

Policy GBRIG: Federal Family and Medical Leave Act

Status: DRAFT

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It is the purpose of this policy to set out in summary form the provisions of the Family and Medical Leave Act ("the Act" or "FMLA") and its implementing regulations. The Board of Education ("Board") does not intend by this policy to create any additional rights to leave not provided by the Act; provided, however, the Board does wish to extend the rights of the Act to certain employees who have worked at least 12 months for the Board. The Board does intend to elect certain options as the Act authorizes. Any portion of this policy inconsistent or contrary to the Act is unintentional and shall not be given effect. As to the interpretation of this policy, the Board's employees should look to the Act itself and its regulations.

A. ELIGIBLE EMPLOYEES

Employees of the Board who have been employed by the Board for at least 12 months and who have worked at least 1250 hours during the 12 month period immediately preceding the commencement of the leave are eligible to take unpaid leave under the FMLA.

B. DEFINITIONS

"Covered Active Duty" means, for members of the regular Armed Forces, duty during deployment to a foreign country; for members of a Reserves component of the Armed Forces, duty during deployment to a foreign country under a call or order to active duty pursuant to federal law.

"Covered Servicemember" (for qualifying exigency leave) means the employee's spouse, child or parent under a federal call or order to covered active duty.

"Covered Servicemember" (for military caregiver leave) means the employee's spouse, child, parent or next of kin who is (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (2) a veteran who was a member of the Armed Forces at any time during the five years preceding the date on which the veteran undergoes such medical treatment, recuperation, or therapy.

"Instructional employee" means an employee whose principal function is to teach and instruct students in a class, a small group, or an individual setting.

"Next of Kin" of a covered servicemember means the nearest blood relative other than the covered servicemember's spouse, parent, son or daughter, in the following order of priority: blood relatives granted legal custody, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative for purposes of FMLA caregiver leave.

"Outpatient Status," with respect to a covered servicemember, means the status of a member of the Armed Forces assigned to either a military medical treatment facility as an outpatient; or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

"Parent" means a biological, adoptive, step or foster mother or father or one who acted in place of a parent when the employee was a child. The term "parent" does not include parent "in law."

"Parent of covered servicemember" means a biological, adoptive, step or foster parent or any other individual who acted in place of a parent of the covered servicemember. The term does not include parents "in law."

"Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care requiring an overnight stay in a hospital, hospice or residential medical care facility or continuing treatment by a health care provider, all as further defined in the FMLA regulations.

"Serious Injury or Illness" means, an injury or illness incurred by a covered servicemember in the line of duty on active duty (or that existed before active duty and was aggravated by line of duty active service) that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating. In the case of a veteran, "serious injury or illness" means a qualifying injury or illness, as defined by the

Secretary of Labor, incurred during or aggravated by active duty during the five years before undergoing treatment, recuperation, or therapy, and that manifested itself before or after the member became a veteran.

"Son or daughter" means a biological, adopted or foster child, a stepchild, a legal ward, or a child for whom the employee acts as a parent. The son or daughter must be under age 18 or, if the son or daughter is age 18 or older, he/she must be incapable of self-care due to a mental or physical disability at the time FMLA leave is to begin.

"Son or daughter of a covered servicemember" means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember acted in the place of a parent, and who is of any age.

"Spouse" means a husband or wife as defined or recognized under ~~Georgia law~~ the FMLA Regulations.

C. AMOUNT AND TYPE OF LEAVE TAKEN

An eligible employee may request leave for one or more of the following reasons:

1. Birth of a son or daughter and to care for the newborn child;
2. Adoption or foster placement with the employee of a son or daughter and to care for the newly placed child;
3. To care for the employee's spouse, son, daughter or parent, if that person has a serious health condition;
4. Serious health condition of the employee that prevents the employee from performing his/her job functions;
5. Any qualifying exigency arising from the fact that the employee's family member (the covered servicemember) is on covered active duty. Qualifying exigencies are defined as short-notice deployment (seven or less calendar days); military events and related activities; child care and school activities; financial and legal arrangements; counseling; rest and recuperation (up to ~~five~~ **fifteen** calendar days per instance); **parental care**; post-deployment activities; additional activities where the employer and employee agree that the leave is an exigency and agree to both timing and duration of the leave; and
6. Military caregiver leave to care for a covered servicemember with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember.

In the event of the birth, adoption or foster placement of a son or daughter, all leave must be completed within twelve months after the birth, adoption or foster placement.

Except as provided below, an employee may take up to a total of 12 weeks leave during any twelve-month period. A "rolling year" shall be used to determine the twelve-month period during which the leave entitlement may occur. That is, each time an employee takes FMLA leave, the remaining leave entitlement would be any balance of the number of weeks that has not been used during the immediately preceding 12 months. See 29 C.F.R. § 825.200(b)(4).

If both spouses work for the District and both are eligible for FMLA leave, they are authorized to take only a combined total of 12 weeks leave during any one 12 month period to care for a newborn or adopted child, a child placed with the employee for foster care, or a parent with a serious health condition. Both spouses are authorized to take leave for twelve (12) weeks to care for a spouse or child with a serious health condition.

An eligible employee is eligible to take up to 26 weeks of military caregiver leave during a "single 12-month period." The "single 12-month period" begins on the date the employee first takes military caregiver leave and ends 12 months after that date, regardless of the method used to determine the leave entitlement period for other FMLA reasons.

If both spouses work for the District and both are eligible for FMLA leave, they are authorized to take only a combined total of 26 weeks during the "single 12-month period" described above for military caregiver leave or a combination of military caregiver leave and leave taken for other FMLA reasons.

The District will require that any accrued paid leave (sick, personal, vacation, or any other paid leave) be substituted for all or a part of the otherwise unpaid FMLA leave under the terms and conditions of the District's normal leave policies. Because leave pursuant to an employee's disability benefit plan or workers' compensation absence is not unpaid, the provision for **required** substitution of accrued paid leave is not applicable in such cases.

D. INTERMITTENT OR REDUCED LEAVE

An employee may take leave on an intermittent or reduced leave schedule where it is medically necessary due to the serious health condition of a covered family member, the employee, or the serious injury or illness of a covered servicemember, or when necessary because of a qualifying exigency. The District will require a certification, in the form designated by the District, to document the necessity of such intermittent leave or reduced schedule leave.

E. NOTIFICATION OF LEAVE

If the need for FMLA leave is foreseeable, an employee requesting leave must provide at least 30 days advance notice to the Superintendent or his/her designee. If such advance notice is not possible, the employee must give notice as soon as practicable, which means as soon as both possible and practical, taking into account all of the facts and circumstances in the individual case. If an employee does not provide at least 30 days notice of foreseeable leave, he or she must explain why such notice was not practicable if so requested by the District. When the need for leave is not foreseeable, an employee must provide notice as soon as practicable, which generally should be according to the District's usual and customary leave requirements. When planning medical treatment, the employee should make a reasonable effort to schedule the treatment, subject to the approval of the health care provider, so that any corresponding leave will not disrupt unduly the operations of the District.

Employees must provide sufficient information for the District to reasonably determine whether the FMLA may apply to the leave request. When an employee seeks leave due to an FMLA-qualifying reason for which the District has previously provided FMLA leave, the employee must specifically reference either the previous qualifying reason for leave or the need for FMLA leave.

F. BENEFITS AND RETURN TO WORK

Employees will be eligible to maintain health care benefits provided by the school district while on FMLA leave. The District will pay the employer's portion, if any, of such benefits. The employee will pay the same portion, if any, of such benefits as the employee paid before beginning the leave.

The District may recover any health care benefit premiums paid on behalf of an employee if the employee does not return to work after the leave period has expired, unless the employee did not return due to a serious health condition of the employee or the employee's spouse, parent or child, or a serious injury or illness of a covered servicemember or other circumstances beyond the employee's control. The District may require certification from the health care provider that a serious health condition of the employee or family member, or the covered servicemember's serious injury or illness, prevented the employee from returning to work.

With the exception of paid vacation, personal, sick, or any other paid leave required to be substituted for unpaid leave under Section C above, the employee's absence during leave will not alter benefits which the employee accrued before taking leave. Any accrued benefits will not be lost during the leave.

Upon return from leave, the employee is entitled to be reinstated to a position equivalent to the one the employee held when he/she left on FMLA leave, with equivalent pay, benefits and other terms and conditions of employment. Upon proper notice, however, the District may deny reinstatement under this policy to an employee whose salary is in the highest 10% of the employees employed by the school district if such denial is necessary to prevent substantial and grievous economic injury to the District's operation, as determined by the District.

G. REQUIRED CERTIFICATION AND REPORTING

The District requires that a request for leave due to a serious health condition of an employee or an employee's family member or a serious injury or illness of a covered servicemember be supported by certification by the appropriate health care provider of the eligible employee or family member on a form to be provided by the District. This certification for a serious health condition must include (1) the name, address, telephone and fax numbers of the healthcare provider and type of practice/specialization; (2) the approximate

date on which the serious health condition commenced, and its probable duration; (3) a statement or description of appropriate medical facts regarding the patient's health condition for which FMLA leave is requested; (4) if the purpose of the leave is to care for a family member, a statement that the employee is needed to care for the family member and an estimate of the frequency and duration of the leave required for such care; (5) if the leave is due to the employee's own serious health condition, a statement that the employee is unable to perform his/her essential job functions, the nature of other work restrictions, and the likely duration of such inability; and (6) if intermittent or reduced schedule leave is requested, information sufficient to establish the medical necessity for the same and an estimate of the dates and duration of treatments and any periods of recovery. The employer may require that the eligible employee obtain subsequent recertification on a reasonable basis as requested by the District in accordance with the FMLA regulations.

The District, at its own expense, may obtain the opinion of a second health care provider of the District's choice, if the District should choose to do so. If a conflict exists between the opinion in the certification and the second opinion, the District may, at its own expense, obtain a third opinion from a health care provider upon which the District and the employee jointly agree. Such a third opinion as to the necessity for the leave is binding on both the District and the employee.

Upon an employee's return to work after leave for the employee's own serious health condition, the District may require the employee to obtain certification from his/her health care provider that the employee is able to resume work.

The District may require that a first request for leave because of a qualifying exigency arising from active duty or a call to active duty be supported by a copy of the covered servicemember's active duty orders or other documentation issued by the military. A certification form requesting the required information to support a request for exigency leave will be provided by the District upon request.

The District may require an employee on FMLA leave to report periodically to his/her principal or supervisor on the employee's status and intent to return to work.

H. SPECIAL PROVISIONS

When an instructional employee seeks intermittent leave or leave on a reduced schedule in connection with a family or personal serious health condition or to care for a covered servicemember that would constitute at least 20% of the total number of working days during which the leave would extend, the District may require the employee to elect to take leave in a block (not intermittently) for the entire period or to transfer to an available alternative position within the school system that is equivalent in pay, for which the employee is qualified, and which better accommodates the intermittent situation.

If an instructional employee begins leave more than five weeks before the end of a semester, the District may require the employee to continue taking leave until the end of the semester if

1. the leave will last at least three weeks; and
2. the employee would return to work during the three-week period before the end of the term.

If an instructional employee begins leave for a purpose other than the employee's own serious health condition during the five-week period before the end of the semester, the District may require the employee to continue taking leave until the end of the semester if

1. the leave will last more than two weeks; and
2. the employee would return to work during the two-week period before the end of the term.

If an instructional employee begins leave for a purpose other than the employee's own serious health condition during the three-week period before the end of a semester, and the leave will last more than five working days, the District may require the employee to continue taking leave until the end of the semester.
