

## FAMILY AND MEDICAL LEAVE

### I. POLICY STATEMENT:

The School District shall comply with the mandatory provisions of the Family and Medical Leave Act of 1993 (FMLA) as authorized by the P.L. 103-3. The Superintendent shall administer this policy adopted by the Board of Education, setting forth the rights and procedures granted by the Act, and shall ensure compliance with this policy either personally, by delegation, or by some combination of personal supervision and delegation.

1. For purposes of this policy and an employee's right to take leave under the Family and Medical Leave Act and District policy, full-time certified staff employed by the District for twelve months are deemed "eligible employees" and are covered by this policy.
2. Any certified staff member employed less than full-time must have been employed by the school District for twelve months and employed for at least seven hundred eighty (780) hours during the previous twelve (12) month period immediately preceding the commencement of leave to be an "eligible employee" for purposes of this policy.
3. A classified staff (support staff) employee must have been employed within the District for 12 months and worked for the District at least 780 hours within the 12 month period immediately preceding the requested leave to be deemed an "eligible employee". Employment is defined as being on the District's payroll. Also, pursuant to FMLA the District must employ 50 or more employees before an otherwise qualified employee is deemed an "eligible employee" for purposes of FMLA leave.

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### II. ELIGIBILITY:

\*No employee is eligible for FMLA leave unless the District employees 50 or more employees as defined in FMLA.

### III. PROCEDURES FOR IMPLEMENTING FAMILY AND MEDICAL LEAVE:

- A. An eligible employee for FMLA leave under this policy shall be entitled up to a total of sixty (60) days (twelve weeks) of FMLA leave per school year (July 1 to June 30) for the following qualifying reasons:

1. The BIRTH and FIRST YEAR CARE of a newborn child (including circumstances which require leave to be taken prior to the birth of the child);
  2. The ADOPTION of FOSTER PLACEMENT of a child (including circumstances which require leave to be taken prior to actual placement of the child);
  3. The care for employee's spouse, son or daughter, or parent who has a SERIOUS HEALTH CONDITION, or
  4. The employee's own SERIOUS HEALTH CONDITION, that makes the employee unable to perform his/her job.
- B. Not all absences of an employee due to illness of the employee or family member constitutes FMLA leave "due to a serious health condition" under #3 and #4 above. "Serious Health Condition" means an illness, injury, impairment, or physical or mental injury that involves inpatient care in a hospital or residential medical care facility OR continuing treatment of the employee or family member by a health care provider due to incapacity requiring the employee to be absent from work for more than 3 calendar days for continuing treatment of a chronic or long term health condition. ("Continuing treatment" means two or more visits to a health care provider or when the employee or family member is under continuing supervision of the health care provider due to a serious long-term or chronic condition or disability which cannot be cured). Short-term absences due to conditions which require only very brief treatment (if any) and recovery do not qualify for FMLA leave, although the employee would still be entitled to take paid sick leave pursuant to the District's sick leave policy if the employee is covered under the policy. The flu would be an example of such a situation. (The days taken under the District's sick leave policy but not qualifying the FMLA leave would not be deducted from the 60 days of FMLA leave to which the employee is entitled in each 12 month period).
- C. The certified employee taking FMLA leave shall be required to count and apply accrued paid family leave and personal leave toward the twelve (12) weeks of FMLA leave taken for birth, adoption, foster care or care of a family member (II. A. 1,2 and 3). Paid personal leave and sick leave shall be applied

toward FMLA leave taken due to a serious health condition of the employee or family member (II. A. 3 and 4). A classified employee shall in addition to applying family leave, personal leave, and sick leave also be required to apply paid vacation leave against the 60 days of FMLA leave to which eligible employees are entitled. If the employee does not have sufficient accrued paid sick leave, family leave and personal leave (and for classified employees, also paid vacation days) equal to the period FMLA leave is taken, the employee is still entitled to the total twelve weeks FMLA leave within the one (1) year period for FMLA qualifying reasons. However, when FMLA leave is taken in such instances, the difference between the employees' accrued paid leave and the 60 days of FMLA leave to which the employee is entitled shall be on an unpaid leave basis.

- D. During the period of FMLA leave, the employee is entitled to continuation of any employee group health benefits which the employee was receiving when the employee began taking FMLA leave. The School District shall continue to pay its portion of the group health insurance premiums, and it shall be the employee's responsibility to continue to pay for his or her portion of said premiums. Upon return to work, the employee shall be entitled to his or her same position or an equivalent position at the same rate of pay and benefits which the employee received at the time FMLA leave began (subject to change in District policy, in the negotiated agreement relative to salary and health insurance benefits and subject to the District's reduction-in-force policy). A return to work during the last two (2) or three (3) weeks of a semester from FMLA leave by certified staff shall also be subject to certain restrictions as set forth in the Special Rules section. The employee shall not accrue additional benefits during the period FMLA leave is taken without pay.
- E. In the case of birth, adoption or foster placement, the FMLA leave entitlement for child-care ends after the child reaches the age of one, or 12 months after the adoption or placement. FMLA leave to care for a child/parent also includes the right to take FMLA leave by/for a step-parent/step-child or a person recognized as acting as a parent as a guardian (or adult with whom child resides pursuant to SDCL 13-28-10).

- F. In cases where both spouses are employed by the school District, the combined total FMLA leave of both employees for birth, adoption or foster placement, or parent shall be limited to twelve (12) weeks. This limitation of twelve (12) weeks total however does not apply to employee-spouses taking FMLA leave due to other serious health conditions of a family member.
- G. The School District, at the request of the employee, may agree to allow the employee to take FMLA leave intermittently or on a reduced hours basis, subject to the recommendations of the Superintendent and approval by the school Board.
- H. When unpaid FMLA leave is "foreseeable" in connection with birth, adoption or foster placement of a child, or for family or employee serious illness the employee shall provide thirty (30) days prior written notice of the request for FMLA leave (or as soon as possible if the employee becomes aware of the need for FMLA leave less than 30 days prior to the surgery or other event) and shall make a reasonable effort to schedule treatment, including the need for intermittent and reduced hour leave, so as to not duly disrupt the operations of the school District.
- I. When the employee requests or is taking unpaid FMLA leave, the District may require health provider verifications of the serious health condition from the employee's health care provider and may also require the employee to obtain a second medical opinion (at the District's expense). In the case of employee serious illness, in addition to the current sick leave policy requirements, the employee shall provide certification by his or her health care provider certifying that the employee is able to return to work and is able to meet the essential functions of the job.
- J. If an employee does not return to work after the unpaid FMLA leave period has expired, all employee benefits shall cease to be paid by the school District. The School District may also require the employee to reimburse the School District for the employee's share of insurance premiums if paid by the District while the employee was on unpaid FMLA leave unless the failure to return to work was due to the serious health condition that entitled the employee to take FMLA leave Initially or due to other circumstances beyond the control of

the employee. Such reimbursement shall be through payroll withholding after the employee returns to work.

- K. The Superintendent or designee will be available to assist employees who want to apply for FMLA leave. FMLA request forms are available at the Superintendent's office.

#### SPECIAL RULES SECTION APPLICABLE TO CERTIFIED EMPLOYEES

The following special rules apply to any certified employee who take FMLA leave under this policy and who is employed principally in an instructional capacity.

- a. If FMLA leave begins with more than five (5) weeks left in the semester, the Superintendent may require the employee to continue taking leave until the end of the semester, if:
  - 1) The employee will be gone from work at least three (3) weeks for any of the four qualifying reasons (II A. 1-4) and
  - 2) The employee would return to work in the last three (3) weeks of the semester.
- b. If FMLA leave begins during the last five (5) weeks of the semester, the Superintendent may require the employee to continue taking leave until the end of the semester if;
  - 1) The employee would be gone from work at least two (2) weeks for a qualifying reason (II. A. 1,2 or 3).
  - 2) The employee would return to work in the last two (2) weeks of the semester.
- c. If FMLA leave begins during the last three (3) weeks of the semester, the Superintendent may require the employee to continue taking leave until the end of that semester if the employee would be absent more than five (5) working days for a qualifying reason (II.A. 1,2, or 3).

- d. If the school District requires a teacher to extend FMLA leave under these special rules, the extended leave shall be counted against the employee's FMLA leave allotment.

Questions on these special rules should be addressed to the Superintendent or designee.

(ADOPTION DATE: February 22, 1994)

(REVIEWED DATE: February 28, 2005)

(REVIEWED DATE: January 26, 2009)