

**Federal Family and Medical Leave Act**

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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 ("Act"). The Webster County Board of Education 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 Family and Medical Leave 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 Webster County Board of Education ("Board of Education") who have been employed by the Board of Education for at least 12 months immediately prior to requesting leave and who either (a) have worked at least 1250 hours during the previous 12 months or (b) are classified as full-time employees in their position are eligible to take 12 weeks of unpaid leave under the Family and Medical Leave Act ("FMLA").

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

1. To care for the employee's spouse, son, daughter or parent, if that person has a serious health condition; and
2. Serious health condition of the employee that prevents the employee from performing his/her job functions.

Full-time employees of local boards of education (who have been employed for at least six months) qualify for paid leave for up to 120 hours for the birth of a child, the adoption of a child, or becoming a foster parent. (HB146)

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.

**B. DEFINITIONS**

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

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

"Serious Health Condition" means an illness, injury, impairment, or physical or mental condition that involves inpatient care in a hospital, hospice or residential medical care facility or continuing treatment by a health care provider.

"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

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is age 18 or older, he/she must be incapable of self-care on a daily basis due to a mental or physical disability.

“Spouse” means a husband or wife.

**C. AMOUNT AND TYPE OF LEAVE TAKEN**

Except as provided below, an employee may take 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 twelve weeks of leave entitlement may occur. That is, each time an employee takes FMLA leave, the remaining leave entitlement would be any balance of the 12 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 Webster County Board of Education and both are eligible for FMLA leave, they are authorized to take only a combined total of 12 weeks leave during any one twelve-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 to care for a spouse or child with a serious health condition for twelve (12) weeks.

The Board of Education will require that any accumulated paid leave be substituted for all or a part of the otherwise unpaid FMLA leave.

Accrued personal leave or vacation leave shall be used for:

- (1) the birth and first-year care of a child; or
- (2) the adoption or foster parent placement of a child.

Accrued sick leave, personal leave or vacation leave shall be used for:

- (1) the serious illness of an employee’s spouse, child, or parent; or
- (2) the employee’s own illness.

**D. INTERMITTENT OR REDUCED LEAVE**

An employee is not permitted to take leave on an intermittent or reduced leave schedule unless it is medically necessary. The Board of Education will require a certification, in the form described in Section G below, to document the medical necessity of such intermittent 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 personnel office. If such advance notice is not possible, the employee must give notice to the personnel office as soon as practicable, ordinarily within one or two working days of learning of the need for leave. When planning medical treatment, the employee should make a reasonable

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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 school district.

**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 Board of Education 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 Board of Education 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 other circumstances beyond the employee's control. The Board of Education may require certification from the health care provider that a serious health condition of the employee or family member prevented the employee from returning to work.

With the exception of paid vacation, personal, medical or sick 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 Board of Education may deny reinstatement under the 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 Board of Education.

**G. REQUIRED CERTIFICATION AND REPORTING**

The Board of Education requires that a request for leave due to a serious health condition be supported by certification by the appropriate health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee on a form to be provided by the Board of Education. This certification must include (1) the date on which the serious health condition commenced, (2) the probable duration of the condition, (3) if the purpose of the leave is to care for a son, daughter, spouse or parent ("family member"), a statement that the employee is needed to care for the family member and estimated amount of time needed for such care, and (4) if the leave is due to the employee's own serious health condition, a statement that the employee is unable to perform his/her job functions. The employer may require that the eligible employee obtain subsequent recertification on a reasonable basis as requested by the Board of Education.

The Board of Education, at its own expense, may obtain the opinion of a second health care provider of the Board of Education's choice, if the Board should choose to do so. If a conflict exists between the

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opinion in the certification and the second opinion, the Board of Education may, at its own expense, obtain a third opinion from a health care provider upon which the Board of Education and the employee jointly agree. Such a third opinion as to the necessity for the leave is binding on both the Board of Education and the employee.

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

The Board of Education 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 illness that would constitute at least 20% of the total number of working days during which the leave would extend, the Board of Education 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 Board of Education may require the employee to continue taking leave until the end of the semester if:

- (i) the leave will last at least three weeks; and
- (ii) 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 Board of Education may require the employee to continue taking leave until the end of the semester if:

- (i) the leave last more than two weeks; and
- (ii) 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 Board of Education may require the employee to continue taking leave until the end of the semester.

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**ADOPTED: April 10, 2006**29 USC 2601 Family and Medical Leave Act**AMENDED: May 10, 2021****Webster County School District**