



Book	Board Policy and Guidelines
Section	Section G
Title	Family and Medical Leave Act of 1993
Number	GBGE.BP
Status	Active
Legal	The Family and Medical Leave Act of 1993 ( P.L. 103-3) 29 Code of Federal Regulations, Part 825, January 28, 2009 Amendments to the FMLA, Section 585 of the National Defense Authorization Act for FY 2008 (NDAA), the Health Insurance Portability and Accountability Act (HIPAA), HIPAA Medical Privacy Rule, Pregnancy Discrimination Act (PDA)
Adopted	March 4, 1998
Last Revised	October 7, 2009

The board of education recognizes that a leave of absence from active employment may be necessary for family or medical reasons. The following leave of absence policy complies with the provisions of the Family and Medical Leave Act of 1993 (FMLA) and as amended in 2009, which entitles eligible employees to take up to twelve (12) workweeks of unpaid leave for family and medical reasons. It also complies with the National Defense Authorization Act (NDAA), which entitles employees to take up to twenty-six (26) workweeks of unpaid Military Caregiver leave and up to twelve (12) workweeks of Qualifying Exigency Leave. The board of education will designate an administrator to act as compliance officer for FMLA issues. The compliance officer's name, address, and telephone number, as well as, statements of intent to comply with the FMLA, will be provided for all employees and displayed at all facilities. The district will regularly evaluate FMLA compliance to ensure fair and equitable opportunities for all eligible employees.

#### **ELIGIBILITY FOR FMLA LEAVE**

Employees are eligible for FMLA leave if they:

1. Have been employed for at least twelve (12) months. The 12 months need not be consecutive. Employment prior to a break in service of (7) years or more will not be counted, unless the break was caused by the employee's active duty with the National Guard or reserve, or there was a written agreement that the district intended to rehire the employee after the break in service; and
2. Have worked at least 1,250 hours during the twelve (12) calendar months immediately preceding the commencement of the leave (for non-instructional staff and part-time instructional staff); or have been considered full time (for instructional staff); and
3. Are employed at a work site where the employer employs at least fifty (50) employees within a 75 mile radius.

#### **Basic FMLA Leave**

An eligible employee may take up to 12 workweeks of unpaid leave during any fiscal year (July 1 to June 30) for the following reasons:

1. To care for the employee's son or daughter during the first 12 months following birth;
2. To care for a child during the first 12 months following placement with the employee for adoption or foster care;
3. For incapacity due to the employee's pregnancy, prenatal medical care or childbirth;
4. The care of the employee's child (including biological, adopted, or foster child, stepchild, legal ward, or child

of a person standing in loco parentis, who is either under age 18, or age 18 or older and is incapable of self care because of mental or physical disability), spouse, or parent (including a person who stood in loco parentis to the employee when the employee was a child – but not parents-in- law'), who has a serious health condition; or

5. The employee's own serious health condition that makes the employee unable to perform an essential functions of his/her position.
6. Married Couples. In cases where a married couple both work for the district, the two spouses together may take a combined total of 12 weeks' FMLA leave during the fiscal 12-month period for reasons 1, 2, and 3 above or to care for the same individual pursuant to reason number 4.

#### **Definition of SERIOUS HEALTH CONDITION\***

For purposes of FMLA policy, a serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves the following:

1. Inpatient care (overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or
2. Continuing treatment\*\* by a health care provider, including the following:
  - a. A period of incapacity of more than three consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves:
    1. Treatment two or more times by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services under order of, or on referral by, a health care provider; or
    2. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment\*\*\* under the supervision of a health care provider.
  - b. Any period of incapacity due to pregnancy, or for prenatal care (even if the absence does not last more than three days and the employee or family member does not receive treatment from a health care provider during the absence);
  - c. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition (even if the absence does not last more than three days and the employee or family member does not receive treatment from a health care provider during the absence). A chronic serious health condition is one which:
    1. requires at least two visits per year for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider; and
    2. continues over an extended period of time (including recurring episodes of a single underlying condition); and
    3. may cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.).
  - d. A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. The first visit to the health care provider must take place within 7 days of the onset of the incapacity. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
  - e. Any period of absence to receive multiple treatments (including any period of recovery there from) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy, kidney disease (dialysis).

All leave taken under this policy and leave for any other reason that would qualify under FMLA, e.g., workers' compensation leave that qualifies as a serious health condition, will be counted against the employee's leave entitlement under FMLA.

\* Unless complications develop, "serious health condition" does not include cosmetic treatments, such as most for acne or plastic surgery, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc. Treatment for substance abuse by a health care provider or on referral by a health care provider may be a serious health condition if the conditions of this policy are met. Absence due to use of the substance, rather than for treatment, does not qualify for FMLA leave.

\*\* "Treatment" includes, but is not limited to, examinations to determine if a serious health condition exists and evaluation of the condition. Treatment does not include routine physical, eye, or dental examinations.

\*\*\* Regimen of continuing treatment includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. A "regimen of continuing treatment" that includes the taking of over-the-counter medications such as aspirin, antihistamines, salves, or bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

## **MILITARY FAMILY LEAVE**

There are two types of Military family Leave available.

1. Qualifying Exigency Leave. This leave is available only to a family member of a military member in the National Guard or Reserves. Employees meeting the eligibility requirements described above may be entitled to use up to 12 workweeks of their Basic FMLA Leave entitlement to address certain qualifying exigencies. Leave may be used if the employee's spouse, son, or daughter is on active duty or called to active duty status in the National Guard or reserves in support of a contingency operation. Qualifying exigencies may include:

Short-notice deployment (up to 7 days of leave)

Attending certain military events

Arranging for alternative child care

Addressing certain financial and legal arrangements

Periods of rest and recuperation for the service member (up to 5 days of leave)

Attending certain counseling sessions

Attending post-deployment activities (available for up to 90 days after the termination of the covered service member's active duty status)

Other activities arising out of the service member's active duty or call to active duty and agreed upon by the district and the employee.

This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a fiscal year.

2. Military Caregiver Leave. Employee meeting the eligibility requirements of FMLA, may take up to 26 weeks in a single 12-month period to care for a spouse, son, daughter, parent or next of kin covered service member with a serious illness or injury incurred in the line of duty while on active duty. A single 12-month period begins on the first day that the employee takes leave for this reason and ends 12 months later, irrespective of the fiscal year period for basic FMLA leave. Next of kin is defined as the closest blood relative of the injured or recovering 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 undergoing treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability list, for a serious illness or injury. A serious illness or injury is one that was incurred by a service member in the line of duty on active duty that may render the service member medically unfit to perform the duties of his or her office, grade, rank or rating.

Married Couples. In a husband and wife both work for the district and each wishes to take leave to care for a covered injured or ill service member, the husband and wife may only take a combined total of 26 weeks of leave.

## **Instructional Employees -- End of Term Exceptions**

The following constitutes special rules for leaves by instructional employees who wish to return from leave near the end of a semester:

If an instructional employee seeks leave for any purpose, including the employee's own serious health condition, of at least three (3) weeks in duration and the requested leave would begin more than five (5) weeks prior to the end of the academic term (school semester), the district may require the employee to continue taking leave until the end of the school term\*\* if the instructional staff member's return to employment would otherwise occur during the three (3) week period before the end of such term. If the instructional employee seeks leave for any purpose other

than the employee's own serious health condition, less than five (5) weeks prior to the academic term, the district may require the staff member to continue taking leave to the end of the term\*\* if the leave is greater than two (2) weeks in duration and the return to employment would occur within two (2) weeks prior to the end of the term.

If the instructional employee takes leave for any purpose other than the employee's own serious health condition, within three (3) weeks prior to the end of the term, and duration of the leave is greater than five (5) days, the district may require the staff member to continue the leave until the end of the term.\*\*

\* When an employee is not required to report for work for one or more weeks (e.g., instructional employees who do not report for work during Christmas/New Year holiday, or during the summer) such days do not count against the employee's FMLA leave.

\*\* When an employee is required to take leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work be charged against the employee's FMLA leave entitlement.

## **COORDINATION WITH EXISTING LEAVE POLICIES**

### **1. Classified Employees**

During a family or medical leave provided under this policy for birth, placement of a child for adoption or foster care, or for care of a family member, an employee shall first exhaust all unused vacation or personal days before continuing such leave on an unpaid basis. During a leave related to the employee's serious health condition, the employee shall exhaust all available paid sick leave, personal leave, and vacation before continuing such leave on an unpaid basis. During a military family leave, an employee shall first exhaust all unused family sick, vacation and personal days before continuing such leave on an unpaid basis.

### **2. Certified Employees**

During a family or medical leave provided under this policy for birth, placement of a child for adoption or foster care, or for care of a family member, an employee shall first exhaust all unused vacation or personal days before continuing such leave on an unpaid basis. During a military family leave, an employee shall first exhaust all unused family sick and personal days before continuing such leave on an unpaid basis.

At the conclusion of a family or medical leave provided for classified or certified employees under this policy, an employee may elect to extend such leave pursuant to the provisions of Policies GCCAF, GDCE, and GECE: Leave For Child Rearing; or Policies GCCAL, GDCH, and GECH: Leave For Other Reasons, so long as the employee is otherwise eligible for such leave under these policies. The following additional guidelines apply to these policies:

1. The amount of time taken for FMLA leave will be deducted from the leave available.
2. Once the FMLA portion of such leave has ended, and the employee has elected to continue on leave pursuant to the policy provisions, the remaining portion of the leave will be governed by the provisions of the applicable policy with respect to compensation, benefits, reinstatement, and all other terms and conditions of employment as set forth in each policy and/or applicable state and federal regulation.

## **EMPLOYEE RESPONSIBILITY WHEN REQUESTING FMLA LEAVE**

All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to their supervisor or the Human Resources Department. An employee who can reasonably foresee the need to take family or medical leave is required to notify the district of the date of commencement and the expected duration of the leave at least thirty (30) days in advance of the leave, or if the need for the leave is not foreseeable, as soon as practicable (1 or 2 business days of learning of the need for the leave except in extraordinary circumstances). When the need for leave is foreseeable, an employee's failure to provide 30 days notice prior to taking leave may result in denial or delay of the start of the leave.

Employees will also be required to provide a health care provider's medical certification and periodic recertification (in the case of Basic FMLA only) supporting the need for the leave. Failure to provide requested certification within 15 days, except in extraordinary circumstances, may result in the delay of further leave until provided.

## **DISTRICT RESPONSIBILITIES**

Within 5 business days after an employee has provided notice of his/her need for FMLA leave, Human Resources will complete and provide the employee with the DOL Notice of Eligibility and Rights.

An employee who requests leave that qualifies as family or medical leave under this policy, and who does not specifically request leave under this policy, shall be notified that such leave has been designated, and will be counted, as FMLA leave. Such notification shall occur promptly, usually within five (5) business days after the district has become aware that the leave qualifies as FMLA leave. The notification may be oral or in writing; however, oral notification that the leave has been designated as FMLA leave will be confirmed in writing on or before the next payday, unless the next payday occurs less than one week after the oral notification, in which case, written confirmation will be provided on the subsequent payday. Written confirmation from the District shall be given through the DOL Designation Notice.

### **CERTIFICATION FOR BASIC FMLA LEAVE**

The District will require certification for the employee's or employee's family member's serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide such certificate upon request may result in denial or delay of leave. Medical certifications will be provided using the DOL Certification of Health Care Provider for Employee's Serious Health Condition or Certification of Health Care Provider for Family Member's Serious Health Condition, as appropriate.

The District may directly contact the employee's health care provider for verification or clarification purposes using a health care professional, and HR professional, leave administrator or management official. The district will not use the employee's direct supervisor for this contact. Before the district makes this direct contact with the health care provider, the employee will be given the opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the District will obtain the employee's permission for clarification of individually identifiable health information.

The District has the right to ask for a second opinion if it has reason to doubt the certification. The District will pay for the employee to get a second opinion from a doctor that the District will select. The District may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the District will require the opinion of a third doctor. The District and the employee will mutually select the third doctor, and the District will pay for the opinion. This third opinion will be considered final. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

The district reserves the right to require that an employee provide the district with recertification of the medical condition for which leave is taken.

Employees requesting family leave (i.e., leave for the birth, adoption, or placement of a child for foster care, or to care for a child or parent with a serious health condition) pursuant to this policy may be requested to provide reasonable documentation of the family relationship.

### **CERTIFICATION FOR MILITARY FAMILY LEAVE**

The District will require certification of the serious health injury or illness or qualifying exigency for military family leave. The employee must respond to the request within 15 days of the request or provide reasonable explanation of the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury of Covered Service member or DOL Certification of Qualifying Exigency for Military Leave, as appropriate. Second and third opinions and recertification are not permitted for certification of a covered service member's serious injury or illness or of a qualifying exigency.

The District may use a health care provider, HR professional, leave administrator or management official – but not the employee's direct supervisor - to authenticate or clarify a medical certification of a serious injury, illness, ITO or ITA. Additionally, the District may contact the individual or entity named in a certification of leave for a qualifying exigency for purposes of verifying the existence and nature of the meeting.

### **INTERMITTENT OR REDUCED LEAVE SCHEDULE**

An employee does not need to use this leave entitlement in one block. Leave can be taken intermittently (in separate blocks of time due to a single health condition) or on a reduced leave schedule (reducing the usual number of hours worked per workweek or workday) when medically necessary. Employees must make reasonable efforts to schedule leave for planned medical treatment so as not to unduly disrupt the district's operations. The District may request a Fitness for Duty Certification every 30 days if the employee has used intermittent FMLA leave during that period and reasonable safety concerns exist regarding the employee's ability to perform his/her job.

Military Family Leave due to qualifying exigencies may also be taken on an intermittent leave basis.

Leave taken under this policy for the birth of a child, the placement of a child for adoption or foster care, or to care for such child may be taken on an intermittent or reduced work schedule only with the approval of the board of education.

#### 1. Non-Instructional Employees

Leave taken because of the employee or family member's serious health condition may be taken on an intermittent or reduced-schedule basis when medically necessary. If an employee seeks leave on an intermittent or reduced schedule basis, the employee must submit medical certification, as discussed above, and additional certification from a health care provider, that the intermittent or reduced schedule leave is medically necessary.

#### 2. Instructional Employees

Leave taken because of the employee or family member's serious health condition may be taken on an intermittent or reduced schedule basis when medically necessary. If an employee seeks leave on an intermittent or reduced schedule basis, the employee must submit medical certification, as discussed above, and additional certification from a health care provider that the intermittent or reduced schedule leave is medically necessary.

If an instructional employee requests intermittent leave to care for a spouse, son, daughter, or parent, or for the serious health condition of the employee, that is foreseeable based on planned medical treatment, and the employee would be on leave for more than twenty (20) percent of the total number of working days over the period of the leave, the district may require the employee to:

- a. Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
- b. Transfer temporarily to an available position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

### **INSURANCE PREMIUMS**

During an employee's family or medical leave of absence, the district will continue to provide medical, dental, vision and life insurance coverage for employees at the same level and under the same conditions as if the employee had continued to work. Voluntary deductions (employee contributions) for dependent insurance for medical, dental, vision, life and employee disability and/or supplemental life insurance must be paid in full each month and received by the last day of the month. Payments are to be submitted to the payroll department. Employees should contact the payroll department regarding specific arrangements for making the required payments.

If the employee chooses not to return to work for reasons other than a serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the district will require the employee to reimburse the district the amount it paid for the employee's and dependents' medical, dental, vision and life insurance premiums during the leave.

### **INTENT TO RETURN TO WORK**

On a basis that does not discriminate against employees on FMLA leave, the District may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work.

### **RETURN TO JOB AT END OF FMLA LEAVE**

Before returning to work, an employee who is on leave of absence due to his or her own serious health condition must submit to their building administrator, or his/her designated assistant, a healthcare provider's written certification form that the employee is able to return to work (form available in the Human Resources Department). Failure to provide such certification may result in the delay or denial of job restoration.

Upon return from FMLA leave, the employee will be returned to the same or an equivalent position with equivalent pay, benefits and other employment terms and no loss in benefits that accrued prior to the leave of absence. An employee who does not return to work at the end of an authorized leave may be subject to termination.

## **FAMILY AND MEDICAL LEAVE INFORMATION**

The foregoing policy presents the pertinent provisions of the Family and Medical Leave Act of 1993, as amended in 2009, and the National Defense Authorization Act of 2008 and complies with the requirements of the Act. If any employee desires additional information or explanation of the procedures and provisions of the Act, he/she is encouraged to seek additional information by obtaining a copy of the Act through the Human Resources Department or arranging a conference with the Director of Human Resources, Manager of Human Resources or designee. .

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SUPERSEDES: GBGE, 11/01/2000, 01/13/94 and GCCAA

CROSS REFERENCE: GCCAF, GDCE, and GECE: Leave For Child Rearing; Policies GCCAL, GDCH, and GECH: Leave For Other Reasons.