

Policy Code: 7520 Family and Medical Leave

All eligible employees will be provided with leave as required by the federal Family and Medical Leave Act of 1993 (FMLA) and applicable state laws and State Board of Education policies. 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 any employee who has requested FMLA-eligible leave.

For purposes of this policy, instructional personnel are considered to be teachers, athletic coaches, driving instructors, special education assistants, instructional teacher assistants, and any other employee whose principal function is to teach and instruct students in a class, a small group, or an individual setting.

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*.

A. Entitlement to Leave

The school district will grant unpaid leave for up to 12 weeks to employees who have been employed for at least 12 months (not necessarily consecutively) and have worked at least 1,250 hours during the previous 12-month period for:

- the birth of a child of the employee and in order to care for the child. Eligibility for FMLA leave expires 12 months from the birth of the child.
- the placement of a child with the employee for adoption or foster care. Eligibility for FMLA leave expires 12 months from the foster care placement or adoption of the child.
- taking care of the spouse, child, or parent of the employee if the spouse, child, or parent has a serious health condition; or
- a serious health condition that makes the employee unable to perform the functions of the employee's position
- a qualifying exigency 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 Reserve components of the Armed Forces under a federal call or order to active duty in support of a contingency operation. This leave may be taken intermittently or on a reduced leave schedule for a combined total of 12 workweeks during a 12-month period.
- 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. This 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.

The 12-month period in which the 12 weeks of leave entitlement occurs will be a rolling 12-month period measured backward from the date an employee uses any FMLA leave. 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.

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).

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

B. 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;
8. parental care; and
9. additional activities agreed upon by the board and employee.

C. Structure of Leave

When leave is taken for the adoption or birth of a child, an employee may take leave only for a continuous period of time unless the board agrees to another arrangement. For a situation involving an employee's serious health condition or that of a family member, the employee may take leave continuously or on an intermittent or reduced leave schedule as is medically necessary. Instructional personnel 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.

- Instructional personnel may be required to continue leave through the end of the school semester if any of the following conditions exist (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).:
 - the leave is beginning more than five weeks before the end of the term; the leave will last at least three weeks; and the employee will be returning to work in the last three weeks of the academic term;
 - the leave is for a purpose other than the employee's own serious health condition or for military exigency; the leave would begin in the last five weeks of the term; the

leave will last more than two weeks; and the employee would be returning to work during the last two weeks of the academic term; or

- the leave is for a purpose other than the employee's own serious health condition or for a military exigency; the leave would begin in the last three weeks of the term, and the leave would last at least five days.

If instructional personnel are required 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.

In order to better accommodate an employee's need for intermittent or reduced leave for a serious health condition, the school district 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. If an instructional employee requests intermittent or reduced scheduled leave for more than 20 percent of the working days of the duration of the leave for the employee's or family member's serious health condition, the school district alternatively may require the employee to take continuous leave for up to the entire duration of the scheduled leave. Instructional personnel 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.

D. Designation of Leave and Employee Notice and Verification Requirements

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 Chief Human Resources Officer or designee. It is the responsibility of the director of human resources to ask any questions necessary of the employee in order to make a determination of whether the leave is FMLA-eligible. The Chief Human Resources Officer or designee may require notice of the need and the reason for leave. The Chief Human Resources Officer or designee's designation must be made within two business days of having obtained the information unless there is a justifiable delay, such as waiting 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 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.

Leave cannot be designated as FMLA-eligible and, therefore, count towards the 12 weeks entitlement after the employee has returned to work from the leave. An exception to this requirement can be made if the school district did not learn the reason for the absence until the employee's return to work or a preliminary designation was made while waiting for all relevant information. Leave may be designated as both FMLA-eligible and as leave under the paid leave policy if paid leave has been substituted. Such leave would be counted towards the 12 weeks FMLA entitlement. In addition, the executive director of human resources operations 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. 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.

An employee must provide at least 30 days' notice if the employee can anticipate the need for FMLA leave. If this is not possible, the notice will be given as soon as "practicable," considering all the facts and circumstances. If the employee does not provide 30 days' notice, and there is no reasonable justification for the delay, the school district can delay the taking of FMLA leave until at least 30 days after the employee provides notice of the need for FMLA leave. If an instructional employee fails to give the required notice for foreseeable leave for an intermittent or reduced leave schedule, the employee may be required to take leave continuously for the duration of the treatment or be temporarily transferred to an alternative position for which the employee is qualified and that has the same benefits.

An employee requesting 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. Normally, employees also would be expected to discuss scheduling with their immediate supervisor prior to scheduling any medical treatment in order to accommodate the work schedule. Employees may take intermittent leave in increments of one hour.

The school district may require employees to provide medical certification to confirm the employee's or the employee's family member's serious health condition. The information requested will be no more than that allowed by the FMLA and the Americans With Disabilities Act. Under certain circumstances, the executive director of human resources may request a second or third opinion at the school system's expense if there is reason to doubt the validity of the medical certification. The school system may require periodic recertification to support the leave, as permitted by law.

Before returning to work from FMLA leave for a serious health condition, the employee will be required to present a "fitness-for-duty" certificate which states that the employee is able to return to work unless the employee took intermittent leave or took leave for a family member's serious health condition.

The school district 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 will be required to 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 employee may be required to report on his or her intent to return to work on a regular basis while on FMLA leave.

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. 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. The employee also must notify the director of human resources of the need for FMLA leave as soon as practicable. 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.

E. Substitution of Paid Leave

Accrued vacation or personal leave will be substituted for any FMLA-eligible leave upon the request of the employee or the decision of the school district. Employees of the school district also may substitute paid sick leave, parental leave, including extended sick leave for instructional personnel, or disability leave for FMLA-eligible leave in circumstances covered by board policy 7510 for paid sick and disability leave. If paid leave is substituted under

circumstances that qualify as FMLA leave, the leave can be counted towards the 12-week entitlement of FMLA leave if designated as FMLA-eligible at the time leave is taken.

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. 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.

If paid leave is substituted for unpaid FMLA leave for continuous leave of 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 board policy 7510.

F. Restoration to Equivalent Position

Employees, except "key" employees, will be restored to an equivalent or the same 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 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 to be "equivalent positions" for 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.

Key employees do not have the right to be restored to an equivalent or the same position upon return from FMLA leave. Key employees are salaried FMLA-eligible employees who are among the highest-paid 10% of all employees. If restoring a key employee would result in substantial and grievous economic injury to the school district, then there is no obligation to restore the employee to the same or an equivalent position. Employees will be informed at the time leave is taken if they are considered key employees and will be informed once a determination is made that the employee will not be restored to the same or an equivalent position. A key employee who has been informed that he or she will not be restored still has rights to health benefits for the full period in which he or she is eligible for FMLA leave.

G. Continuation of Health Benefits

Health benefits for the employee will continue to be paid by the school district for the duration of FMLA leave. This includes key employees who have been notified that they will not be restored to an equivalent position. The health care benefits will be the same as if the employee were continuing to work. Employees do not have the right to the accrual of earned benefits during the 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, where such a reduction is normally based upon hours worked.

Health insurance premiums paid while an employee is on FMLA leave may be recovered if the employee does not return to work after leave, so long as the reason for not returning does not relate to a serious health condition or to circumstances beyond the employee's control. Examples of circumstances beyond the employee's control include: a spouse's unexpected job transfer to a location more than 75 miles from the employee's worksite, a relative or individual other than an immediate family having a serious health condition and needs the employee to

provide care; the employee is laid off while on leave; the employee decides not to return to work after notification of "key employee" status and is not reinstated.

H. Posting Requirements

The superintendent or designee will ensure that notices of FMLA provisions and information on procedures for filing complaints are posted in places where employees and applicants would find them readily accessible.

I. Record-Keeping Requirement

The Chief Human Resources Officer or designee will be responsible for maintaining records of the following information for at least three years: basic payroll and identifying employee data; 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.

Copies of employee notices, including general and specific notices, as well as any other documents describing employee benefits or policies and records of disputes between the school district and any employee regarding the designation of FMLA leave, will be maintained by the Chief Human Resources Officer or designee for at least three years.

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: Family and Medical Leave Act of 1993, as amended, [29 U.S.C. 2601 et seq](#); [29 C.F.R. pt. 825](#); [16 NCAC 6C.0400 - .0405](#); Americans with Disabilities Act, [42 U.S.C. 12101 et seq](#); 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 of Absence (policy 7510)

Adopted:

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Chapel Hill-Carrboro Schools