

**Agenda Item Details**

Meeting	Aug 30, 2018 - Regular Meeting
Category	10. PERSONNEL
Subject	10.1 Adoption of Revised Policy #6560 - FMLA
Access	Public
Type	Action (Consent)
Recommended Action	BE IT SO RESOLVED, that the board of Education (the "board") hereby adopts the revised Policy #6560, Family and Medical Leave Act (FMLA), dated August 30, 2018.

Public Content**Administrative Content**

[Policy 6560-FMLA Revised 083018.PDF \(596 KB\)](#)

Motion & Voting

BE IT RESOLVED that upon the recommendation of the Superintendent of Schools, the Consent Agenda, consisting of the following agenda items be approved as a whole with action recorded as if it had been taken severally:
New Business, Items 9.1 through 9.15
Personnel, Items 10.1 through 10.32

Motion by Thomas Gross, second by Robert Guerriero.

Final Resolution: Motion Carried

Yes: Jeananne Dawson, Robert Vecchio, Robert Guerriero, Thomas Gross, Lorraine Mentz, April Coppola

SUBJECT: FAMILY AND MEDICAL LEAVE ACT

The Family and Medical Leave Act of 1993 (FMLA) requires public agencies such as the District to provide up to twelve (12) weeks of unpaid, job-protected leave to "eligible" employees for certain family and medical reasons. Employees are "eligible" if they have been employed by the District for at least twelve (12) months and for at least 1,250 hours of service during the previous twelve-month period. Full-time teachers are deemed to meet the 1,250 hour test. However, a break in employment for military service (i.e., call to active duty) should not interrupt the twelve (12) month/1,250 hours of employment requirement and should be counted toward fulfilling this prerequisite. The law covers both full-time and part-time employees.

The District uses a "rolling" twelve (12) month period measured backwards from the date of any FMLA leave usage as its method for calculating the leave year period for the commencement of the FMLA leave period. In certain cases, FMLA leave may be taken on an intermittent basis rather than all at once, or the employee may work a part-time schedule.

The entitlement to leave for the birth or placement of a child for adoption or foster care shall expire at the end of the twelve (12) month period following the date of such birth or placement.

Definitions Related to FMLA*Spouse*

Spouse means a husband or wife as defined or recognized under state law, including "common law" and "same-sex" marriage in states where it is recognized.

Parent

Parent means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a child. This term does not include parents "in law."

Son or daughter

Son or daughter means a biological, adopted, or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis, who is either under age eighteen (18), or age eighteen (18) or older and "incapable of self-care because of a mental or physical disability" at the time that FMLA leave is to commence.

In Loco Parentis

The FMLA Regulations define in loco parentis as including those with day-to-day responsibilities to care for or financially support a child. Employees who have no biological or legal relationship with a child may, nonetheless, stand in loco parentis to the child and be entitled to FMLA leave. Similarly, an employee may take leave to care for someone who, although having no legal or biological relationship to the employee when the employee was a child, stood in loco parentis to the employee when the employee was a child.

SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)*Serious Health Condition*

A "serious health condition" is defined as an illness, injury, impairment or physical or mental condition that involves one of the following:

1. Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity; or
2. Any subsequent treatment (i.e., continuing treatment) in connection with such inpatient care;
3. Continuing treatment by a health care provider includes any one or more of the following:
 - a. A period of incapacity of more than three (3) consecutive calendar days that also involves:
 - i. Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
 - ii. Treatment by a health care provider on at least one occasion which results in a regimen of continuing therapy under the supervision of the health care provider.
 - iii. To satisfy the "treatment" component of the incapacity definitions set forth above, the employee must first visit the health care provider within 7 days of the first day of incapacity. In addition, for the employee to qualify under Section 3(a)(i) the employee must also have 2 visits to the health care provider within 30 days of the period of incapacity.
4. Any period of incapacity due to pregnancy, or for prenatal care;
5. Any period of incapacity or treatment for such incapacity due to a *chronic serious health condition*;
6. A period of incapacity which is permanent or long-term due to condition for which treatment may not be effective; or
7. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than 3 consecutive calendar days in the absence of medical intervention or treatment, such as cancer (e.g., chemotherapy, radiation, etc.).

Chronic Serious Health Conditions

In order for an employee to claim the need for continuous treatment under FMLA for a chronic serious health condition, the employee must demonstrate that the chronic condition:

- 1) Requires periodic visits [defined as a minimum of two (2) visits per year] to a health care provider or by a nurse or physician's assistant under direct supervision of a health care provider;

SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)

- 2) Continues over an extended period of time (including reoccurring episodes of a single underlying condition); and
- 3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).

Disability

The definition of "disability" is defined by the Americans with Disabilities Act, as an impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment.

Incapable of Self-Care

To be "incapable of self-care" means that the child (or adult child) needs assistance or supervision to provide daily self-care in three or more of the "activities of daily living" (ADLs) or "instrumental activities of daily living" (IADLs). Activities of daily living include caring appropriately for one's grooming and hygiene, bathing, dressing and eating. Instrumental activities of daily living include cooking, cleaning, shopping, taking public transportation, paying bills and maintaining a residence. The list of ADLs and IADLs in the regulations is not exhaustive, and additional activities should also be considered in determining whether an adult son or daughter is incapable of self-care because of a disability.

Reasons for Taking Leave

A District must grant unpaid leave to an eligible employee for one (1) or more of the following reasons:

- 1) The birth of a child and care of a newborn child;
- 2) Adoption of a child and care for the child;
- 3) The placement of a child with the employee for foster care;
- 4) To care for a spouse, child or guardian, who has a "serious health condition" as defined by the FMLA;
- 5) To care for an adult child who is incapable of self-care due to a disability (regardless of date of the onset of disability) and has a "serious health condition" as defined by the FMLA; and/or,
- 6) A "serious health condition" of the employee, as defined by FMLA;

SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)

- 7) For “qualified exigencies” arising out of the fact that the employee’s immediate family member (spouse, child, parent) is on covered active duty (or has been notified of an impending call or order to covered active duty) as a member of the Regular Armed Forces, National Guard or Reserves or if the individual in call to covered active duty and is a retired member of the Regular Armed Forces or Reserves.

Military Family Leave EntitlementsMilitary Caregiver Leave

An eligible employee who is the spouse, son, daughter, parent, or next of kin (nearest blood relative) is entitled to up to twenty-six (26) weeks of leave in a single twelve (12) month period to care for a military member who is:

- 1) Recovering from a service-connected serious illness or injury sustained while on active duty; or
- 2) Recovering from a serious illness or injury that existed prior to the service member's active duty and was aggravated by service in the Armed Forces while on active duty, and that may render the service member medically unfit to perform the duties of the service member’s office, grade, rank or rating; or
- 3) A covered veteran who has a qualifying injury or illness from service that was incurred in the line of duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty on the Armed Forces) and manifested itself before or after the member became a veteran, and is:
 - a. A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the service member unable to perform the duties of the service member’s office, grade, rank or rating; or
 - b. A physical or mental condition for which the covered veteran has received a VA Service Related Disability Rating (VASDR) of 50 percent or greater and such VASDR rating is based, in whole or in part, on the condition precipitating the need for caregiver leave; or
 - c. A physical or mental condition that substantially impairs the veteran’s ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service or would do so absent treatment; or
 - d. An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veteran Affairs Program of Comprehensive Assistance for Family Caregivers.

This military caregiver leave is available during a single twelve (12) month period during which an eligible employee is entitled to a combined total of twenty-six (26) weeks of all types of FMLA leave. Military Caregiver Leave may be combined with other forms of FMLA-related leave providing a combined

SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)

total of twenty-six (26) weeks of possible leave for any single twelve (12) month period; however, the other form of FMLA leave when combined cannot exceed twelve (12) of the twenty-six (26) weeks of combined leave. Military Caregiver Leave has a set "clock" for calculating the twelve (12) month period for when FMLA leave begins and tolling starts at the first day of leave taken.

The term "military member" means:

- 1) A current member of the Regular 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 covered veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) and who was discharged or released under conditions other than dishonorable at any time during the period of five (5) years prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

"Qualifying Exigency" Leave/Call to Active Duty

An eligible employee is entitled to FMLA leave because of "a qualifying exigency" arising out of circumstances where the spouse, son, daughter, or parent of the employee is serving in the Regular Armed Forces or either the National Guard or the Reserves and is on active duty called for by the President of the United States or Congress, or has been notified of an impending call to active duty status, in support of a contingency operation. There is no "qualifying exigency" unless the military member is or is about to be deployed to a foreign country.

A "qualifying exigency" related to families of Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve personnel on (or called to) active duty to take FMLA protected leave to manage their affairs is defined as any one of the following reasons:

- 1) Short-notice deployment (i.e., notification of an impending call or order to active duty seven (7) or less calendar days prior to the date of deployment;
- 2) Military events and related activities;
- 3) Childcare and school activities;
- 4) Parental care leave;
- 5) Financial and legal arrangements;
- 6) Counseling;

SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)

- 7) Rest and recuperation (for up to fifteen [15] calendar days);
- 8) Post-deployment activities; and
- 9) Any additional activities where the employer and employee agree to the leave.

In any case in which the necessity for leave due to any qualifying exigency is foreseeable, whether because the spouse, or a son, daughter, or parent of the employee is on active duty, or because of notification of an impending call or order to active duty in support of a contingency operation, the employee shall provide such notice to the employer as is reasonable and practicable. This military-related leave is for up to twelve (12) weeks during a single twelve (12) month period. Leave may be taken intermittently or on a reduced leave schedule.

Upon an employer's request, an employee must provide a copy of the military member's active duty order to support the employee's request for qualifying exigency leave. In addition, the employer may request the following information:

- 1) A statement or description of appropriate facts regarding the exigency that is needed;
- 2) The approximate date on which the exigency commenced or will commence;
- 3) An estimate of the frequency and duration of the exigency if leave is needed on a reduced scheduled basis or intermittently;
- 4) If the exigency requires meeting with a third party, the contact information for the third party and description of the purpose of the meeting;
- 5) Additionally, the certification for qualifying exigency leave for Rest and Recuperation Leave must include a copy of the military member's Rest and Recuperation Leave Orders, or other documentation by the military setting forth the dates of the military member's leave.

Substitution of Paid Leave

At the employee's or District's option, certain kinds of paid leave may be substituted for unpaid leave. The remainder of the leave, if any, will be unpaid. The District may require the employee to substitute any accrued compensatory time, paid vacation, personal leave or family leave if the employee is taking leave to care for another due to birth or serious health condition. The District may also require the employee to substitute any of his/her accrued paid vacation, personal leave, or medical/sick leave if they seek leave for his/her own serious health condition. The District may substitute paid vacation, compensatory time, personal leave, family leave and the employee's own medical/sick leave if they seek leave under the Military Caregiver Leave.

Any unpaid leave available pursuant to an applicable collective bargaining agreement or other District policy shall also be utilized concurrently with any entitlement to FMLA leave,

SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)

Eligible employees who are on a leave of absence that is covered by payments such as disability benefits or Workers' Compensation benefits, will not be required to substitute accrued paid leave while receiving these benefit payments. However, the District and the employee may agree to have accrued paid leave supplement the disability or Workers' Compensation benefits, to the extent permitted by law. Any leave of absence taken pursuant to Sections 71 or 73 of the Civil Service Law, an applicable disability statute or the Workers Compensation Law, will be run concurrently with FMLA leave.

Relation of Policy to Collective Bargaining Agreements

To the extent that a collective bargaining agreement provides greater family and medical leave rights to an employee than the rights established under this Policy, the rights granted to the employee in the collective bargaining agreement will govern the family and medical leave of the employee. If an employee is entitled to family and medical leave under this Policy and under a collective bargaining agreement, the employee's family and medical leave will be deemed to have been taken concurrently under both this Policy and the collective bargaining agreement.

Advance Notice and Medical Certification

The employee may be required to provide advance leave notice and medical certification.

- 1) The employee ordinarily must provide thirty (30) days advance notice when the leave is "foreseeable."
- 2) The District may require medical certification to support a request for leave because of a "serious health condition".
- 3) The District may reinitiate the medical certification process with the first absence in a new twelve (12) month leave year.
- 4) The District may also require medical certification if the employee is unable to return from leave because of a "serious health condition".
- 5) The District may also require medical certification for an employee returning to work often called the "fitness for duty" certification.

Intermittent or Reduced Leave

1) An employee may take intermittent leave or may work a reduced leave schedule to reduce the usual number of hours per day or work week whenever the leave is medically necessary due to the serious health condition of the employee or a covered family member, or the serious injury or illness of a covered service member. FMLA leave may also be taken intermittently (or on a reduce schedule basis) by an employee when necessary for a qualifying exigency. Leave may not be taken on an intermittent basis or reduced

SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)

schedule basis when used to care for the employee's own child during the first year following birth, or to care for a child placed with the employee for foster care or adoption, unless both the District and the employee agree to such leave.

- 2) If the need for intermittent leave is foreseeable, based on planned medical treatment, the employee is responsible for scheduling the treatment in a manner that does not unduly disrupt the District's operations, subject only to the approval of the health care provider.

Job and Benefits Protection

- 1) Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms.

The District may deny restoration to certain highly compensated employees, but only if necessary to avoid substantial and grievous economic injury to the District's operation.

- 2) The use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave.
- 3) The use of unpaid FMLA leave cannot affect the exempt status of bona fide executive, administrative and professional employees under the Fair Labor Standards Act.
- 4) The employee on family or medical leave is not entitled to the accrual of any seniority or employment benefits during any period of unpaid FMLA leave except as expressly stated herein or as otherwise provided by an applicable collective bargaining agreement, binding past practice or by law.

Medical Insurance Coverage

- 1) For the duration of FMLA leave, the District must maintain the employee's medical insurance coverage under any "group health plan," under the conditions coverage would have been provided if the employee had continued working. If an employee was required to pay all or a part of the premiums for coverage prior to the leave, the employee must continue to pay his/her share of the premiums during the leave period. At the time an employee begins unpaid family or medical leave, he/she shall receive written instructions detailing the time and manner in which the employee premiums, if any, are to be paid. Failure to pay any required premiums by the end of the grace period stated in the written instructions shall result in the loss of insurance coverage so chosen by the employee. The payment of premiums by employees covered by a collective bargaining agreement shall be at the rate set forth in the collective bargaining agreement.

- 2) In some cases, the District may recover premiums paid for maintaining an employee's health coverage if the employee fails to return to work from FMLA leave.

SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)FMLA Leave for Spouses Employed at the Same Employer

In the event that spouses are both employed by the District and are eligible for FMLA-related leave, the spouses are limited to a combined total of twelve (12) weeks of FMLA leave during any twelve (12) month period. If the reason for such leave is for the birth of a child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition. If the leave is taken for other reasons such as the "serious health condition" of the employee or to care for the serious health condition of a child, each spouse is entitled to twelve (12) weeks of FMLA-related leave during any twelve (12) month period.

In the event that spouses are both employed by the district who are entitled to FMLA leave for the reason of being a military caregiver to an injured service member may be limited to a combined total of twenty-six (26) weeks of leave during a single twelve (12) month period if;

- 1) the leave is taken to care for a covered service member with a serious injury or illness; or
- 2) if a combination of leave is taken to care for a covered service member and for the birth of a child, placement of a child for adoption or foster care or to care for a parent who has a serious health condition.

Special Provisions for School District Employees

An "instructional employee" is an employee whose principal function is to teach and instruct students in a class, a small group, or an individual setting (e.g., teachers, coaches, driving instructors, special education assistants, etc.). Teaching assistants and aides who do not have instruction as the principal function of their job are not considered an "instructional employee."

Intermittent Leave Taken By Instructional Employees

FMLA leave that is taken at the end of the school year and resumes at the beginning of the next school year is not regarded as intermittent leave but rather continuous leave. The period in the interim (i.e., summer vacation) is not counted against an employee and the employee must continue to receive any benefits that are customarily given over the summer break.

Intermittent leave may be taken but must meet certain criteria. If the instructional employee requesting intermittent leave will be on that leave for more than twenty percent (20%) of the number of working days during the period for which the leave would extend, the following criteria may be required by the employer:

- 1) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or

SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)

- 2) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

Appropriate notice for foreseeable FMLA leave still applies and all employees must be returned to an equivalent position within the School District. Additional certifications, requirements and/or training may not be required of the employee as a contingent of their return to work.

Leave Taken by Instructional Employees Near the End of the Instructional Year

There are also special requirements for instructional employees taking leave and the leaves relation to the end of the term. If the instructional employee is taking leave more than five (5) weeks prior to the end of the term, the District may require that the employee take the leave until the end of the term if the leave lasts more than three (3) weeks and the employee was scheduled to return prior to three (3) weeks before the end of the term.

If the instructional employee is taking leave less than five (5) weeks prior to the end of the term for any FMLA-related reasons except qualifying exigency, the District may require that the employee remain out for the rest of the term if the leave lasts more than two (2) weeks and the employee would return to work during that two (2) week period at the end of the instructional term.

If the instructional employee begins taking leave during the three (3) weeks prior to the end of the term for any reason except qualifying exigency, the District may require that the employee continue leave until the end of the term if the leave is scheduled to last more than five (5) working days.

Any additional time that is required by the District due to the timing of the end of the school year will not be charged against the employee as FMLA leave because it was the employer who requested that the leave extend until the end of the term.

Key Employees:

Under certain circumstances, the District may deny job restoration to key employees. A key employee is a salaried employee eligible to take leave under this Policy who is among the highest paid ten percent of all the employees -- both salaried and non-salaried, eligible and ineligible under this Policy -- who are employed by the District. The District may refuse to reinstate key employees after using FMLA leave if it determines that substantial and grievous economic injury would result from reinstatement. If this determination is made, the employee will be notified in writing and given an opportunity to end the leave and return to work. If the employee remains on leave, he or she will not have a right to be restored to employment.

POLICY

2018

6560
11 of 11

Personnel

SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)

Reservation of Rights:

The District shall comply with all legal requirements for providing family and medical leave to eligible employees. To the extent permitted by law, the District hereby expressly reserves the right to modify, change or eliminate any provision of this Policy subject to applicable law and/or the provisions of an applicable collective bargaining agreement with respect to any employee or group of employees and does not intend to create any contractual commitment to any employee by issuing this Policy.

FMLA Posting:

In accordance with Federal law, the District shall post a notice summarizing the main provisions of the FMLA, including enforcement of the Law in each school building. In addition, a copy of the notice shall either be placed in the employee handbook or furnished to each new employee within five (5) business days of being hired. A copy of the notice posting is attached to this Policy as Appendix A.

Adopted: 2/7/94

Revised: 7/1/96; 12/7/10; 8/30/18