

**FAMILY AND MEDICAL LEAVE POLICY AND
NOTICE OF EMPLOYEE RIGHTS AND RESPONSIBILITIES**

The Board of Education (Board) shall consider employees to be entitled to FMLA leave according to the definitions, criteria and notice procedure set forth in the federal Family Medical Leave Act and its implementing regulations (FMLA). No policy, procedure or action by the Board shall constitute a waiver of the requirements of the FMLA. The following explanation of the FMLA is provided for general information and in compliance with the written notice requirements of the FMLA. Any specific questions about or requests for leave under the FMLA are to be directed to the Office of Personnel.

Basic Leave Entitlement

The Family and Medical Leave Act of 1993 (the "FMLA") requires that the Board allow at least up to 12 work weeks of unpaid, job-protected leave during any 12-month period for eligible employees who must miss work because of one of the following circumstances:

1. For incapacity due to pregnancy, prenatal medical care or child birth;
2. To care for the employee's son or daughter after birth, or placement for adoption or foster care;
3. To care for a spouse, son, daughter, or parent who has a serious health condition;
4. For a serious health condition that makes the employee unable to perform the employee's job; or
5. For qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty during the deployment to a foreign country or call to active duty status as a member of the National Guard, Reserves or Armed Forces of the United States.

The FMLA also includes a special leave entitlement that permits certain eligible employees to take up to 26 weeks of leave to care for a covered service member during a single 12-month period. A "covered servicemember" is (a) a current member of the Armed Forces (including National Guard or Reserves) who has a serious injury or illness incurred by the member in 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 line of duty on active duty in the Armed Forces) that may render the servicemember medically unfit to perform his or her duties and for which the servicemember is undergoing medical treatment, recuperation or therapy, or is in outpatient status, or is on the temporary disability retirement list; or (b) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness as designated by the Secretary of Labor that was incurred by the member in 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 line of duty on active duty in the Armed Forces) and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment,

MCDOWELL COUNTY SCHOOLS
Policy 8-018

recuperation, or therapy For purposes of this policy, this special leave entitlement is called “military caregiver leave.”

Spouses who are both employed by the Board are limited in the amount of family leave they may take for the birth and care of a newborn child, placement of a child for adoption or foster care, or to care for a parent who has a serious health condition to a combined total of 12 weeks (or 26 weeks, within the applicable time period, if leave to care for a covered servicemember with a serious injury or illness is also used).

Generally, an employee is not required to use this leave entitlement in one block of time. Leave may be taken intermittently or on a reduced leave schedule when medically necessary. When leave is needed for planned medical treatment, the employee must make a reasonable effort to schedule treatment so as not to unduly disrupt the Board’s operation. Leave due to qualifying exigencies and military caregiver leave may also be taken on an intermittent basis. The Board does not permit intermittent FMLA leave for the birth and care of a newborn child, or placement for adoption or foster care. Other forms of leave, paid and unpaid, are available for such reasons.

Leave Period: The Board uses the rolling backward method of calculating how much FMLA leave is available and/or remaining. This method for calculating the relevant 12-month period may be changed at any time with 60 calendar days notice to employees.

Employee Eligibility

The Board shall consider employees to be eligible for FMLA leave in accordance with the criteria set forth in the FMLA. Generally, to be eligible for FMLA benefits, an employee must:

1. work for a covered employer (the Board is a covered employer);
2. have worked for the Board for a total of 12 months;
3. have worked at least 1,250 hours over the previous 12 months (actual work hours, not merely a day or hour for which the employee has been paid); and
4. work at a location in the United States or in any territory or possession of the United States where at least 50 employees are employed by the Board within 75 miles.

In addition, employees must comply with all applicable time frames for providing notice of the need for FMLA leave and certification of a serious health condition, many of which are summarized in this policy.

Serious Health Condition

For purposes of FMLA leave, a “serious health condition” means an illness, injury, impairment or physical or mental condition that involves either an overnight stay in a medical care facility or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee’s job, or prevents the qualified family member from participating in school or other daily activities.

Subject to certain conditions, the continuing treatment requirement may be met by a period of incapacity of more than 3 consecutive calendar days combined with at least two visits to a

health care provider or one visit and a regimen of continuing treatment, or incapacity due to pregnancy, or incapacity due to a chronic condition. Other chronic conditions may also meet the definition of serious health condition.

Notification and Certification Responsibilities

Employee Responsibilities

Employees seeking to use any form of FMLA leave are required to provide 30-day advance notice of the need to take FMLA leave when the need is foreseeable. When 30 days notice is not possible, the employee must provide notice as soon as practicable (usually either the same or the next business day) and generally must comply with the Board's usual procedural requirements for requesting leave, including the Board's normal call-off procedures.

Employees must provide sufficient information for the Board to determine if the leave may qualify for FMLA protection and the anticipated timing and duration of the leave. Depending on the situation, such information may include that the employee or qualifying family member is unable to perform job functions or daily activities, is incapacitated due to pregnancy, or is hospitalized or requires continuing care of a health care provider and/or that circumstances exist supporting the need for military family leave. The required forms for providing the necessary information are available at the office of the Personnel.

When an employee requests leave for a FMLA-qualifying reason for the first time, the employee need not expressly assert FMLA rights or even mention the FMLA. When an employee seeks leave, however, due to a FMLA-qualifying reason for which the Board has previously provided the employee FMLA-protected leave, the employee must specifically reference either the qualifying reason for leave or the need for FMLA leave.

Board Responsibilities

The Board must post a notice approved by the Secretary of Labor explaining employee and employer rights and responsibilities under the FMLA. Additionally, the Board must either include the same general information in employee handbooks or other written guidance to employees concerning benefits. This policy provides the notice required by law.

When an employee requests FMLA leave or the Board acquires knowledge that leave may be for an FMLA purpose, the Board must notify the employee of his or her eligibility to take leave, and inform the employee of his/her rights and responsibilities under the FMLA. If the employee is not eligible, the Board must provide a reason for the ineligibility. This policy contains the needed information concerning an employee's rights and responsibilities under the FMLA.

When the Board has enough information to determine that leave is being taken for a FMLA-qualifying reason, the Board must notify the employee that the leave is being designated as and will be counted as FMLA leave, including the amount of leave counted against FMLA leave entitlement, whether the leave is paid or unpaid. If the Board determines that the leave is not FMLA-protected, the Board must notify the employee.

Medical Certification

The Board requires that an employee's request for leave due to a serious health condition affecting the employee or a covered family member be supported by a certification from a health

MCDOWELL COUNTY SCHOOLS
Policy 8-018

care provider. The required forms are provided by the office of Personnel, and must be returned to the same office within fifteen (15) days unless a medical emergency prevents it. If the employee fails to provide a complete and adequate medical certification, FMLA leave may be delayed, denied, or revoked. If the information provided is incomplete or unclear or its authenticity is in doubt, the Board may require clarification and/or authentication of the information provided on the FMLA form, and may also require second or third medical opinions (at the Board's expense) and periodic recertification of a serious health condition. When the Board requires a certification of a serious health condition from a health care provider, or requires clarifying or authenticating information about the same be provided, it shall inform the employee of the deadline for complying and shall explain the possible consequences of failing to meet that deadline.

The Genetic Information Nondiscrimination Act of 2008 (GINA) prohibits employers and other entities covered by GINA Title II from requesting or requiring genetic information of an individual or family member of the individual, except as specifically allowed by this law. To comply with this law, the Board asks that employees not provide any genetic information when responding to this request for medical information. "Genetic information" as defined by GINA, includes an individual's family medical history, the results of an individual's or family member's genetic tests, the fact that an individual or an individual's family member sought or received genetic services, and genetic information of a fetus carried by an individual or an individual's family member or an embryo lawfully held by an individual or family member receiving assistive reproductive services.

Military Family Leave Entitlements

Military Caregiver Leave: For purposes of military caregiver leave, an eligible employee is a spouse, son, daughter, parent, or next of kin, as defined by the FMLA regulations, of a covered servicemember. The "single 12-month period" for leave to care for a covered servicemember with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later, regardless of the 12 month period established by the Board for other types of FMLA leave. An eligible employee is limited to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the "single 12-month period." (Only 12 of the 26 weeks total may be for a FMLA-qualifying reason other than to care for a covered servicemember.)

Qualifying Exigency Leave: Eligible employees may be entitled to up to a total of 12 workweeks of unpaid leave during the normal 12-month period established by the Board for FMLA leave for qualifying exigencies arising out of the fact that the employee's spouse, son, daughter, or parent is on active duty, or has been notified of an impending call or order to active duty, in support of a contingency operation. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling session and attending post-deployment reintegration briefings.

Return-to-Work Fitness for Duty Certification

The Board requires all employees who are on FMLA leave for a serious health condition to submit a fitness for duty certification from their physician **prior to** returning to work. This certification must be submitted to the office of Personnel prior to the start of the employee's first day of work after FMLA leave.

Benefit Protections

MCDOWELL COUNTY SCHOOLS
Policy 8-018

The Board is required to maintain group health insurance coverage for an employee on FMLA leave on the same terms as if the employee had continued to work.

Arrangements will need to be made by employees to pay their share of health insurance premiums while on leave. In some instances, the Board may recover premiums it paid to maintain health coverage for an employee who fails to return to work from FMLA leave or is later determined not to have been entitled to FMLA for the relevant period.

Use of FMLA leave cannot result in the loss of any employment benefits that accrued prior to the start of an employee's leave.

Job Restoration

Upon return from FMLA leave, an employee must be restored to the employee's original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. An employee has no greater right to restoration or to other benefits and conditions of employment than if the employee had been continuously employed.

Failure to Return to Work at Completion of Leave

Under certain circumstances, if an employee fails without good reason to return to work at the conclusion of the FMLA leave, the Board may be entitled to recover its cost of the health care insurance premium directly from the employee. In addition, an employee who fails to return to work at the conclusion of FMLA leave may be subject to disciplinary action up to and including termination.

Substitution of Leave

The Board currently provides paid and unpaid leave of varying lengths in accordance with West Virginia law and Board policy. These laws and policies will continue in effect and be supplemented by the provisions of the FMLA so that by combining all of the applicable leave periods of paid or unpaid benefits provided by the Board, eligible employees may receive up to a total of 12 weeks leave in any 12 month period, or more if permitted by law or the amount of paid leave the employee has accrued. **Accordingly, and pursuant to the FMLA, the Board requires employees to use all accrued paid leave before taking unpaid FMLA leave.** Paid leave will be charged towards the FMLA leave entitlement. In order to use paid leave for FMLA leave, employees must comply with the Board's normal paid leave procedures.

Other Benefits During FMLA Leave

Any employee taking FMLA leave generally shall be accorded the same rights and benefits as other school employees on leaves of absence under West Virginia Code 18A-2-2a, as amended.

Confidentiality of Medical Information

FMLA-related medical information will be maintained by the Board in a separate confidential medical file as required by federal law.

Disciplinary Action

MCDOWELL COUNTY SCHOOLS
Policy 8-018

The FMLA was enacted to allow employees the ability to balance work and family life without losing their job. The Board strongly supports the purpose of this law. It is important, however, that employees do not take FMLA leave for purposes other than that which the FMLA designates.

An employee providing false or misleading information in his/her request for FMLA will be subject to disciplinary action up to and including termination.

An employee found to be working or otherwise engaged in gainful employment while on FMLA leave from the Board shall be subject to disciplinary action up to and including termination.

Unlawful Acts

It is unlawful for any employer to interfere with, restrain, or deny the exercise of any right provided by the FMLA. It is also unlawful for an employer to discharge or discriminate against any individual for opposing any practice made unlawful by the FMLA or for involvement in any proceedings under or relating to the FMLA.

Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer for certain alleged violations of the FMLA.

The FMLA does not affect any federal or state law prohibiting discrimination, or supersede any state or local law which provides greater family or medical leave rights.

Administrative Guidelines

The Superintendent may issue written administrative guidelines consistent with the purpose of this policy to effect its implementation. Reasonable notice of such guidelines shall be given.

Adopted on December 3, 2013

Effective July 1, 2014