

FAMILY AND MEDICAL LEAVE

The School System shall comply with the mandatory provisions of the Family and Medical Leave Act of 1993. The Superintendent shall issue, and from time to time amend, regulations setting forth the rights and procedures granted by the Act, and shall ensure compliance with those regulations either personally or by delegation, or by some combination of personal oversight and delegation.

A. Leave without Pay

1. Eligible employees may take leave without pay to cover any of the following events, subject to the terms and conditions contained in this policy. Eligible employees may take up to twelve workweeks of leave without pay in a 12-month period for the following reasons:

- a. their own serious health condition that causes the employee to be unable to perform the essential functions of their position;
- b. the serious health condition of a spouse, child, or parent;
- c. the birth or adoption of a child (parental leave); or
- d. any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on "covered active duty".

Eligible employees may take up to twenty-six work weeks of leave without pay in a single 12-month period for the following reason: to care for a covered service member with a serious injury or illness if the eligible employee is the service member's spouse, son, daughter, parent, or next of kin (military caregiver leave).

2. An employee requesting leave under this policy must make the request in writing to the Superintendent or Designee.

3. An employee will only be considered eligible for unpaid leave under this policy if:

a. that employee has been employed by the School Committee for at least twelve (12) months; and

- b. that employee has worked at least 1250 hours for the School Committee in the previous 12 month period.

4. Extent of leave:

a. An eligible employee may take up to twelve weeks of leave total (or up to twenty-six weeks of leave total for military caregiver leave described above) during a twelve month period, including any paid leave used. Paid leave shall run concurrent with unpaid leave for the purpose of this policy.

b. In any case where both husband and wife work for the School Committee, parental leave, military related leave, and family medical leave to care for a sick parent are limited to twelve work weeks total for the husband and wife together (or twenty-six work weeks total in the case of military caregiver leave). Except as otherwise provided, the husband and wife may divide the twelve (or twenty-six in the case of military caregiver leave) work weeks of leave in any way they may agree to.

5. Definitions:

a. "Child" means a son or daughter, whether biological adopted, or foster child, or a stepchild, legal ward or child to whom the employee stands in loco parentis, if the child is either under the age of eighteen (18) years or is incapable of self-care because of a mental or physical disability.

b. "Eligible employee" is an employee who has been employed for at least twelve (12) months by the School Committee and who has worked at least 1250 hours in the previous twelve (12) month period. The terms "eligible employee" and "employee" are used interchangeably in this policy.

c. "Health care provider": means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state where the doctor practices, or any person determined by the Secretary of Labor to be capable of providing health care services.

d. "Intermittent Leave" means leave taken in whole day periods but less than a whole workweek.

e. "Parent" means a biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

f. "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee. Except for teachers, no employee exempt from the overtime rules of the Fair Labor and Standards Act may take leave on a reduced leave schedule without the permission of the Superintendent or Designee.

g. "Serious health condition" means an illness, injury, impairment, or physical or mental condition which involves—

(1) inpatient care in a hospital, hospice, or residential medical care facility, or

(2) continuing treatment by a health care provider.

h. "Spouse" means a husband or wife.

i. "Twelve Month Period" means the school system's fiscal year.

B. Types of Leave without Pay

1. Personal Medical Leave without Pay: The Superintendent or Designee may grant a medical leave of absence without pay to an employee who, because of a serious health condition is unable to perform the functions of his or her job.

a. Sick leave, and all other available paid leave, shall run concurrently with leave permitted under

this policy. An employee may be required to exhaust all available sick leave and other available paid leave, before taking leave without pay.

- b. The Superintendent or Designee may require written certification of the employee's medical condition from the employee's health care provider, stating--
 - i. the date on which the health condition began;
 - ii. the probable duration of the condition;
 - iii. the appropriate medical facts within the health care provider's knowledge regarding the condition; and
 - iv. a statement that the employee is unable to perform the functions of his/her job.

- c. If the Superintendent or Designee has reason to doubt the validity of the health provider's certification, he or she may require, at the School Committee's expense, a second opinion. The employee must obtain the opinion of the District's designated health care provider concerning the information in b., above. The health care provider shall provide a report concerning information in b., above. The health care provider giving the second opinion may not be a person regularly employed by the School Committee.

- d. If the second opinion conflicts with the first, the Superintendent or Designee may require, at the School Committee's expense, a third opinion. The employee must obtain the opinion of the District's designated health care provider concerning the information in b., above. The health care provider shall provide a report concerning information in b., above. The provider's opinion shall be final and binding on the School Committee and the employee.

- e. The Superintendent or Designee may require an employee on medical leave without pay to provide updated written certifications of the employee's medical condition from the employee's health care provider at reasonable intervals.

- f. If the necessity for leave is foreseeable based on planned medical treatment, the employee—
 - (1) shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the School System, subject to the approval of the employee's health care provider; and
 - (2) shall give the employee's supervisor at least 30 days' notice, before the date the leave is to begin, of the employee's intention to take personal medical leave without pay, except that if the date of treatment requires the leave to begin in less than thirty days, the employee shall provide such notice as practicable.

- g. Failure to provide notice as mandated above shall result in the denial of leave until the required notice period has passed.
- h. The employee may take intermittent leave or take leave on a reduced leave schedule when medically necessary. The Superintendent or Designee may require medical necessity to be certified by the health care provider for the employee before such use is approved.
- i. Before the employee may resume work, the employee must present his or her supervisor with written notice from the employee's health care provider that the employee is able to resume work.

2. Family Medical Leave without Pay: The Superintendent or Designee may grant a medical leave of absence without pay to an employee who needs the time off to care for the employee's spouse, child or parent, if the spouse, child or parent has a serious health condition.

- a. The Superintendent or Designee may require written certification from the health care provider for the spouse, child, or parent, as the case may be, stating—
 - i. the date on which the health condition began;
 - ii. the probable duration of the condition;
 - iii. the appropriate medical facts within the health care provider's knowledge regarding the condition; and
 - iv. a statement that the employee is needed to care for the spouse, child, or parent, as the case may be, and an estimate of the amount of time that such employee is needed to care for the spouse, child, or parent.
- b. If the Superintendent or Designee has reason to doubt the validity of the certification provided by the health care provider, he or she may require, at the School Committee's expense, a second opinion. The employee and the covered family member must obtain the opinion of the District's designated health care provider concerning the information in a., above. The health care provider shall provide a report concerning information in a., above. The health care provider giving the second opinion may not be a person regularly employed by the School Committee.
- c. If the second opinion conflicts with the first, the Superintendent or Designee may require, at the School Committee's expense, a third opinion. The employee and the covered family member must obtain the opinion of the District's designated health care provider concerning the information in a., above. The health care provider shall provide a report concerning information in a., above. The provider's opinion shall be final and binding on the School Committee and the employee.
- d. The Superintendent or Designee may require an employee on family medical leave without pay to provide updated written notifications from the health care provider for the spouse, child, or parent, as the case may be, at reasonable intervals.

- e. If the necessity for leave is foreseeable based on planned medical treatment, the employee--
 - (1) Shall make a reasonable effort to schedule the treatments to as not to disrupt unduly the operations of the School System, subject to the approval of the health care provider for the spouse, child, or parent of the employee, as the case may be; and
 - (2) Shall give the employee's supervisor at least 30 days' notice, before the date the leave is to begin, of the employee's intention to take family medical leave without pay, except that if the date of the treatment requires the leave to begin in less than 30 days, the employee shall provide such notice as practicable.
- f. Failure to provide notice as mandated above shall result in the denial of leave until the required notice period has passed.
- g. The employee may take intermittent leave or take leave on a reduced leave schedule when medically necessary for the adequate care of the spouse, child, or parent. The Superintendent or Designee may require medical necessity to be certified by the health care provider for the spouse, child, or parent before such use is approved.

3. Parental Leave without Pay: Parental leave is governed by both the FMLA and Massachusetts General Laws (M.G.L.) c. 149 § 105D (“Parental Leave Act”). Please see the Arlington Public Schools’ Parental Leave Policy () for information regarding parental leave. The Parental Leave Policy is incorporated by reference in to this Family and Medical Leave Policy. Please note that the Special Rules below may apply to parental leave.

4. Leaves related to Military Service

a. *Qualifying Exigency Leave*

a.

b. An eligible employee may take up to twelve workweeks of leave in a 12-month period for any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on “covered active duty.” An eligible employee seeking leave under this section shall be required to submit an appropriate certification regarding the covered military member’s status and relationship to the employee, including a copy of the military member’s active duty orders, as well as a written statement providing the appropriate facts related to the particular qualifying exigency for which leave is sought.

Qualifying exigencies may arise when the employee’s spouse, son, daughter, or parent who is a member of the Armed Forces (including the National Guard and Reserves) and who is on covered active duty or has been notified of an impending call or order to covered active duty. “Qualifying exigencies” are defined by the U.S. Department of Labor and are described at <http://www.dol.gov/whd/regs/compliance/whdfs28mc.pdf>.

b. *Military Caregiver Leave*

c.

d. Military caregiver leave allows an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member with a serious injury or illness to take up to a total of 26 workweeks of unpaid leave during a “single 12-month period” to provide care for the service member.

A covered service member is a current member of the Armed Forces, including a member of the National Guard or Reserves, who is receiving medical treatment, recuperation, or therapy, or is in outpatient status, or is on the temporary disability retired list for a serious injury or illness. A serious injury or illness is one that is incurred by a service member in the line of duty on active duty that may cause the service member to be medically unfit to perform the duties of his or her office, grade, rank, or rating. A serious injury or illness also includes injuries or illnesses that existed before the service member’s active duty and that were aggravated by service in the line of duty on active duty.

See <http://www.dol.gov/whd/regs/compliance/whdfs28ma.pdf>

e.

f. Any request for leave under this section must be supported by a certification completed by an authorized health care provider or by a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member’s family.

C. Special Rules

1. Rules Applicable to Instructors in Periods Near the Conclusion of the Academic Term.

The following rules apply to any employee who takes leave without pay under this policy and who is employed principally in an instructional capacity.

a. If leave without pay begins more than five weeks before the end of an academic term, the Principal may require the employee to continue taking leave until the end of that academic term, if--

- (1) the leave is of at least three weeks duration; and
- (2) the employee would return to work during the three-week period before the end of the academic term.

b. If Parental or Family Medical leave without pay begins within five weeks before the end of an academic term, the Principal may require the employee to continue taking leave until the end of that term, if--

- (1) the leave is of more than two weeks duration; and
- (2) the employee would return to work during the two-week period before the end of the academic term.

c. If Parental or Family Medical leave without pay begins within three weeks before the end of an academic term the Principal may require the employee to continue taking leave until the end of that term, if the leave is for more than five working days.

d. Extended leave under this section will be counted against the teacher's FMLA allotment. If the teacher's FMLA allotment expires during the extension the additional time is

nevertheless deemed FMLA leave.

2. Intermittent Leave and Reduced Leave Schedules:

a.If the intermittent leave or reduced leave schedule is foreseeable based on planned medical treatment, the Superintendent or Designee may require the employee to transfer temporarily to an available alternate position--

- (1) which is offered by the Superintendent or Designee;
- (2) for which the employee is qualified;
- (3) which has equivalent pay and benefits; and
- (4) which, in the sole judgment of the Superintendent or Designee, better accommodates recurring periods of leave than the regular employment position of the employee.

b.If a teacher does not give the Superintendent or Designee the required 30 days' notice for intermittent leave or a reduced leave schedule which is foreseeable, he or she must delay the taking of leave until the notice provision is met.

c. If a teacher takes intermittent leave or a reduced leave schedule which is for more than 20% of the normal working days over the period of the leave, that teacher must instead take the entire period as FMLA leave.

3. Benefits during Leave:

a.While the employee is on leave, the School System shall maintain coverage of that employee under its group health plan at the level and under the conditions which would have been provided if the employee had continued in employment instead of being on leave.

b.If the employee normally had a monthly payment associated with that plan, the employee must continue to make those monthly payments during the term of the employee's leave. If the employee fails to make such payments, the School System shall, if possible, continue the benefits at the reduced rate permitted for the School System's payment alone. If such a reduced rate is not possible, then the employee shall be excluded from the group health plan.

4. Employment and Benefits upon Return to Work:

a.Any employee who takes leave under this Policy for the intended purpose of the leave shall be entitled, on return from leave--

- (1) to be restored to his or her former job; or
- (2) to be placed in an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

b.The taking of leave under this policy shall not result in the loss of any employment benefit accrued before the date on which the leave began.

c.No employee shall accrue seniority or employment benefits during any period of leave, nor shall the employee be entitled to any right, benefit, or position of employment other

than those to which the employee would have been entitled if the employee had not taken the leave.

d. This policy does not change the legal requirement that probationary teachers teach at least 160 contractual teaching days during the school year in order to count the year toward the three years of service needed to attain continuing contract status.

e. The Superintendent or Designee may deny restoration to salaried employees who are among the highest paid ten percent of the School System's employees, if:

- (1) such denial is necessary to prevent substantial and grievous economic injury to the operations of the School System;
- (2) the Superintendent or Designee notifies the employee of the intent of the School System to deny restoration on the basis of economic injury at the time the Superintendent or Designee determines that such injury would occur; and
- (3) if the leave has begun, the employee does not return to work after receiving the notice of intent not to restore him or her.

5. Failure to Return from Leave: The School System may recover the premium which it paid for maintaining coverage of the employee under its group health plan during the employee's unpaid leave under this policy if--

a. the employee fails to return from unpaid leave under this policy after the period of leave to which the employee is entitled has expired; and

- b. the employee fails to return to work for a reason other than--
- (1) the continuance, recurrence, or onset of a serious health condition which would entitle the employee to personal or family medical leave without pay;
 - (2) the occurrence of another qualifying exigency or qualifying injury (in the case of military caregiver leave) which would entitle the employee to a military related leave; and
 - (3) other circumstances beyond the control of the employee.

6. Prohibited Acts:

a. No employee of the School System shall interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under this title.

b. No employee of the School System shall discriminate against any individual for opposing any practice contrary to this policy.

- c. No employee of the School System shall discriminate against any individual for:
- (1) filing any charge, instituting or causing to be instituted any proceeding, under or related to this policy;

- (2) giving, or being about to give, any information in connection with any inquiry or proceeding relating to any right provided under this policy; or
- (3) testifying, or being about to testify, in any inquiry or proceeding relating to any right provided under this policy.

LEGAL REFS.: P.L. 103-3 "Family and Medical Leave Act of 1993,"
29 U.S.C. section 2601, et seq.
Department of Labor Regulations, 29 C.F.R. Part 825

CROSS REF: File _____, Parental Leave Policy

Adopted and Approved by the Arlington School Committee: June 11, 2015