12 months from the birth,
102 foster care placement, or adoption of the child. Leave must be used in a single
103 block of time unless the board agrees to another arrangement.
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 - 105 3. **Military service exigency:** A combined total of 12 workweeks during a 12-month
106 period. The leave may be taken intermittently or on a reduced leave schedule.
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 - 108 4. **Leave to care for injured servicemember:** A combined total of no more than 26
109 workweeks during a single 12-month period. The leave may be taken
110 intermittently or on a reduced leave schedule. If combined with other types of
111 FMLA leave, the total leave taken in a single 12-month period still may not
112 exceed 26 weeks.
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 - 114 5. **Spouses employed by the school system:** Spouses who are both employed by the
115 school system and eligible for FMLA leave are limited in the amount of family
116 leave they may take for the birth and care of a newborn child, for the placement of
117 a child for adoption or foster care, or to care for a parent who has a serious health
118 condition to a combined total of 12 weeks (or 26 weeks if leave to care for a
119 covered servicemember with a serious injury or illness is also used).
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121 **F. QUALIFIED MILITARY SERVICE EXIGENCIES**

122 A military service exigency that qualifies for FMLA leave must be defined in accordance
123 with federal regulations. Qualified exigencies may include:

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- 126 1. short-notice deployment;
 - 127 2. military events and related activities;
 - 128 3. school and childcare activities;
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- 132 4. financial and legal arrangements;
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- 134 5. counseling;
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- 136 6. rest and recuperation leave;
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- 138 7. post-deployment activities;
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- 140 8. parental care; and
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- 142 9. additional activities agreed upon by the board and employee.
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144 **G. INTERMITTENT OR REDUCED WORK SCHEDULE**

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- 146 1. An employee may take FMLA leave on an intermittent or reduced leave schedule
- 147 as required for the health of the employee or family member, due to a qualifying
- 148 exigency, or as otherwise approved by the superintendent. The employee must
- 149 make a reasonable effort to schedule treatment so as not to disrupt unduly the
- 150 operations of the school. Whenever possible, the employee should discuss
- 151 scheduling with his or her immediate supervisor prior to scheduling any medical
- 152 treatment in order to accommodate the work schedule.
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- 154 2. An employee who requests intermittent or reduced leave time for medical
- 155 treatment of a serious health condition may be required to give the reasons for the
- 156 intermittent or reduced leave schedule and the schedule for treatment.
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- 158 3. To better accommodate an employee's need for intermittent or reduced leave for a
- 159 serious health condition, the school system may require an employee to take an
- 160 alternative position during the period of leave. The alternative position must have
- 161 equal pay and benefits, but it does not have to have equivalent duties.
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- 163 4. Employees may take intermittent leave in increments of one hour.
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- 165 5. Instructional personnel are subject to special rules for taking intermittent or
- 166 reduced leave. (See Section H.)
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168 **H. INSTRUCTIONAL PERSONNEL**

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170 The following special rules apply to instructional personnel only. For the purposes of
171 this policy, instructional personnel are teachers, athletic coaches, driving instructors,
172 special education assistants, and any other employees whose principal function is to teach
173 and instruct students.

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- 175 1. **Use of Intermittent or Reduced Schedule Leave**

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- a. Instructional employees may use intermittent or reduced schedule leave only when the employee and the school system have reached an agreement on how the leave will be used.
 - b. If an instructional employee requests intermittent or reduced schedule leave for more than 20 percent of the workdays of the duration of a leave due to medical treatment, the school system may require the employee to take continuous leave for up to the entire duration of the scheduled leave or to transfer to an alternative position with equivalent pay and benefits for the period of leave.
 - c. Instructional employees who take intermittent or reduced schedule leave that constitutes 20 percent or less of the workdays during the leave period are not subject to transfer to an alternative position.

192 **2. Extension of FMLA Leave at School System Discretion**

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194 The school system may require instructional personnel to continue leave through
195 the end of the school semester if any of the following conditions exist:

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- a. the leave will begin more than five weeks before the end of the term; the leave will last at least three weeks; and the employee would return to work in the last three weeks of the academic term;
 - b. the leave is for a purpose other than the employee's own serious health condition or for a military exigency; the leave will begin in the last five weeks of the term; the leave will last more than two weeks; and the employee would return to work during the last two weeks of the academic term; or
 - c. the leave is for a purpose other than the employee's own serious health condition or for a military exigency; the leave will begin in the last three weeks of the term; and the leave will last at least five days.

211 If the school system requires an instructional employee to take leave until the end
212 of the academic term, only the period of leave until the employee is ready and
213 able to return to work will be charged against the employee's FMLA entitlement.

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215 **I. EMPLOYEE'S RESPONSIBILITY WHEN REQUESTING LEAVE**

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217 To ensure that employees receive proper notification of their rights and responsibilities
218 and that leave is properly designated, all employees requesting any type of leave must
219 make the request to the [assistant superintendent director](#) of human resources or designee.

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1. **Employee’s Responsibilities When Leave is Foreseeable**

- a. The employee must provide 30 days’ advance notice of the need to take FMLA leave when the need is foreseeable. If this amount of notice is not possible, then notice must be given as soon as practicable, taking into account all of the facts and circumstances.
- b. The employee must provide sufficient information for the school system reasonably to determine (1) whether the FMLA may apply to the leave request and (2) the anticipated timing and duration of the leave. This information would include, for example, notice that the employee is unable to perform job functions, notice that the family member is unable to perform daily activities, notice of the need for hospitalization or continuing treatment by a health care provider, or notice of circumstances supporting the need for military family leave.
- c. If the employee does not provide 30 days’ notice and there is no reasonable justification for the delay, the school system may delay the FMLA leave until at least 30 days after the employee provides notice of the need for FMLA leave.
- d. If an instructional employee fails to give the required notice of foreseeable leave for an intermittent or reduced leave schedule, the school system may require the employee to take continuous leave for the duration of his or her treatment or may temporarily transfer the employee to an alternative position for which the employee is qualified and that has the same benefits. (See Section H.)

2. **Employee’s Responsibilities When Leave is Not Foreseeable**

- a. When leave is not foreseeable, the employee must comply with the usual school system procedures for notifying his or her supervisor of the absence and requesting leave, including any applicable requirements established by policy 7510, Leave. If the employee fails to do so, the leave may be delayed or denied.
- b. When giving notice of an absence, the employee must inform the supervisor if the requested leave is for a reason for which FMLA leave was previously taken or certified.
- c. The employee also must notify the ~~assistant superintendent~~ director of human resources or designee of the need for FMLA leave as soon as practicable.

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265 d. All employee responsibilities in the FMLA for notice, medical
266 certification, fitness for duty certification, and notice of intent to return to
267 work apply as specified in this policy and policy 7510.
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269 **J. SCHOOL SYSTEM'S DESIGNATION AND NOTICE TO EMPLOYEE**
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271 1. Whether or not the employee specifically requests FMLA leave, the ~~assistant~~
272 ~~superintendent~~ director of human resources or designee is responsible for asking
273 any questions of the employee necessary to make a determination of whether the
274 leave is FMLA-eligible, unless the employee has already requested and received
275 FMLA leave or certification for the same condition or event. The ~~assistant~~
276 ~~superintendent~~ director of human resources may require the employee to provide
277 notice of the need and the reason for leave.
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279 2. The ~~assistant superintendent for~~ director of human resources or designee shall
280 provide all legally-required notices to the employee within five days of receiving
281 this information or otherwise learning that an employee's leave may be for an
282 FMLA-qualifying reason, unless there is a justifiable delay, such as a delay for
283 documentation.
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285 The required notices must indicate whether the employee is eligible under the
286 FMLA. If the employee is eligible, the notice must specify any additional
287 information required from the employee and must explain the employee's rights
288 and responsibilities under the FMLA. If the employee is not eligible, the notice
289 must provide a reason for the ineligibility. The required notices also must state
290 whether the leave will be designated as FMLA-protected and, if so, the amount of
291 leave that will be counted against the employee's leave entitlement.
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293 3. Leave may be designated as both FMLA-eligible and as leave under the school
294 system's paid leave policy if paid leave has been substituted. Such leave would
295 be counted toward the employee's 12-week FMLA entitlement. In addition, the
296 ~~assistant superintendent~~ director of human resources may designate an absence
297 (taken as paid or unpaid leave) that meets the criteria for an FMLA-qualifying
298 absence as part of the employee's total FMLA entitlement, whether or not the
299 employee has requested FMLA leave. (See Section M.)
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301 4. Leave that has been taken for an FMLA-qualifying reason may be retroactively
302 designated as FMLA leave with appropriate notice to the employee, provided that
303 such designation does not cause harm or injury to the employee.
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305 **K. CERTIFICATION**
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307 The school system reserves the right to require employees to provide certification of any
308 FMLA-qualifying event or condition of the employee or the employee's spouse, child,
309 parent or next of kin, including certification for military exigency leave. The school
310 system will not request more medical certification information than that allowed by the
311 FMLA and the Americans with Disabilities Act. The ~~assistant superintendent~~ **director of**
312 **human resources** may request a second or third opinion at the school system's expense if
313 reason to doubt the validity of a medical certification exists. The school system may
314 require periodic recertification to support the leave, as permitted by law.
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316 **L. RETURN TO WORK**

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318 The school system may require an employee to periodically report on his or her status
319 and intent to return to work. Any employee who is taking leave through the end of an
320 academic semester must report on his or her intent to return to work no later than four
321 weeks before the end of the academic semester. In addition, the school system may
322 require the employee to report on his or her intent to return to work on a regular basis
323 while on FMLA leave.
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325 Before an employee returns to work from FMLA leave taken for the employee's own
326 serious health condition, the employee must present a "fitness-for-duty" certification that
327 states that the employee is able to return to work. This requirement does not apply to an
328 employee taking intermittent leave unless the employee's condition presents a reasonable
329 safety concern.
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331 **M. SUBSTITUTION OF PAID LEAVE**

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333 1. The school system will substitute appropriate paid leave, including sick leave,
334 personal leave, and vacation time for unpaid, FMLA leave to the extent allowed
335 by law and policy, giving proper notice to the employee that the leave is
336 designated as FMLA. If an employee has exhausted his or her accrued paid leave
337 but an FMLA-qualifying reason for absence continues, the school system will
338 designate resulting absences as protected FMLA leave until the employee has
339 used all allowable FMLA leave. Such absences will be unpaid.
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341 2. When an employee has an absence (taken as paid or unpaid leave) that meets the
342 criteria for an FMLA-qualified absence, the school system may, with proper
343 notice to the employee, designate the absence as part of the employee's total
344 annual FMLA entitlement. If the absence continues for more than 10 days, all
345 employee responsibilities in the FMLA to provide notice for foreseeable and
346 unforeseeable leave, medical certification, fitness for duty certification, and notice
347 of intent to return to work apply as specified in this policy and policy 7510.
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- 349 3. An employee must not be permitted to exhaust paid leave before beginning
350 FMLA leave if it has been determined that the employee's reason for using paid
351 leave meets the FMLA eligibility requirements.
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353 **N. RESTORATION TO EQUIVALENT POSITION**

354 **1. Generally**

355 Employees, except "key" employees, will be restored to the same or an equivalent
356 position upon return from FMLA leave.
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359 The equivalent position will have virtually identical pay, benefits, and working
360 conditions, including privileges, perquisites, and status, as the position the
361 employee held prior to the leave. The position also must involve substantially
362 similar duties and responsibilities, which must entail substantially equivalent skill,
363 effort, responsibility, and authority. All positions within the same job
364 classification are considered "equivalent positions" for the purposes of this policy,
365 so long as these conditions are met. For licensed employees, all positions with the
366 same salary and licensure requirements also will be considered equivalent
367 positions, so long as these conditions are met.
368

369 **2. Key Employees**

370 Key employees do not have the right to be restored to the same or an equivalent
371 position upon their return from FMLA leave. Key employees are salaried FMLA-
372 eligible employees who are among the highest paid 10 percent of all employees.
373 If restoring a key employee would result in substantial and grievous economic
374 injury to the school system, then the school system has no obligation to restore the
375 employee to the same or an equivalent position.
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378 An employee will be informed at the time leave is taken if he or she is considered
379 a key employee and will be informed once a determination is made that the
380 employee will not be restored to the same or an equivalent position upon return
381 from FMLA leave. A key employee who has been informed that he or she will
382 not be restored still has the right to health benefits for the full period in which he
383 or she is eligible for FMLA leave.
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385 **O. CONTINUATION OF HEALTH BENEFITS**

386 Health care coverage and benefits will be continued for the duration of an employee's
387 FMLA leave on the same conditions as would have been provided if the employee had
388 continued working. Employees do not have the right to the accrual of earned benefits
389 during FMLA leave. If an employee takes intermittent or reduced leave, he or she has the
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392 right to maintain the same health care benefits, but earned benefits may be reduced in
393 proportion to hours worked when such a reduction is normally based upon hours worked.
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395 The school system may recover from the employee the cost of health insurance premiums
396 paid on behalf of the employee while the employee was on unpaid FMLA leave if the
397 employee does not return to work after the leave, so long as the reason for not returning
398 does not relate to a serious health condition or to circumstances beyond his or her control.
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400 **P. POSTING REQUIREMENT**

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402 The superintendent or designee shall ensure that notices of FMLA provisions and
403 information on procedures for filing complaints are posted in places that are readily
404 accessible to employees and applicants.
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406 **Q. RECORDKEEPING REQUIREMENT**

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408 The personnel department shall maintain records of the following information for at least
409 three years: basic payroll and identifying employee data, the dates (or hours) of FMLA
410 leave taken by each employee, and premium payments of employee benefits. Medical
411 information, such as that relating to medical certifications, also will be maintained in the
412 personnel department in confidential medical records.
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414 The ~~assistant superintendent~~ director of human resources will maintain for at least three
415 years copies of employee notices, including general and specific notices, any other
416 documents describing employee benefits or policies, and records of disputes between the
417 school system and any employee regarding designation of FMLA leave.
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419 **R. ENFORCEMENT**

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421 An employee may file a complaint with the U.S. Department of Labor or bring a private
422 lawsuit against the school system for violations of the FMLA.
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424 FMLA does not affect any federal or state law prohibiting discrimination or supersede
425 any state or local law that provides greater family or medical leave rights.
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427 **S. OUTSIDE EMPLOYMENT/FALSIFICATION OF RECORDS**

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429 The school system may deny FMLA benefits to an employee who engages in self-
430 employment or employment for any employer while on continuous leave if the employee
431 fraudulently obtained FMLA leave. Falsification of records and failure to correct records
432 known to be false are violations of this policy and will result in discipline, which may
433 include termination from employment.
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435 Legal References: Americans With Disabilities Act, 42 U.S.C. 12101 *et seq.*; Family and
436 Medical Leave Act of 1993, as amended, 29 U.S.C. 2601 *et seq.*; 29 C.F.R. pt. 825; National
437 Defense Authorization Act for 2008, Pub. L. 110-181 sec. 585; *North Carolina Public Schools*
438 *Benefits and Employment Policy Manual* (N.C. Dept. of Public Instruction, current version),
439 available at <http://www.ncpublicschools.org/district-humanresources/key-information>

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441 Cross References: Leave (policy 7510)

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443 Adopted:

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