

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*.

15
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.

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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

42
43 Unless otherwise noted, all terms in this policy must be defined in accordance
44 with 29 C.F.R. pt. 825.

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: that~~ the period for leave to care for a covered servicemember with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later.

E. ENTITLEMENT TO LEAVE

Eligible employees may take leave as follows:

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

F. QUALIFIED MILITARY SERVICE EXIGENCIES

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

1. short-notice deployment;
2. military events and related activities;
3. school and childcare activities;
4. financial and legal arrangements;
5. counseling;

- 133 6. rest and recuperation leave;
134
135 7. post-deployment activities;
136
137 8. parental care; and
138
139 9. additional activities agreed upon by the board and employee.
140

141 **G. INTERMITTENT OR REDUCED WORK SCHEDULE**
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- 143 1. An employee may take FMLA leave on an intermittent or reduced leave schedule
144 as required for the health of the employee or family member, due to a qualifying
145 exigency, or as otherwise approved by the superintendent. The employee must
146 make a reasonable effort to schedule treatment so as not to disrupt unduly the
147 operations of the school. Whenever possible, the employee should discuss
148 scheduling with his or her immediate supervisor prior to scheduling any medical
149 treatment in order to accommodate the work schedule.
150
151 2. An employee who requests intermittent or reduced leave time for medical
152 treatment of a serious health condition may be required to give the reasons for the
153 intermittent or reduced leave schedule and the schedule for treatment.
154
155 3. To better accommodate an employee's need for intermittent or reduced leave for a
156 serious health condition, the school system may require an employee to take an
157 alternative position during the period of leave. The alternative position must have
158 equal pay and benefits, but it does not have to have equivalent duties.
159
160 4. Employees may take intermittent leave in increments of one hour.
161
162 5. Instructional personnel are subject to special rules for taking intermittent or
163 reduced leave. (See Section H.)
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165 **H. INSTRUCTIONAL PERSONNEL**
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167 The following special rules apply to instructional personnel only. For the purposes of
168 this policy, instructional personnel are teachers, athletic coaches, driving instructors,
169 special education assistants, and any other employees whose principal function is to teach
170 and instruct students.
171

- 172 1. Use of Intermittent or Reduced Schedule Leave
173
174 a. Instructional employees may use intermittent or reduced schedule leave
175 only when the employee and the school system have reached an agreement
176 on how the leave will be used.

177 b. If an instructional employee requests intermittent or reduced schedule
 178 leave for more than 20 percent of the workdays of the duration of a leave
 179 due to medical treatment, the school system may require the employee to
 180 take continuous leave for up to the entire duration of the scheduled leave
 181 or to transfer to an alternative position with equivalent pay and benefits for
 182 the period of leave.

183
 184 c. Instructional employees who take intermittent or reduced schedule leave
 185 that constitutes 20 percent or less of the workdays during the leave period
 186 are not subject to transfer to an alternative position.

187
 188 2. Extension of FMLA Leave at School System Discretion

189
 190 The school system may require instructional personnel to continue leave through
 191 the end of the school semester if any of the following conditions exist:

192
 193 a. the leave will begin more than five weeks before the end of the term; the
 194 leave will last at least three weeks; and the employee would return to work
 195 in the last three weeks of the academic term;

196
 197 b. the leave is for a purpose other than the employee’s own serious health
 198 condition or for a military exigency; the leave will begin in the last five
 199 weeks of the term; the leave will last more than two weeks; and the
 200 employee would return to work during the last two weeks of the academic
 201 term; or

202
 203 c. the leave is for a purpose other than the employee’s own serious health
 204 condition or for a military exigency; the leave will begin in the last three
 205 weeks of the term; and the leave will last at least five days.

206
 207 If the school system requires an instructional employee to take leave until the end
 208 of the academic term, only the period of leave until the employee is ready and
 209 able to return to work will be charged against the employee’s FMLA entitlement.

210
 211 **I. EMPLOYEE’S RESPONSIBILITY WHEN REQUESTING LEAVE**

212
 213 To ensure that employees receive proper notification of their rights and responsibilities
 214 and that leave is properly designated, all employees requesting any type of leave must
 215 make the request to the director of human resources or designee.

216
 217 1. Employee’s Responsibilities When Leave is Foreseeable

218
 219 a. The employee must provide 30 days’ advance notice of the need to take
 220 FMLA leave when the need is foreseeable. If this amount of notice is not

- 221 possible, then notice must be given as soon as practicable, taking into
222 account all of the facts and circumstances.
223
- 224 b. The employee must provide sufficient information for the school system
225 reasonably to determine (1) whether the FMLA may apply to the leave
226 request and (2) the anticipated timing and duration of the leave. This
227 information would include, for example, notice that the employee is
228 unable to perform job functions, notice that the family member is unable
229 to perform daily activities, notice of the need for hospitalization or
230 continuing treatment by a health care provider, or notice of circumstances
231 supporting the need for military family leave.
232
- 233 c. If the employee does not provide 30 days' notice and there is no
234 reasonable justification for the delay, the school system may delay the
235 FMLA leave until at least 30 days after the employee provides notice of
236 the need for FMLA leave.
237
- 238 d. If an instructional employee fails to give the required notice of foreseeable
239 leave for an intermittent or reduced leave schedule, the school system may
240 require the employee to take continuous leave for the duration of his or her
241 treatment or may temporarily transfer the employee to an alternative
242 position for which the employee is qualified and that has the same
243 benefits. (See Section H.)
244
- 245 2. Employee's Responsibilities When Leave is Not Foreseeable
246
- 247 a. When leave is not foreseeable, the employee must comply with the usual
248 school system procedures for notifying his or her supervisor of the
249 absence and requesting leave, including any applicable requirements
250 established by policy 7510, Leave. If the employee fails to do so, the
251 leave may be delayed or denied.
252
- 253 b. When giving notice of an absence, the employee must inform the
254 supervisor if the requested leave is for a reason for which FMLA leave
255 was previously taken or certified.
256
- 257 c. The employee also must notify the director of human resources or
258 designee of the need for FMLA leave as soon as practicable.
259
- 260 d. All employee responsibilities in the FMLA for notice, medical
261 certification, fitness for duty certification, and notice of intent to return to
262 work apply as specified in this policy and policy 7510.
263
264

J. SCHOOL SYSTEM'S DESIGNATION AND NOTICE TO EMPLOYEE

1. Whether or not the employee specifically requests FMLA leave, the director of human resources or designee is responsible for asking any questions of the employee necessary to make a determination of whether the leave is FMLA-eligible, unless the employee has already requested and received FMLA leave or certification for the same condition or event. The director of human resources may require the employee to provide notice of the need and the reason for leave.

2. The director of human resources or designee shall provide all legally-required notices to the employee within five days of receiving this information or otherwise learning that an employee's leave may be for an FMLA-qualifying reason, unless there is a justifiable delay, such as a delay for documentation.

The required notices must indicate whether the employee is eligible under the FMLA. If the employee is eligible, the notice must specify any additional information required from the employee and must explain the employee's rights and responsibilities under the FMLA. If the employee is not eligible, the notice must provide a reason for the ineligibility. The required notices also must state whether the leave will be designated as FMLA-protected and, if so, the amount of leave that will be counted against the employee's leave entitlement.

3. Leave may be designated as both FMLA-eligible and as leave under the school system's paid leave policy if paid leave has been substituted. Such leave would be counted toward the employee's 12-week FMLA entitlement. In addition, the director of human resources may designate an absence (taken as paid or unpaid leave) that meets the criteria for an FMLA-qualifying absence as part of the employee's total FMLA entitlement, whether or not the employee has requested FMLA leave. (See Section M.)

4. Leave that has been taken for an FMLA-qualifying reason may be retroactively designated as FMLA leave with appropriate notice to the employee, provided that such designation does not cause harm or injury to the employee.

K. CERTIFICATION

The school system reserves the right to require employees to provide certification of any FMLA-qualifying event or condition of the employee or the employee's spouse, child, parent, or next of kin, including certification for military exigency leave. The school system will not request more medical certification information than that allowed by the FMLA and the Americans with Disabilities Act. The director of human resources may request a second or third opinion at the school system's expense if reason to doubt the validity of a medical certification exists. The school system may require periodic recertification to support the leave, as permitted by law.

L. RETURN TO WORK

The school system may require an employee to periodically report on his or her status and intent to return to work. Any employee who is taking leave through the end of an academic semester must report on his or her intent to return to work no later than four weeks before the end of the academic semester. In addition, the school system may require the employee to report on his or her intent to return to work on a regular basis while on FMLA leave.

Before an employee returns to work from FMLA leave taken for the employee's own serious health condition, the employee must present a "fitness-for-duty" certification that states that the employee is able to return to work. This requirement does not apply to an employee taking intermittent leave unless the employee's condition presents a reasonable safety concern.

M. SUBSTITUTION OF PAID LEAVE

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

N. RESTORATION TO EQUIVALENT POSITION

1. Generally

Employees, except "key" employees, will be restored to the same or an equivalent position upon return from FMLA leave.

353 The equivalent position will have virtually identical pay, benefits, and working
354 conditions, including privileges, perquisites, and status, as the position the
355 employee held prior to the leave. The position also must involve substantially
356 similar duties and responsibilities, which must entail substantially equivalent skill,
357 effort, responsibility, and authority. All positions within the same job
358 classification are considered “equivalent positions” for the purposes of this policy,
359 so long as these conditions are met. For licensed employees, all positions with the
360 same salary and licensure requirements also will be considered equivalent
361 positions, so long as these conditions are met.

362
363 2. Key Employees

364
365 Key employees do not have the right to be restored to the same or an equivalent
366 position upon their return from FMLA leave. Key employees are salaried FMLA-
367 eligible employees who are among the highest paid 10 percent of all employees.
368 If restoring a key employee would result in substantial and grievous economic
369 injury to the school system, then the school system has no obligation to restore the
370 employee to the same or an equivalent position.

371
372 An employee will be informed at the time leave is taken if he or she is considered
373 a key employee and will be informed once a determination is made that the
374 employee will not be restored to the same or an equivalent position upon return
375 from FMLA leave. A key employee who has been informed that he or she will
376 not be restored still has the right to health benefits for the full period in which he
377 or she is eligible for FMLA leave.

378
379 **O. CONTINUATION OF HEALTH BENEFITS**

380
381 Health care coverage and benefits will be continued for the duration of an employee’s
382 FMLA leave on the same conditions as would have been provided if the employee had
383 continued working. Employees do not have the right to the accrual of earned benefits
384 during FMLA leave. If an employee takes intermittent or reduced leave, he or she has the
385 right to maintain the same health care benefits, but earned benefits may be reduced in
386 proportion to hours worked when such a reduction is normally based upon hours worked.

387
388 The school system may recover from the employee the cost of health insurance premiums
389 paid on behalf of the employee while the employee was on unpaid FMLA leave if the
390 employee does not return to work after the leave, so long as the reason for not returning
391 does not relate to a serious health condition or to circumstances beyond his or her control.

392
393 **P. POSTING REQUIREMENT**

395 The superintendent or designee shall ensure that notices of FMLA provisions and
396 information on procedures for filing complaints are posted in places that are readily
397 accessible to employees and applicants.
398

399 **Q. RECORDKEEPING REQUIREMENT**
400

401 The ~~personnel department~~ **human resources office** shall maintain records of the following
402 information for at least three years: basic payroll and identifying employee data, the dates
403 (or hours) of FMLA leave taken by each employee, and premium payments of employee
404 benefits. Medical information, such as that relating to medical certifications, also will be
405 maintained in the ~~personnel department~~ **human resources office** in confidential medical
406 records.
407

408 The director of human resources will maintain for at least three years copies of employee
409 notices, including general and specific notices, any other documents describing employee
410 benefits or policies, and records of disputes between the school system and any employee
411 regarding designation of FMLA leave.
412

413 **R. ENFORCEMENT**
414

415 An employee may file a complaint with the U.S. Department of Labor or bring a private
416 lawsuit against the school system for violations of the FMLA.
417

418 FMLA does not affect any federal or state law prohibiting discrimination or supersede
419 any state or local law that provides greater family or medical leave rights.
420

421 **S. OUTSIDE EMPLOYMENT/FALSIFICATION OF RECORDS**
422

423 The school system may deny FMLA benefits to an employee who engages in self-
424 employment or employment for any employer while on continuous leave if the employee
425 fraudulently obtained FMLA leave. Falsification of records and failure to correct records
426 known to be false are violations of this policy and will result in discipline, which may
427 include termination from employment.
428

429 Legal References: Americans ~~W~~with Disabilities Act, 42 U.S.C. 12101 *et seq.*; Family and
430 Medical Leave Act of 1993, as amended, 29 U.S.C. 2601 *et seq.*; 29 C.F.R. pt. 825; National
431 Defense Authorization Act for 2008, Pub. L. 110-181 sec. 585; *North Carolina Public Schools*
432 *Benefits and Employment Policy Manual* (N.C. Dept. of Public Instruction, current version),
433 available at <http://www.ncpublicschools.org/district-humanresources/key-information>
434

435 Cross References: Leave (policy 7510)
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