

**NEW MILFORD BOARD OF EDUCATION**

**New Milford Public Schools  
50 East Street  
New Milford, Connecticut 06776**

**POLICY SUB-COMMITTEE  
MEETING NOTICE**

**DATE:** October 21, 2014  
**TIME:** 6:45 P.M.  
**PLACE:** Lillis Administration Building, Rm. 2

**AGENDA**

**New Milford Public Schools Mission Statement**

The mission of the New Milford Public Schools, a collaborative partnership of students, educators, family, and community, is to prepare each and every student to compete and excel in an ever-changing world, embrace challenges with vigor, respect and appreciate the worth of every human being, and contribute to society by providing effective instruction and dynamic curriculum, offering a wide range of valuable experiences, and inspiring students to pursue their dreams and aspirations.

- 1. Call to Order**
- 2. Public Comment**

The Board welcomes Public Participation and asks that speakers please limit their comments to three minutes. Speakers may offer objective comments of items on this agenda. The Board will not permit any expression of personal complaints or defamatory comments about Board of Education personnel and students, nor against any person connected with the New Milford Public School System.

**3. Discussion and Possible Action Items**

A. Policies Recommended for Revision:

1. 4112.9/4212.9 Outside Employment
2. 4115 Evaluations
3. 4118.5/4218.5 Electronic Monitoring
4. 4121 Substitute Teachers

**4. Item of Information**

A. Regulation Revision:

1. 4152.6/4252.6 Family and Medical Leaves

**5. Adjourn**

**Sub-Committee Members:** Angela C. Chastain, Chairperson  
David A. Lawson  
Dave Littlefield  
David R. Shaffer

**Alternates:** Wendy Faulenbach  
John W. Spatola

2014 OCT 1 9:22  
NEW MILFORD, CT

## RECOMMENDED FOR REVISION

*Commentary: October 2014 – The proposed revision is intended to address situations where the outside employment has such a significant and lasting impact that merely ceasing the activity does not fully remedy the situation and therefore disciplinary action may be necessary.*

4112.9

4212.9

### Personnel – Certified/Non-Certified

#### Outside Employment

New Milford Public School personnel may hold outside jobs or otherwise receive compensation for outside activities, but must always meet the performance standards of their jobs with the school system. All employees shall be judged by the work performance standard of their jobs and shall be subject to the demands and schedules of their jobs, regardless of any existing outside work or activity requirements.

~~If the school system determines that an employee's outside work or non-school activity interferes with performance or the ability to meet the requirements of the school system as they are modified from time to time, the employee may be asked to terminate the outside employment or activity if he or she wishes to remain employed with the school system.~~

***If outside work or a non-school activity interferes with an employee's performance or ability to meet the requirements of the school system, the employee may be asked to terminate the outside employment or activity in order to remain employed with the school system. If outside work or a non-school activity compromises the effectiveness of the employee or disrupts the operations of the school district, the employee may be subject to disciplinary consequences up to and including termination.***

Non-school employment or activity that constitutes a conflict of interest shall be strictly prohibited. Employees shall not receive any compensation or material gain from individuals outside the school system for school materials or property provided by the school system or for services rendered while performing their jobs, unless he or she receives prior approval in writing from the Superintendent of Schools.

~~Employees who represent the school system in outside activities or otherwise engage in outside activities in connection with their employment with the school system shall conduct themselves in a proper, business-like and ethical manner, and shall not engage in any conduct that compromises the image of the school system or the performance of his or her job.~~

## RECOMMENDED FOR REVISION

*Commentary: October 2014 – Separate and apart from this policy, the district has a teacher evaluation and support program as required by law. This policy does not need to do more than reference the basics and can therefore be reduced as follow:*

4115

### Personnel – Certified

#### Evaluations

It is the policy of the New Milford Board of Education to implement a job performance evaluation program for all employees in accordance with state law and the objectives of the Board to improve performance to the extent practical.

The Superintendent or designee shall ~~continuously~~ evaluate each professional employee who holds a certificate or permit issued by the State Board of Education. Such evaluations shall be conducted in accordance with ***Connecticut General Statutes §10-151b and related regulations.*** ***The Superintendent shall be responsible for developing and implementing the district's teacher evaluation and support program.***

~~the guidelines established by the State Board of Education, other guidelines as may be established by mutual agreement between the Board and the teacher's collective bargaining representative and consistent with the comprehensive professional development plan required by Connecticut General Statutes §10-220a. An evaluation shall include, but need not be limited to, identification of strengths, areas needing improvements, strategies for improvement and multiple indicators of student academic growth (when guidelines for such indicators are adopted by the State Board of Education pursuant to Connecticut General Statutes 10-151b(e).) Claims of failure to follow the established procedures of the established evaluation program shall be subject to the grievance procedure contained in the relevant collective bargaining agreement.~~

The Superintendent shall report the status of such evaluations to the Board of Education on or before June first of each year.

Each employee shall have access to his or her performance evaluations.

Legal References: Connecticut General Statutes

~~10-151b Evaluation by superintendent of certain educational personnel~~  
***Teacher evaluations. Teacher evaluation and support program; development; adoption; implementation; guidelines***

10-220a In-service training. Professional development committees.  
Institutes for educators. Cooperating teacher program,  
regulations.

Policy adopted:	December 9, 2003	NEW MILFORD BOARD OF EDUCATION
Policy revised:	October 18, 2005	New Milford, Connecticut
Policy revised:	June 14, 2011	

## RECOMMENDED FOR REVISION

*Commentary: October 2014 – Suggested revisions reflect modern language and clarification regarding the kinds of electronic monitoring the school district might engage in.*

**4118.5**  
**4218.5**

### Personnel – Certified/Non-Certified

#### Electronic Monitoring

The New Milford Board of Education reserves its right to approve the use of electronic monitoring in its workplace in accordance with C.G.S. §31-48d.

“Electronic monitoring,” means the collection of information on school district premises concerning employees’ activities or communications, by any means other than direct observation of the employees. Electronic monitoring includes the use of a computer, telephone, wire, radio, camera, electromagnetic, photoelectronic or photo-optical systems. The definition does not include the collection of information (A) for security purposes in any common areas of the Board of Education premises which are open to the public, or (B) which is prohibited under other state or federal law.

The following specific types of electronic monitoring has been approved by the Board for use by this school district in its facilities:

- Monitoring of e-mail and other components of the school district’s computer system *and Wi-Fi access* for compliance with policies.
- Video surveillance of certain facilities and parking areas for security purposes.
- ~~Recording of telephone numbers dialed from school phones~~ *and/or monitoring of data from school phones, including board-issued cell phones.*

Where electronic monitoring may produce evidence of misconduct, the school district may use electronic monitoring without any prior notice when the Board and/or the Superintendent have reasonable grounds to believe employees of the school system are engaged in conduct that (1) violates the law, (2) violates the legal rights of the Board of Education or other employees, or (3) creates a hostile work environment.

The school administration shall post, in a conspicuous place which is readily available for viewing by its employees, a notice concerning the types of electronic monitoring which the administration may engage in.

Legal References: C.G.S. §31-48d – Electronic Monitoring in the Workplace

Policy adopted: December 9, 2003  
Policy revised: October 18, 2005  
Policy revised: June 14, 2011

NEW MILFORD PUBLIC SCHOOLS  
New Milford, Connecticut

## RECOMMENDED FOR REVISION

*Commentary: October 2014- The proposed revision in the first paragraph brings this policy up to date with Conn. Gen. Stat. §10-145 and RCSA §10-145d-420. The revisions to the final paragraph are intended to improve the process for approving substitute teachers by having the Board establish objective criteria for selection while authorizing the Superintendent to create the approved list. The Board would no longer need to approve the list, but would be apprised of its content periodically. This method of establishing the approved list is consistent with state law and helps avoid issues that may arise by the Board's potential discussion of candidates. The Board has the discretion to revise the objective criteria suggested below and underlined.*

**4121(a)**

### **Personnel -- Certified**

#### **Substitute Teachers**

A substitute teacher shall be a person fully qualified to instruct in our schools and who is employed for short periods of time in the absence of the regular teacher. ~~Substitute teachers who are in the same assignment for more than ten days must hold a bachelor's degree.~~ ***Substitute teachers shall be required to have a valid bachelor's degree, except as otherwise permitted by the State Department of Education.***

Suitable programs for training, assigning, orienting and evaluating the work of substitute teachers shall be provided by the certified staff under the direction of the Superintendent.

Unless otherwise provided by contract ***or required by law***, rates of compensation for substitute teachers will be set by the Board of Education and fringe benefits shall not be provided.

Retired teachers may be employed as substitute teachers without jeopardizing their retirement salary within the limits as prescribed by law.

~~The Superintendent of Schools is authorized to assign substitute teachers from a list approved by the Board of Education annually, as amended from time to time throughout the year. The Superintendent is also authorized to assign a substitute teacher who is not on the pre-approved list for the period of time until the Board next meets for regular business, so long as the need for a substitute exists and the position requires specific qualifications or credentials that can not be fulfilled by any of the pre-approved substitute teachers.~~

***The Superintendent of Schools shall develop and maintain a list of approved substitute teachers. The Superintendent is authorized to approve substitute teachers based upon candidates' qualifications, including but not limited to, education, job-related experience, oral and written communication skills, specialized expertise and references. The list of approved substitute teachers shall be provided to the Board of Education annually and as amended from time to time throughout the year.***

**Personnel -- Certified**

**Substitute Teachers**

Legal Reference: Connecticut General Statutes

10-145 Certificate necessary to employment. Forfeiture for noncompliance.  
Substitute teachers

10-183v Reemployment of teachers.

Policy adopted: December 9, 2003  
Policy revised: October 18, 2005  
Policy revised: June 14, 2011  
Policy revised: May 8, 2012

NEW MILFORD PUBLIC SCHOOLS  
New Milford, Connecticut



<b>ITEM OF INFORMATION REGULATION REVISION</b>
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*Commentary September 2014: Proposed changes are on page (b), eligibility. State law enables paraprofessionals to meet FMLA eligibility criteria when they have been employed for at least one year and worked 950 hours after May 12, 2014 (the date the state regulations went into effect).*

**4152.6(a)**

**4252.6(a)**

## **PERSONNEL CERTIFIED/NON-CERTIFIED**

### **Family and Medical Leaves**

Family and Medical leave is regulated by the federal Family and Medical Leave Act of 1993, as amended (FMLA). The following administrative regulations and the corresponding Board policy will be interpreted to comply with that law, as well as the Connecticut Fair Employment Practices Act (CFEPA) with respect to pregnancy-related disability leave and transfer. Employees should contact the Superintendent of Schools, New Milford Board of Education, 50 East Street, New Milford, CT if they have any questions regarding how these regulations apply to their situation, when and how they may take leave, or any other question regarding FMLA leave.

**The Basic Entitlement** An eligible employee is entitled to unpaid leave:

- Upon the birth of the employee's son or daughter, or to care for an employee's newborn child;
- For placement with the employee of a son or daughter for adoption or foster care;
- To care for the employee's spouse, son, daughter, or parent who has a serious health condition;
- Because of a serious health condition that makes the employee unable to perform his or her job;
- In connection with a "qualifying exigency" (such as making legal, financial and child care arrangements and taking care of other family obligations) involving the employee's spouse, son, daughter or parent's who is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty).
- To care for a covered service member who (1) is the employee's spouse, child, parent or nearest blood relative and (2) is a member of the Armed Forces who is medically unfit to perform his duties and (3) has a serious illness or injury suffered in the line of active duty and (4) is undergoing medical treatment, recuperation or therapy or is on the temporary disability retirement list.

## **Family and Medical Leaves**

### **Eligibility Requirements**

In order for an employee to be eligible for FMLA Leave, he or she must have been employed by the school District for no less than twelve months and worked at least 1,250 hours in the twelve months just before the beginning of the leave.<sup>1</sup> *Paraprofessionals are eligible for leave if they have been employed by the school District for no less than twelve months and have worked at least 950 hours after May 12, 2014.*

### **Leave Time**

Except in the case of leave to care for a covered servicemember, an eligible employee will be entitled to up to twelve (12) workweeks of unpaid leave during a 12-month period. The “12-month period” during which an employee may take FMLA Leave will be determined on a rolling basis, measured backwards from the date upon which an employee first uses any leave. For instance, an employee requiring FMLA Leave in April will be entitled to up to twelve workweeks of leave less any leave taken since April of the prior year.

Leave Time to Care for Covered Servicemember: An eligible employee who takes family leave to care for a covered service member shall be entitled to a combined total of twenty-six (26) workweeks of unpaid leave during a single 12-month period. The “single 12-month period” begins on the first day the employee takes such leave and ends 12 months after that date.

#### Husband and Wife both Eligible Employees:

If a husband and wife eligible for leave are both employed by the district, their combined leave for the birth of a child, to care for a child after birth or placement for adoption or foster care, and/or to care for a parent who has a serious health condition, cannot exceed twelve (12) weeks of leave.

If a husband and wife eligible for leave are employed by the district, their combined leave cannot exceed twenty-six (26) weeks of leave during a single 12-month period when leave is taken for the following reasons:

- To care for a covered service member, or;
- When a combination of leave is taken to care for a covered service member as well as for the birth of a child, to care for a child after birth or placement for adoption or foster care, and/or to care for a parent who has a serious health condition.

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<sup>1</sup> A member of the National Guard or Reserve who is absent from employment for an extended period of time due to military service and is then reemployed by the District is entitled to FMLA leave if he or she would have been eligible for leave had he or she remained continuously employed.



## **Family and Medical Leaves**

**Serious Health Condition** A serious health condition is an illness, injury, impairment or physical or mental condition involving continuing treatment by a healthcare provider or any period of incapacity or treatment related to in-patient care (i.e., overnight stay) in a hospital, hospice or residential medical care facility. Continuing treatment entails:

- Treatment two or more times, within 30 days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider; or
- Treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider.

A serious health condition also exists during any:

- Period of incapacity due to pregnancy or prenatal care;
- Period of incapacity or treatment for such incapacity due to a chronic serious health condition, such as asthma or diabetes, which requires periodic visits to a health care provider and may involve occasional episodes of incapacity;
- Period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective, such as terminal cancer or Alzheimer's disease; or
- Period of absence to receive multiple treatments for restorative surgery or a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence

An employee who needs to know whether he or she has a health condition that would qualify him or her for FMLA Leave should contact the Human Resource Specialist.

## **Military Leave**

**Qualifying Exigency:** Eligible employees with a spouse, son, daughter, or parent who is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty) may use their 12-week leave entitlement to address certain "qualifying exigencies".

A "qualifying exigency" may include issues arising from short notice deployment, attending certain military events, arranging for alternative childcare and attending school activities, addressing certain financial and legal arrangements, attending certain counseling sessions, engaging in rest and recuperation, parental care and attending post-deployment reintegration

## **Family and Medical Leaves**

### **Military Leave** (continued)

briefings as well as participating in additional activities arising out of the active duty or call to active duty. In order to secure leave for a qualifying exigency, employees must submit a completed DOL Form WH-384 along with a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the military member's covered active duty service. This information need only be provided once DOL Form WH-384 must be completed and returned within 15 calendar days of the date the District distributes the Form to the employee.

### **Care of a covered servicemember**

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember (either a currently serving servicemember or covered veteran) during a single 12-month period. In order to care for a covered servicemember, an eligible employee must be the spouse, son, daughter, or parent, or next of kin of a covered servicemember.

“Covered Servicemember” means-

- (1) A current member of the Armed Forces<sup>2</sup> 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. Covered veteran means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran.

“Serious Injury or Illness” means-

- (1) In the case of a current member of the Armed Forces, an injury or illness that was incurred by the member in line of duty on active duty (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and
- (2) In the case of a covered veteran an injury or illness that was incurred by the member in the line of duty on active 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 in

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<sup>2</sup> Including a member of the National Guard or Reserves

## **Family and Medical Leaves**

### **Military Leave** (continued)

the Armed Forces) and manifested itself before or after the member became a veteran, and is:

- (i) 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 servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or
- (ii) a physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or
- (iii) a physical or mental condition that substantially impairs the covered 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
- (iv) an injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

In order to secure this extended leave, employees must submit a completed DOL Form WH-385 (current servicemember) or WH-385V (veteran). This Form must be completed and returned within 15 calendar days of the date the District distributes the Form to the employee.

### **Notice of Eligibility**

When an employee requests FMLA leave, or when the school District learns that an employee's absence may be for an FMLA-qualifying reason, the District will notify the employee of FMLA eligibility within five business days, absent extenuating circumstances. Notification of eligibility does not mean that the District has determined that the leave qualifies as FMLA leave. Eligibility notification will include a notice of the employee's FMLA rights and responsibilities and inform the employee of any certification the District may require to support the leave request.

Notification will be achieved through the District's distribution of "Notice of Eligibility and Rights & Responsibilities," Department of Labor (DOL) Form WH-381, to the employee directly, or at his or her recorded home address.

### **Designation Notice**

When the District has sufficient information to determine whether leave is being taken for a FMLA-qualifying reason, the District will notify the employee whether the leave will be

## **Family and Medical Leaves**

### **Designation Notice** (continued)

designated as FMLA Leave. The employee will be informed of the District's determination through the distribution of the "Designation Notice," DOL Form WH-382, within five business days of the receipt of such information, absent extenuating circumstances. Sufficient information includes medical certification (such as DOL Form WH-380 for employee's serious health condition, DOL Form WH-380-F for family member's serious health condition, or DOL Form WH-385 for serious injury or illness of covered servicemember) or a certification for qualifying exigency (DOL Form WH-384).

If the District has sufficient information to designate the leave as FMLA Leave immediately after receiving notice of the employee's need for leave, the District may provide the employee with the Notice of Eligibility and Designation Notice at the same time.

If the District will require an employee to present a fitness-for-duty certification in order to return to work, the District will provide notice of such requirement with the Designation Notice.

If such fitness-for-duty certification needs to address the employee's ability to perform the essential functions of his/her position, then the District will notify the employee in the Designation Notice and attach a list of the essential functions of the position.

### **Intermittent Leave/Reduced Hours**

Leave taken intermittently or on a reduced work schedule is permitted under this policy for medical necessity (due to the serious health condition of the employee or covered family member or serious injury or illness of a covered servicemember) and due to a qualifying exigency. Intermittent leave is not available when leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care.

Employees on intermittent leave must be allowed to take leave in as small a block of time as is provided for under the District's timekeeping practices. Any employee group that takes leave in increments greater than one hour will be permitted to use intermittent FMLA leave in one hour increments. For example, an employee who is normally eligible to take sick time in increments of half-days will be permitted to use intermittent FMLA leave in one hour blocks. By contrast an employee who is normally eligible to take sick time in fifteen minute increments will be allowed to take intermittent FMLA leave in fifteen minute increments as well.

Unless a collective bargaining agreement or state or federal law require otherwise, the District may require an employee to transfer to a temporary alternative job for which the employee is qualified and which better accommodates the intermittent or reduced hours leave. The temporary position will have rank, pay and benefits equivalent to the employee's regular job.

## **Family and Medical Leaves**

### **Intermittent Leave/Reduced Hours** (continued)

Instructional Employees: Special rules affecting intermittent leave, leave on reduced leave schedule, or leave near the end of an academic term apply to instructional employees.

Instructional employees are those employees whose principal function is to teach and instruct students in a class, small group, or individual setting. The term includes not only teachers, but also athletic coaches, driving instructors, special education assistants and some teacher assistants and aides who are principally engaged in instruction.

Some instructional employees requesting intermittent leave or a reduced schedule leave may be required to choose between taking leave for the entire period of the intermittent leave and transferring temporarily to an alternative position for which the employee is qualified. This will occur in those situations where the leave is foreseeable based on planned medical treatment and the intermittent leave would involve the employee being absent for more than twenty percent (20%) of the working days during the period over which the leave extends. Instructional employees taking intermittent leave which constitutes *less* than twenty percent (20%) of the working days are not subject to transfer to an alternative position.

An instructional employee requesting leave near the end of an academic term may be required to remain on leave through the end of the term. Whether an instructional employee will be required to do so will depend on when the leave is requested and the number of weeks remaining in the term. Instructional employees requesting intermittent leave, reduced schedule leave, or leave near the end of an academic term and having questions regarding these restrictions should contact the Superintendent's Office.

### **Paid Leave Substituted for (Runs Concurrently with) FMLA Leave**

The federal FMLA regulations refer to "substituting" leave. This means the same thing as having two or more types of leave run concurrently. Earned-paid leave will be charged against the employee's FMLA

Leave entitlement as set forth below:

- Vacation and personal leave will run concurrently when an employee cares for his or her child after the birth or placement for adoption or foster care; when an employee cares for his or her son, daughter or parent who has a serious health condition; when a qualifying exigency occurs arising out of the employee's spouse, child or parent's tour of active duty in support of a contingency operation; and/or when an employee cares for care for his or her spouse, child, parent or next of kin who is on, called or ordered to active duty in the Armed Forces but is medically unfit to perform the duties of the member's office, grade, rank or rating.



**4152.6(h)**  
**4252.6(h)**

## **Family and Medical Leaves**

### **Paid Leave Substituted for (Runs Concurrently with) FMLA Leave** (continued)

- Vacation, personal and sick leave will run concurrently when a serious health condition makes an employee unable to do his or her job except when an employee is receiving workers' compensation or disability insurance benefits for a serious health condition. If it is the District's policy, practice, or obligation pursuant to a collective bargaining agreement to supplement worker's compensation or disability plan benefits with available paid leave (such as the case where a plan only provides replacement income for two-thirds of an employee's salary), then such paid leave will run concurrently.
- Workers' Compensation and State Disability Benefits will run concurrently when a serious health condition makes an employee unable to perform his or her job.

In the event that no paid leave is available to an employee while he/she is on FMLA Leave, FMLA Leave will be unpaid. The District's policies, practices and collective bargaining agreements control whether an employee has accrued paid leave.

The employee will be notified that paid leave will run concurrently with, and counted against, FMLA leave in the Notice of Eligibility and Designation Notice.

### **Advance Notice**

Except in the case of a qualifying exigency, a request for a FMLA Leave must be made at least thirty days before the date on which the leave will begin unless the need is not foreseeable. When planning or scheduling foreseeable medical treatment, the employee must consult with the District and make a reasonable effort to schedule the leave so as to meet the approval of his or her health care provider without unduly disrupting school operations. If the need for FMLA Leave is not foreseeable, the request must be made as early as practicable under the particular facts and circumstances. Failure to provide timely notice may delay the taking of foreseeable leave. The District may decide to waive such notice requirement and designate the leave as FMLA Leave if it would otherwise qualify.

A request for FMLA Leave due to a qualifying exigency arising out of a spouse, child or parent's tour, impending call or order to active duty that is foreseeable must be made as far in advance as is reasonable and practicable. The District requires copies of the military service member's active duty orders for qualifying exigency leaves. DOL Form WH-384 may be used for this purpose.



## **Family and Medical Leaves**

### **Medical Certification**

When an employee requests a leave based on a family member's or an employee's own serious health condition or to care for a covered servicemember, he or she will be required to support the request with written certification from the treating health care provider. The medical certification must explain the reason for the leave, the approximate date the condition commenced, the probable duration of the condition and the general nature of the treatment regimen. The employee should provide the health care provider with either a DOL Form WH-380-E, for an employee's own condition, or a DOL Form WH-380-F, for an immediate family member's condition, for this purpose.

When the leave is planned, the employee should provide the medical certification with the request, and if not with the request, before the leave begins. When the leave is not foreseeable, the employee must provide medical certification within 15 calendar days after the certification is requested, or as soon thereafter as reasonably possible. Delay in providing the certification could impact the start or continuation of leave, and failure to provide certification could result in the leave being treated as an unexcused absence. The District may require an employee to obtain a second or third opinion at the District's expense, depending on the particular circumstances of the individual case.

The employee has an obligation to provide the District with a complete and sufficient medical certification. If the certification is incomplete or insufficient the District will inform the employee of the deficiency and describe what information is needed to make the certification complete. The employee will be granted seven calendar days to cure a deficiency.

The District may contact the health care provider for the purposes of clarifying or authenticating a certification. This action will only be taken after the initial seven day cure period and will only be taken if the employee has provided the district with a Health Insurance Portability and Accountability Act ("HIPAA") release (FMLA Policy Addendum A). If a certification deficiency is not cured within the seven day time period, and the District is unable to correct the deficiency through direct, HIPAA-authorized, health care provider contact, the District may deny FMLA and any related absence may be counted as unexcused. The employee bears the ultimate responsibility for providing the District with timely and complete certification. Under no circumstances may the employee's direct supervisor contact the health care provider for purposes of clarification.

## **Family and Medical Leaves**

### **Other Medical Certification**

While an employee is out on leave, the District may require additional reports regarding the employee's status and intent to return to work, which may include re-certification(s) from a health care provider.

### **Health Insurance**

The District will continue health benefits during an employee's FMLA Leave as if the employee was continuously employed during the leave period. Employees making co-pay contributions to their health benefits must continue to do so, or coverage may be lost. If paid leave is substituted for FMLA Leave, any co-pay contributions will be paid by the method used prior to the leave (e.g., payroll deduction). If the FMLA Leave is unpaid, insurance payments must be paid in the manner the District designates. The District will notify the employee in writing of the terms and conditions by which these payments must be made. If an employee is able to return to work after the expiration of the leave but chooses not to, the employee will be required to reimburse the District for premiums the District paid to maintain his or her health coverage.

### **Other Benefits**

During FMLA leave, the employee shall not accrue any additional benefits unless otherwise provided for by contract or school policy. Employment benefits accrued by the employee up to the day on which the FMLA leave of absence begins will be available upon return from leave.

With respect to pension and retirement plans, FMLA leave will be treated as continued service for purposes of vesting and eligibility to participate.

### **Return to Work**

The District may require an employee on FMLA Leave to report periodically on the employee's status and intent to return to work. An employee who took leave because of his or her own serious health condition may be required to provide a fitness-for-duty certification (medical clearance) before returning to work. This will occur at the District's discretion, and factors considered will include, but not be limited to, the nature of the employee's health condition, the functions of the employee's position, the nature of the employee's initial medical certification(s) and evidence of abuse of leave entitlements.

An employee returning from FMLA Leave will be returned to the same position the employee held when the leave commenced or to an equivalent position with the same benefits, pay and similar terms and conditions of employment. Upon return from FMLA Leave, an employee will

**4152.6(k)**  
**4252.6(k)**

## **Family and Medical Leaves**

### **Return to Work** (continued)

not be required to re-qualify for any benefits enjoyed before the leave. All benefits provided by the District prior to the leave shall resume in the same manner at the same levels subject only to changes that affect the entire workforce.

If the employee would not have been employed at the time he or she returned to work, then the District may deny reinstatement. For example, the District has no obligation to reinstate an employee who would have been laid-off during his or her FMLA leave period. An employee who is unable to return to work after exhausting his or her FMLA Leave entitlement or who would not otherwise have been employed will be separated from employment, unless the District has granted an extension to the leave.

### **Key Employees**

Some higher-paid employees are considered “key employees”. Such employees will be advised at the beginning of their FMLA leave that they are a key employee and, on that basis, may be denied restoration to their position if restoration would cause substantial and grievous economic injury to the District.

### **Pregnancy-related Leave and Transfer**

Under state law, an employee is entitled to a reasonable leave of absence for disability resulting from pregnancy. An employee taking such leave must provide a medical certification from a health care provider in the same manner he or she would for FMLA leave.

When an employee’s disability also qualifies as a serious health condition under this policy, the two types of leave will run at the same time. When this happens, the leave will be counted against the employee’s FMLA leave entitlement. While on pregnancy-related disability leave, an employee will be eligible to receive the same disability benefits as an employee on a medical leave of absence. In the event no paid days are available, the leave will be unpaid. Return to work FMLA entitlements apply.

If a pregnant employee reasonably believes that continued work in her current position could cause injury to herself or the fetus, she should give written notice to the Superintendent’s Office. Upon receipt of such notice, the District will make a reasonable effort to transfer the pregnant employee to a suitable temporary position. The District’s decision regarding the request for transfer may be appealed to the Connecticut Commission on Human Rights and Opportunities.

## **Family and Medical Leaves**

### **Employee Abuse of Policy**

Any employee who is found to have abused his or her leave entitlements under this policy may be subject to discipline, up to and including immediate discharge.

### **Posting and Record-Keeping**

#### **Posting Requirements**

- Notice explaining the Family and Medical Leave Act provisions and providing information concerning the procedures for filing complaints must be posted where employees can easily see it. (Department of Labor Form WHD Publication 1420)
- If a significant number of employees speak a language other than English, a second FMLA notice, written in a language that employees can understand should be posted as well. (The Department of Labor's web-site provides FMLA notices in foreign languages. Use the site-address [www.dol.gov/esa/whd/fmla/finalrule.gov](http://www.dol.gov/esa/whd/fmla/finalrule.gov).)
- Notice explaining employee FMLA rights and responsibilities must be included in applicable employee handbooks.<sup>3</sup> (The text of DOL Form WHD Publication 1420)
- A copy of the notice explaining FMLA provisions will be given to each new employee upon hiring. (Department of Labor Form WHD Publication 1420)

#### **Record-keeping Requirements**

- Must keep records in conformance with wage and hour law.
- Records must be kept for no less than three years.
- Name, address and occupation of the employee; rate or basis of pay and terms of compensation; daily and weekly hours worked per pay period; additions to or deductions from wages; and total compensation paid.
- Dates FMLA leave is taken by employees must be recorded.
- If FMLA leave is taken in increments of less than one full day, the hours of the leave;

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<sup>3</sup> This does not include collective bargaining agreements.

## **Family and Medical Leaves**

### **Posting and Record-Keeping** (continued)

- Any written notice of FMLA leave given by the employee, and copies of all notices given to employees as required by law and by this policy;
- Any documents describing employee benefits or employer policies and practices regarding the taking of paid and unpaid leaves;
- Payment of any employee benefits premiums; and
- Records of any dispute regarding designation of leave as FMLA leave, including any written statements from the employer and/or the employee concerning the reasons for the designation and for the disagreement.

### **Medical Records**

Records and documents relating to medical certifications, re-certifications or medical histories of employees or employees' family members shall be maintained in the employees' separate medical files and treated as confidential medical records.

### **Forms**

This administrative regulation references the following forms developed by the U.S. Department of Labor:

- "FMLA Rights and Responsibilities Notice" WHD Publication 1420
- "Notice of Eligibility and Rights & Responsibilities" DOL Form WH-381
- "Designation Notice" DOL Form WH-382
- "Certification of Health Care Provider for Employee's Serious Health Condition" DOL Form WH-380-E
- "Certification of Health Care Provider for Family Member's Serious Health Condition" DOL Form WH-380-F
- "Certification of Qualifying Exigency For Military Family Leave" DOL Form WH-384
- "Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave" DOL Form WH-385
- "Certification for Serious Injury or Illness of Veteran for Military Caregiver Leave," DOL Form WH385-V

**4152.6(n)**  
**4252.6(n)**

**Family and Medical Leaves**

**Posting and Record-Keeping** (continued)

The District reserves the right to substitute any of the forms listed above with replacements distributed by the Department of Labor or any other sufficient form created by the District.

Regulation adopted: November 7, 2005  
Regulation revised: November 18, 2008  
Regulation revised: October 13, 2009  
Regulation revised: March 19, 2013

NEW MILFORD PUBLIC SCHOOLS  
New Milford, Connecticut