

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.

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22 **A. DEFINITIONS**

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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.

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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, except that 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**

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93 Eligible employees may take leave as follows:

- 94
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.
98
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.
104
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.
113
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).
120

121 **F. QUALIFIED MILITARY SERVICE EXIGENCIES**

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

- 125
126 1. short-notice deployment;
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128 2. military events and related activities;
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130 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.
- 153
- 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.
- 157
- 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.
- 162
- 163 4. Employees may take intermittent leave in increments of one hour.
- 164
- 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**

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

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- 175 1. Use of Intermittent or Reduced Schedule Leave

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

191 2. Extension of FMLA Leave at School System Discretion

192
193 The school system may require instructional personnel to continue leave through

194 the end of the school semester if any of the following conditions exist:

- 195
- 196 a. the leave will begin more than five weeks before the end of the term; the
- 197 leave will last at least three weeks; and the employee would return to work
- 198 in the last three weeks of the academic term;
- 199
- 200 b. the leave is for a purpose other than the employee’s own serious health
- 201 condition or for a military exigency; the leave will begin in the last five
- 202 weeks of the term; the leave will last more than two weeks; and the
- 203 employee would return to work during the last two weeks of the academic
- 204 term; or
- 205
- 206 c. the leave is for a purpose other than the employee’s own serious health
- 207 condition or for a military exigency; the leave will begin in the last three
- 208 weeks of the term; and the leave will last at least five days.

209
210 If the school system requires an instructional employee to take leave until the end

211 of the academic term, only the period of leave until the employee is ready and

212 able to return to work will be charged against the employee’s FMLA entitlement.

213
214 **I. EMPLOYEE’S RESPONSIBILITY WHEN REQUESTING LEAVE**

215
216 To ensure that employees receive proper notification of their rights and responsibilities

217 and that leave is properly designated, all employees requesting any type of leave must

218 make the request to the director of human resources or designee.

219

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

- 263 d. All employee responsibilities in the FMLA for notice, medical
264 certification, fitness for duty certification, and notice of intent to return to
265 work apply as specified in this policy and policy 7510.
266

267 **J. SCHOOL SYSTEM'S DESIGNATION AND NOTICE TO EMPLOYEE**
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- 269 1. Whether or not the employee specifically requests FMLA leave, the director of
270 human resources or designee is responsible for asking any questions of the
271 employee necessary to make a determination of whether the leave is FMLA-
272 eligible, unless the employee has already requested and received FMLA leave or
273 certification for the same condition or event. The director of human resources
274 may require the employee to provide notice of the need and the reason for leave.
275

- 276 2. The director of human resources or designee shall provide all legally-required
277 notices to the employee within five days of receiving this information or
278 otherwise learning that an employee's leave may be for an FMLA-qualifying
279 reason, unless there is a justifiable delay, such as a delay for documentation.
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281 The required notices must indicate whether the employee is eligible under the
282 FMLA. If the employee is eligible, the notice must specify any additional
283 information required from the employee and must explain the employee's rights
284 and responsibilities under the FMLA. If the employee is not eligible, the notice
285 must provide a reason for the ineligibility. The required notices also must state
286 whether the leave will be designated as FMLA-protected and, if so, the amount of
287 leave that will be counted against the employee's leave entitlement.
288

- 289 3. Leave may be designated as both FMLA-eligible and as leave under the school
290 system's paid leave policy if paid leave has been substituted. Such leave would
291 be counted toward the employee's 12-week FMLA entitlement. In addition, the
292 director of human resources may designate an absence (taken as paid or unpaid
293 leave) that meets the criteria for an FMLA-qualifying absence as part of the
294 employee's total FMLA entitlement, whether or not the employee has requested
295 FMLA leave. (See Section M.)
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- 297 4. Leave that has been taken for an FMLA-qualifying reason may be retroactively
298 designated as FMLA leave with appropriate notice to the employee, provided that
299 such designation does not cause harm or injury to the employee.
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301 **K. CERTIFICATION**
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303 The school system reserves the right to require employees to provide certification of any
304 FMLA-qualifying event or condition of the employee or the employee's spouse, child,
305 parent, or next of kin, including certification for military exigency leave. The school
306 system will not request more medical certification information than that allowed by the

307 FMLA and the Americans with Disabilities Act. The director of human resources may
308 request a second or third opinion at the school system's expense if reason to doubt the
309 validity of a medical certification exists. The school system may require periodic
310 recertification to support the leave, as permitted by law.

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312 **L. RETURN TO WORK**

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

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

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327 **M. SUBSTITUTION OF PAID LEAVE**

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329 1. The school system will substitute appropriate paid leave, including sick leave,
330 **parental leave**, personal leave, and vacation time for unpaid, FMLA leave to the
331 extent allowed by law and policy, giving proper notice to the employee that the
332 leave is designated as FMLA. If an employee has exhausted his or her accrued
333 paid leave but an FMLA-qualifying reason for absence continues, the school
334 system will designate resulting absences as protected FMLA leave until the
335 employee has used all allowable FMLA leave. Such absences will be unpaid.

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337 2. When an employee has an absence (taken as paid or unpaid leave) that meets the
338 criteria for an FMLA-qualified absence, the school system may, with proper
339 notice to the employee, designate the absence as part of the employee's total
340 annual FMLA entitlement. If the absence continues for more than 10 days, all
341 employee responsibilities in the FMLA to provide notice for foreseeable and
342 unforeseeable leave, medical certification, fitness for duty certification, and notice
343 of intent to return to work apply as specified in this policy and policy 7510.

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345 3. An employee must not be permitted to use paid leave before beginning FMLA
346 leave if it has been determined that the employee's reason for using paid leave
347 meets the FMLA eligibility requirements.

348

349 **N. RESTORATION TO EQUIVALENT POSITION**

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351 1. Generally

352
353 Employees, except “key” employees, will be restored to the same or an equivalent
354 position upon return from FMLA leave.

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

365
366 2. Key Employees

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

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

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382 **O. CONTINUATION OF HEALTH BENEFITS**

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

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

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P. POSTING REQUIREMENT

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

Q. RECORDKEEPING REQUIREMENT

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

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

R. ENFORCEMENT

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

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

S. OUTSIDE EMPLOYMENT/FALSIFICATION OF RECORDS

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

Legal References: Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*; Family and Medical Leave Act of 1993, as amended, 29 U.S.C. 2601 *et seq.*; 29 C.F.R. pt. 825; National Defense Authorization Act for 2008, Pub. L. 110-181 sec. 585; *North Carolina Public Schools Benefits and Employment Policy Manual*, N.C. Department of Public Instruction (current version)

Cross References: Leave (policy 7510)

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