

**FAMILY AND MEDICAL LEAVE ACT AND NEW JERSEY FAMILY LEAVE ACT**

The Board of Education has adopted this Policy to implement the terms of the Family and Medical Leave Act of 1993 ("FMLA"), and the New Jersey Family Leave Act ("NJFLA"). Eligible staff members are entitled to family and medical leave in accordance with applicable State and Federal law, as set forth in this Policy and in the other applicable Board Policies. To the extent any terms or conditions of this Policy vary from any applicable collective bargaining agreement, the terms of the collective bargaining agreement ("CBA") shall apply, as permitted and/or limited by law.

**I. Family Medical Leave Act**

- a. **Eligibility**: In order to be eligible for FMLA leave, a staff member must: (a) have worked for the District for a total of twelve (12) months; and (b) have worked for at least one thousand two hundred fifty (1,250) hours over the previous twelve (12) months. For purposes of determining FMLA eligibility, the twelve (12) months of employment does not need to be consecutive.
- b. **Leave Entitlement**: Eligible staff members are entitled to up to twelve (12) workweeks of unpaid, job-protected leave during any twelve (12) month period from July 1 to June 30 for one or more of the following reasons:
  - For the birth and care of a newborn child of the staff member;
  - For placement with the staff member of a son or daughter for adoption or foster care;
  - To care for a spouse, son, daughter, or parent with a serious health condition;
  - To take medical leave when the staff member is unable to work because of his/her own serious health condition; or
  - For "qualifying exigencies" arising out of the fact that the staff member's spouse, son, daughter, or parent is on active duty or call to active duty as a member of the National Guard or Reserves in support of a contingency operation.

Spouses who are both employed by the District 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 twelve (12) workweeks. Leave for birth and care of a newborn child, or placement of a child for adoption or foster care must conclude within twelve (12) months of the birth or placement.

For purposes of FMLA requests, a parent "means the biological parent of a staff member or an individual who stood in loco parentis to a staff member when the staff member was a son or daughter." In addition, a "spouse" is defined as a husband, wife, or civil union partner.

FMLA Eligible Staff members are also entitled for up to twenty (26) weeks of FMLA leave during a single 12-month period for a spouse, son, daughter, parent, or nearest blood relative caring for a recovering service member. Such leave shall be referred to as Service Member Caregiver Leave. A recovering service member is defined as a member of the Armed Forces who suffered an injury or illness while on active-duty that may render the person unable to perform the duties of the member's office, grade, rank or rating. The provisions of the FMLA detailed below will apply to this type of FMLA leave, including employer coverage, staff member eligibility requirements, health insurance continuation, and reinstatement rights. During the single 12-month period in which a staff member may use Service Member Caregiver Leave to care for an injured service member, the combined total of FMLA leave that may be taken by the staff member may not exceed twenty-six (26) weeks.

- c. **Types of Leave:** A staff member may take FMLA leave in consecutive weeks, as intermittent leave, or as reduced leave. A staff member who requests intermittent or reduced leave shall make a reasonable effort to schedule such leave so as not to unduly disrupt the instructional/education program.
- i. Leave for birth of a son or daughter or placement of a son or daughter with the staff member for adoption or foster care may not be taken by a staff member intermittently or on a reduced leave schedule.
  - ii. Leave may be taken intermittently or on a reduced leave schedule when medically necessary for planned and/or unanticipated medical treatment of a related serious health condition by or under the supervision of a health care provider, or for recovery from treatment or recovery from a serious health condition.
  - iii. Intermittent leave means leave scheduled for periods of time from one hour or more to several weeks; however, the total time within which the leave is taken can not exceed a twelve (12) month period for each serious health condition episode. Intermittent leave may be taken for a serious health condition that requires periodic treatment by a health care provider, rather than one continuous period of time. Intermittent leave may also be taken for absences where the staff member is incapacitated or unable to perform the essential functions of the position because of a serious health condition even if the staff member does not receive treatment by a health care provider. The staff member shall make a reasonable effort to schedule intermittent leave so as not to unduly disrupt the operations of the instructional/education program.
  - iv. Reduced leave means leave scheduled for fewer than the staff member's usual number of hours worked per workweek, but not fewer than a staff member's usual number of hours worked per workday, unless otherwise agreed to by the staff member and the District. A staff member is entitled, at the option of the staff member, to take leave on a reduced leave schedule not exceeding twenty-four (24) consecutive weeks. The staff member shall make a reasonable effort to schedule reduced leave so as not to unduly disrupt the

operations of the instructional/educational program. The staff member shall provide the District prior notice of the care, medical treatment or continuing supervision by a health care provider necessary due to a serious health condition of a family member in a manner that is reasonable and practicable. Leave taken on a reduced leave schedule shall not result in a reduction of the total amount of leave to which a staff member is entitled.

- v. The fact that a holiday may occur within the week taken by a staff member as Family Leave has no effect and the week is counted as a week of Family Leave. However, if the staff member is out on Family Leave and the District is closed and the staff member would not be expected to report for work for one or more weeks, the weeks the District is closed for this staff member do not count against the staff member's family leave entitlement.

Any leave time remaining after a staff member has exhausted his/her entitlement to intermittent leave in any twelve month period may be taken as consecutive leave or reduced leave, and any leave time remaining after a staff member has exhausted his/her entitlement to reduced leave in any twelve month period may be taken as consecutive leave or intermittent leave.

d. **Serious Health Condition:** A "serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either: (a) in-patient care in a hospital, hospice, or residential medical-care facility, including any period of incapacity (inability to work or perform other regular daily activities) or subsequent treatment in connection with such in-patient care; or (b) continuing treatment by a health care provider which includes:

- i. A period of incapacity lasting more than three (3) consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also includes:
  - 1. Treatment two (2) or more times by or under the supervision of a health care provider (i.e., in person visits, the first within seven (7) days and both within thirty (30) days of the first day of incapacity); or
  - 2. One treatment by a health care provider (i.e., an in-person visit within seven (7) days of the first day of incapacity) with a continuing regimen of treatment (i.e., prescription medication, physical therapy, etc.); or
- ii. Any period of incapacity related to pregnancy or for prenatal care; or
- iii. Any period of incapacity or treatment for a chronic serious health condition which continues over an extended period of time, requires periodic visits (at least twice a year) to a health care provider, and may involve occasional episodes of incapacity; or

- iv. Any period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective. Only supervision by a health care provider is required, rather than active treatment; or
  - v. Any absences to receive multiple treatments for restorative surgery or for a condition that would likely result in a period of incapacity of more than three (3) days if not treated.
- e. **Staff members Must Use Accumulated Sick Days:** Staff members must use all accrued but unused sick days as part of his/her FMLA leave to cover some or all of the leave taken. However, for periods during which a staff member is actually receiving Worker's Compensation or Temporary Disability Benefit payments, this requirement does not apply.
- f. **Maintenance of Health Benefits:** The District will maintain an staff member's group health insurance coverage to the same extent it was provided before the FMLA leave was taken, and on the same terms as if the staff member continued to work. Staff members who pay a share of their health insurance premiums will continue to be responsible for paying those premiums while on FMLA leave. It is the responsibility of the staff member to meet with the District's Payroll and Benefits Representative BEFORE going on FMLA leave in order to discuss payment of premiums while on FMLA leave.
- g. **Notice of Intent to Return to Work:** No later than 15 school days prior to the expiration of a staff member's FMLA leave, he/she must notify the District of the date he/she intends to return to work. If a non-tenured staff member fails to provide the District with an anticipated return to work date, the District will assume that the non-tenured staff member has resigned from his/her employment with the District.
- h. **Job Restoration:** Upon a staff member's return from FMLA leave, a staff member will be restored to his/her original job, or to an equivalent job with equivalent pay, benefits, and other terms and conditions of employment. If the District experiences a reduction in force or layoff and the staff member would have lost his/her position had the staff member not been on family leave as a result of the reduction in force or pursuant to the good faith operation of a bona fide layoff and recall system including a system under any collective bargaining agreement, the staff member shall be entitled to reinstatement to the former or an equivalent position in accordance with applicable statutes, codes and laws. The staff member's tenure and seniority rights, if any, and other benefits shall be preserved, but the staff member shall accrue no, additional time toward tenure or seniority for the period of the leave except as may be provided by law.

The return of a staff member prior to the expiration of the requested family leave may be permitted by the Board if the return does not unduly disrupt the instructional program or required the District to incur the cost of continuing the employment of a substitute under contract.

- i. **Notice**: Staff members seeking to take FMLA leave must provide thirty (30) days written advance notice to the Superintendent or his/her designee of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than thirty (30) days in advance, the staff member must provide notice as soon as practicable, which is generally the same or next business day.

When the need for FMLA leave is not foreseeable, the staff member must provide notice to the employer as soon as practicable, which is generally the same or next business day. Where written notice is impractical, staff members should provide oral notice, and later confirm the notice in writing.

Staff members must provide the District with sufficient information for the District to reasonably determine whether the FMLA may apply to the leave request. Such information may include, but is not limited to, that the staff member is incapacitated due to pregnancy, has been hospitalized overnight, is unable to perform the functions of his/her job, and/or that the staff member or his/her qualifying family member is under the continuing care of a health care provider.

When planning medical treatment, the staff member must consult with the Superintendent or his/her designee and make a reasonable effort to schedule the leave so as not to unduly disrupt the education program, subject to the approval of the health care provider. Staff members are ordinarily expected to consult with the Superintendent or designee prior to scheduling of treatment that would require leave for a schedule that best suits the needs of the District and the staff member.

Though an staff member who seeks leave for an FMLA-qualifying reason for the first time does not necessarily need to assert his/her FMLA rights, when he/she seeks leave for an FMLA-qualifying reason for which the District previously provided the staff member FMLA protected leave, the staff member must specifically reference either the qualifying reason for the leave or the need for FMLA leave.

- j. **Certification**: The District may require that a staff member's request for leave due to a serious health condition affecting the staff member or a covered family member be supported by a certification from a health care provider. The certification must meet the requirements of 29 CFR Section 825.306 to include: which part of the definition of "serious health condition" applies; the approximate date the serious health condition commenced and its probable duration; whether it will be necessary for the staff member to take intermittent and/or reduced leave; whether the patient is presently incapacitated and the likely duration and frequency of episodes of incapacity; if additional treatments will be required for the condition; and/or if the patient's incapacity will be intermittent or will require reduced leave. The certification of a serious health condition of a family member of the staff member shall be sufficient if it states the date on which the condition commenced, the probable duration of the condition, and the medical facts within the provider's knowledge regarding the condition. Certification for the birth or placement of a child need only state the date of birth or date of placement.

In the event the Superintendent or designee doubts the validity of the certification, in accordance with 29 CFR Section 825.307, the District may require, at the District's expense, the staff member obtain an opinion regarding the serious health condition from a second health care provider designated by the District, but not employed on a regular basis by the District. If the second opinion differs from the staff member's health care provider, the District may require, at the District's expense, the staff member obtain the opinion of a third health care provider designated by the District or approved jointly, in good faith, by the District and the staff member. The opinion of the third health care provider shall be final and binding on the District and the staff member.

The District may require re-certification pursuant to the requirements of 29 CFR Section 825.308. In accordance with 29 CFR Section 825.309, the staff member on leave must provide a written report to the Superintendent or designee every thirty workdays. The report shall include the staff member's status and intended date to return to work. In the event the staff member's circumstances change, the staff member must provide reasonable notice to the Superintendent or designee if the staff member intends to return to work on a date sooner than previously noticed to the District. The staff member is not required to take more leave than necessary to resolve the circumstance that precipitated the need for leave. As a condition of returning to work after the leave for the staff member's own serious health condition, and in accordance with 29 CFR Section 825.310, the District requires a staff member to provide a certification from their health care provider that the staff member is able to resume work.

In accordance with 29 CFR Section 825.311, the District may delay the taking of FMLA leave to a staff member who fails to provide certification within fifteen days after being requested to do so by the District. In accordance with 29 CFR Section 825.312, the District may delay the taking of leave until thirty days after the date the staff member provides notice to the District of foreseeable leave or the District may delay continuation of leave if a staff member fails to provide a requested medical certification in a timely manner.

- k. **Ineligible Staff Members:** The District may deny job restoration after FMLA leave if the staff member is a "key staff member" as defined in 29 CFR 825 section 217 if such denial is necessary to prevent substantial and grievous economic injury to the District or the District may delay restoration to a staff member who fails to provide a fitness for duty certificate to return to work for leave that was the staff member's own serious health condition. A "key staff member" is a salaried, staff member who is among the highest paid ten percent of the District staff employed by the District within 75 miles of the worksite. No more than ten percent of the District staff within 75 miles of the worksite may be "key staff members."

In the event the Superintendent or his/her designee believes that reinstatement may be denied to a key staff member, the Superintendent or designee must give written notice to the staff member at the time the staff member gives notice of the need for leave, or when the need for leave commences, if earlier, that he/she qualifies as a key staff member. The key staff member must be fully informed of the potential consequences with respect to reinstatement and maintenance of health benefits if the District should determine that substantial grievous economic injury to the District's operations will result if the staff member is reinstated from leave. The District's notice must explain the basis for the District's finding that substantial and grievous economic injury will result, and if leave has commenced, must provide the staff member a reasonable time in which to return to work. If the staff member on leave does not return to work in response to the notice of intent to deny restoration, the staff member continues to be entitled to maintenance of health insurance.

A key staff member's rights under the FMLA continue unless and until the staff member either gives notice that he/she no longer wishes to return to work or the District actually denies reinstatement at the conclusion of the leave period. A staff member is still entitled to request reinstatement at the end of the leave period even if the staff member did not return to work in response to the District's notice. The District will then again determine whether there will be substantial and grievous economic injury from reinstatement based on the facts at that time. If it is determined that substantial and grievous economic injury will result, the District will notify the staff member in writing (in person or by certified mail) of the denial of the restoration.

- I. FMLA Designation:** Eligible Staff members may be automatically placed on FMLA leave (without first completing an FMLA Request Form or medical certification forms) if the District has reason to know that the staff member's absence is due to an FMLA-qualifying condition (e.g. staff member undergoes emergency surgery or suffers a work-related injury that is a serious health condition or the staff member presents a doctor's note which, in the District's sole discretion and judgment, demonstrates that the absence was due to an FMLA-qualifying reason). In such cases, the District will unilaterally designate the leave as FMLA leave to the extent permitted by law. In addition, the District will subsequently provide written notification of the designation of FMLA leave to the staff member.
- m. FMLA Leave and Workers Compensation:** Staff members on FMLA leave for conditions covered by Workers' Compensation who are offered a light duty position will have the option of remaining on FMLA leave without pay (and foregoing the light duty position and additional workers' compensation benefits) or accepting the light duty position. If the staff member accepts the light duty position, then the staff member's right to job restoration runs through the end of the applicable Leave Year. If the staff member accepts light duty, then s/he retains the right to be restored to the same position the staff member held at the time his or her FMLA leave commenced or to an equivalent position. Nothing in this policy is meant to provide a guarantee or assurance that a light duty position is available, as this decision is within the sole discretion of the District.

## II. New Jersey Family Leave Act

Like the FMLA, the NJFLA provides eligible staff members with unpaid, job-protected time off from work in connection with the birth or adoption of a child, or for the serious health condition of a parent, child, or spouse, but does not authorize leave for the staff member's own serious health condition. The NJFLA provides for up to twelve (12) workweeks of unpaid, job-protected leave in a twenty-four (24) month period. The staff member is eligible for up to twelve (12) weeks leave in the first twelve (12) months of the twenty-four month period under the NJFLA.

For purposes of the NJFLA, the definition of "parent" includes a parent-in-law, stepparent, foster parent, or adoptive parent. In addition, "spouse" includes a civil union partner.

- a. **Eligibility:** In order to be eligible for NJFLA leave, an staff member must (a) have worked for the District for a total of twelve (12) months and (b) have worked for at least one thousand (1,000) base hours, excluding overtime, during the immediate preceding twelve (12) months period. NJFLA leave taken for the birth or adoption of a healthy child may commence at any time within a year after the date of the birth or placement for adoption.

A staff member during any period of the NJFLA leave is prohibited from performing any services on a full-time basis for any person for whom the staff member did not provide services immediately prior to commencement of the leave. A staff member on NJFLA leave may commence part-time employment that shall not exceed half the regularly scheduled hours worked for the District. The staff member may continue the part-time employment that commenced prior to the NJFLA leave at the same number of hours that the staff member was regularly scheduled prior to such leave.

The method to determine the twenty-four (24) month period in which the twelve (12) weeks of NJFLA leave entitlement occurs will be the twenty-four (24) month period measured forward from when the staff member's first leave begins.

- b. **Types of Leave:** A staff member may take NJFLA leave in consecutive weeks, as intermittent leave, or as reduced leave. A staff member who requests intermittent or reduced leave shall make a reasonable effort to schedule such leave so as not to unduly disrupt the instructional/educational program.
- i. In the case of a family member who has a serious health condition, leave may be taken intermittently when medically necessary. The total time within which the leave is taken, can not exceed a twelve (12) month period for each serious health condition episode. The staff member will provide the District with prior notice of the leave in a manner which is reasonable and practicable; and the staff member shall make a reasonable effort to schedule the leave so as not to unduly disrupt the operations of the instructional/educational program. In the case of the birth or adoption of a healthy child, the leave may be taken intermittently only if agreed to by the staff member and the District.

- ii. Reduced leave means leave scheduled for fewer than the staff member's usual number of hours worked per workweek, but not fewer than a staff member's usual number of hours worked per workday, unless otherwise agreed to by the staff member and the District. A staff member is entitled, at the option of the staff member, to take leave on a reduced leave schedule for a period not exceeding twenty-four consecutive months. The staff member is not entitled to take the leave on a reduced leave schedule without an agreement between the staff member and the District if the leave is taken for the birth or adoption of a healthy child. The staff member shall make a reasonable effort to schedule reduced leave so as not to unduly disrupt the operations of the instructional/educational program. The staff member shall provide the District prior notice of the care, medical treatment or continuing supervision by a health care provider necessary due to a serious health condition of a family member in a manner that is reasonable and practicable. Leave taken on a reduced leave schedule shall not result in a reduction of the total amount of leave to which a staff member is entitled.
- iii. The fact that a holiday may occur within the week taken by a staff member as Family Leave has no effect and the week is counted as a week of Family Leave. However, if the staff member is out on Family Leave and the District is closed and the staff member would not be expected to report for work for one or more weeks, the weeks the District is closed for this staff member does not count against the staff member's family leave entitlement.

Any leave time remaining after a staff member has exhausted his/her entitlement to intermittent leave in any twelve month period may be taken as consecutive leave or reduced leave, and any leave time remaining after a staff member has exhausted his/her entitlement to reduced leave in any twelve month period may be taken as consecutive leave or intermittent leave.

- c. **Maintenance of Health Benefits:** The District will maintain an staff member's group health insurance coverage to the same extent it was provided before the NJFLA leave was taken, and on the same terms as if the staff member continued to work. For those staff members who pay a share of their health insurance premiums, they will continue to be responsible for paying those premiums while on NJFLA leave. It is the responsibility of the staff member to meet with the Payroll and Benefits Representative BEFORE going on NJFLA leave in order to discuss payment of premiums while on NJFLA leave.
- d. **Notice:** Staff members seeking to take NJFLA leave for the birth or adoption of a child must provide thirty (30) days written notice to the Superintendent or his/her designee, except that if the date of the birth or adoption requires leave to begin in less than thirty (3) days, the staff member shall provide such notice that is reasonable and practicable. Staff members seeking to take NJFLA leave to care for a parent, child, or spouse with a serious health condition must provide fifteen (15) days advance written notice, except that if the date of the treatment or supervision requires leave to begin in less than fifteen (15) days, the staff member shall provide such notice that is reasonable and practicable.

When the Superintendent or designee is not made aware that a staff member was absent for family leave reasons and the staff member wants to request the leave be counted as family leave, the staff member must provide timely notice within two (2) business days of returning to work to have the time considered for family leave in accordance with the Family Leave Act.

- e. **Staff Member use of Accumulated Sick Days:** Although sick leave may generally only be used for a staff member's own illness or injury, an employee may apply for use of his/her accumulated and unused sick leave pursuant to N.J.S.A. 43:21-39.1 when caring for the serious health condition of a family member as defined under the NJFLA. In such circumstance, the employee may, at the sole discretion of the Board or the Board's designee, be permitted to utilize up to sixty (60) accumulated and unused sick leave days per year in order to care for a family member or until the family member no longer has a serious health condition, whichever is sooner. Staff members must submit the appropriate NJFLA paperwork and accompanying documentation demonstrating the serious health condition of an eligible family member, including starting and ending dates for qualifying treatment, to be considered for approval, and such paperwork must be renewed annually for absences that extend beyond the July 1<sup>st</sup> – June 30<sup>th</sup> annual cycle.
- f. **Certification:** The Board shall require the certification of a duly licensed health care provider verifying the purpose of requested NJFLA leave. Certification of a serious health condition of a family member of the staff member shall be sufficient if it states the date on which the condition commenced, the probably duration of the condition, and the medical facts within the provider's knowledge regarding the condition. Certification for the birth or placement of a child need only state the date of birth or date of placement, whichever is appropriate.

In the event the Superintendent or designee doubts the validity of the certification for the serious health condition of a family member of the staff member, the District may require, at the District's expense, the staff member obtain an opinion regarding the serious health condition from a second health care provider designated or approved, but not employed on a regular basis, by the District. If the second opinion differs from the certification the District may require, at the District's expense, that the staff member obtain the opinion of a third health care provider designated or approved jointly by the District and the staff member concerning the serious health condition. The opinion of the third health care provider shall be final and binding on the District and the staff member.

- g. **Ineligible Staff Members:** The District may deny family leave to the staff member if the staff member is a salaried staff member who is among the highest paid five percent of the school District staff or one of the seven highest paid staff members of the District, whichever is greater, if the denial is necessary to prevent substantial and grievous economic injury to the District's operations. The Superintendent or designee shall notify the staff member of the intent to deny the leave at the time the Superintendent or designee determines the denial is necessary. If the leave has already commenced at the time of the District's notification of denial, the staff

member shall be permitted to return to work within ten working days of the date of notification.

- h. When Leave Applies Under the FMLA and NJFLA:** When a staff member takes a leave for a purpose covered by both the FMLA and the NJFLA, the leave simultaneously counts against the staff member's entitlement under both laws. In other words, it cannot be stacked.

For more information and details about the FMLA and the New Jersey FLA, including eligibility, please contact the Office of the Superintendent.

Date: August 26, 2013  
 Revised: May 27, 2014

**Legal References:**

<u>N.J.S.A.</u> 18A:11-1	General mandatory powers and duties
<u>N.J.S.A.</u> 18A:27-4	Power of boards of education to make rules governing employment of teacher, etc.; employment thereunder
<u>N.J.S.A.</u> 18A:29-14	Withholding increments; causes; notice of appeals
<u>N.J.S.A.</u> 18A:30-1 <u>et seq.</u>	Sick Leave
<u>N.J.S.A.</u> 18A:54-20	Powers of board (county vocational schools)
N.J.S.A. 34:11B-1 et seq.	
N.J.A.C. 13:14-1 et seq.	
29 U.S.C. 2601 et seq	
29 C.F.R. 825.200 et seq.	

Montville Township Education Association v. Board of Education of the Township of Montville, 1984 S.L.D. (November 7)

City of Burlington Educational Association v. Board of Education of the City of Burlington, 1985 S.L.D. (July 1), aff'd. St. Bd. November 6, 1985

Scotch Plains - Fanwood Board of Education v. Scotch Plains-Fanwood Education Association, 270 NJ Super 444 (App. Div. 1994); rev'd. 139 NJ 141 (1995)

**Possible  
Cross References:**

4151.1	Personal illness and injury/health and hardship
4151.6	Religious observance
4151.7	Emergency/personal
4251	Attendance patterns