

## Policy Code: 7520 Family and Medical Leave

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

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

The board strictly prohibits interfering with, restraining or denying the ability of any employee to exercise any right provided by the FMLA. The board also strictly prohibits any type of discrimination against or discharge of an employee who has filed a complaint in regard to the FMLA. A copy of this policy will be provided to each employee upon hiring.

### A. Definitions

#### 1. Serious Health Condition

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

#### 2. Continuing Treatment

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

#### 3. Other Terms

Unless otherwise noted, all terms in this policy must be defined in accordance 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 National Guard or Reserves under a federal call or order to active duty; or
5. to care for a covered servicemember (as defined by federal law and/or regulation [29 C.F.R. 825. 127](#)) who has incurred a serious injury or illness, or aggravated an existing illness or injury, in the line of duty while on active duty in the Armed Forces, which may render the family member medically unfit to perform his or her office, grade, rank or rating. 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 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;
6. rest and recuperation leave;
7. post-deployment activities; and
8. parental care; and
9. additional activities agreed upon by the board and employee.

### **G. Intermittent or Reduced Work Schedule**

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

### **H. Instructional Personnel**

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

1. Use of Intermittent or Reduced Schedule Leave
  - 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.

## 2. Extension of FMLA Leave at School System Discretion

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

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.

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

## I. Employee's Responsibility when Requesting Leave

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

### 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 of human resources or designee of the need for FMLA leave as soon as practicable.
- d. All employee responsibilities in the FMLA for notice, medical certification, fitness for duty certification and notice of intent to return to work apply as specified in this policy and policy 7510.

## **J. School System's Designation and Notice to Employee**

1. Whether or not the employee specifically requests FMLA leave, the assistant superintendent 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 assistant superintendent may require the employee to provide notice of the need and the reason for leave.

2. The assistant superintendent for 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 assistant superintendent 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 assistant superintendent may request a second or third verification 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.

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

### **2. Key Employees**

Key employees do not have the right to be restored to the same or an equivalent position upon their return from FMLA leave. Key employees are salaried FMLA-eligible

employees who are among the highest paid 10 percent of all employees. If restoring a key employee would result in substantial and grievous economic injury to the school system, then the school system has no obligation to restore the employee to the same or an equivalent position.

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

#### **O. Continuation of Health Benefits**

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

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

#### **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 personnel department 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 personnel department in confidential medical records.

The assistant superintendent 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 (2008-2009, revised February 2009)

Cross References: Leave (policy 7510)

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## **CUMBERLAND COUNTY BOARD OF EDUCATION**

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