

# VALLEY STREAM UNION FREE SCHOOL DISTRICT TWENTY FOUR

## FAMILY AND MEDICAL LEAVE

POLICY 4700

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Consistent with the federal Family and Medical Leave Act (FMLA) of 1993 as amended, the Board of Education recognizes the right of eligible employees to unpaid, job protected family and medical leave for up to twelve (12) workweeks during any twelve (12) month period. For the purposes of family and medical leave, the twelve month period necessary for eligibility shall be a rolling year. A rolling twelve (12) month period is measured backward from the date an employee uses any leave required by the FMLA. The Board of Education shall ensure that all eligible employees who use such leave (a) shall have their health benefits continued, (b) shall not have any previously accrued benefits altered and (c) except as otherwise authorized by law shall be returned to an equivalent position according to established Board of Education practices, policies and collective bargaining agreements.

To be eligible for leave pursuant to the FMLA an employee must have been employed for at least twelve (12) months and have worked at least 1,250 hours during the prior twelve (12) months.

FMLA leave shall be granted for the following reasons:

1. the birth and care of a newborn child of the employee;
2. the adoption or foster placement of a child;
3. to care for an employee's spouse, parent, or son or daughter with a serious health condition;
4. due to a serious health condition that makes the employee unable to perform the essential functions of the employee's job;
5. for a qualifying exigency as defined in law and regulation, arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty).

The term "Parent" means a biological, adoptive, step or foster father or mother, or any other individual who stood in *loco parentis* to the employee when the employee was a child. This term does not include parents-in-law.

The term "Spouse" means a husband or wife as defined or recognized under state law for purposes of marriage in the state where the employee resides, including "common law" marriage and same-sex marriage. This term does not include a domestic partner.

The term "Child" means a biological, adopted, or foster child, stepchild, legal ward, or child of person standing in *loco parentis*, who is either under age eighteen (18), or age eighteen (18) or older and "incapable of self-care because of a mental or physical disability" at the time family or medical leave is to commence.

A person stands in *loco parentis* if that person provides day-to-day care or financial support for a child. Employees with no biological or legal relationship to a child can stand in *loco parentis* to that child, and are entitled to family or medical leave pursuant to the Family Medical Leave Act.

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FMLA also includes a special leave entitlement that permits 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 service member is: (1) a current member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness\*; or (2) a veteran who was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran, and who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.\*

**\*The FMLA definitions of "serious injury or illness" for current service-members and veterans are distinct from the FMLA definition of "serious health condition".**

The term "serious health condition" means an illness, injury, impairment or physical or mental condition that involves: (a) inpatient care in a hospital, hospice, or residential medical care facility; or (b) continuing treatment by a health care provider.

Family leave must be taken within one year of the birth or placement of the employee's child. If both spouses are employed by the School District, the combined amount of leave for family leave or medical leave may be limited to twelve weeks.

### **Benefits and Protections**

During FMLA leave, the employer must maintain the employee's health coverage under any "group health plan" on the same terms as if the employee had continued to work. Upon return from FMLA leave, most employees must be restored to their original or equivalent positions with equivalent pay, benefits and other employment terms. Use of FMLA leave cannot result in the loss of any employment benefit that accrued prior to the start of an employee's leave. The School District requires an employee to use accrued paid vacation, personal or family leave for purposes of an FMLA leave.

The employee shall notify the School District of his/her request for leave, if foreseeable, at least thirty (30) days prior to the date when the leave is to begin. If such leave is not foreseeable then the employee shall give such notice as is practical. When an employee returns following a leave, he/she must be returned to the same or equivalent position of employment. The Superintendent of Schools or his/her designee may reassign a teacher consistent with the teacher's agreement to a different grade level, building or other assignment consistent with the employee's certification and tenure area.

Employees, absent unusual circumstance, must comply with the School District's usual and customary notice and procedural requirements for requesting leave.

**Intermittent Leave**

An employee, who requests family leave, shall not be provided intermittent leave or a reduced leave schedule unless the employee and School District mutually agree. Intermittent leave may be provided for medical leave, however, the School District may transfer the employee to a comparable position if it will better accommodate such intermittent periods of leave. For instructional employees who request medical leave and it is foreseeable that the medical treatment shall cause the employee to be on leave for more than 20% of the total number of working days in the period of leave, the School District may require the employee to take a block of time or to transfer to an equivalent position for which the employee is qualified, but which better accommodates intermittent periods of leave.

**Certification**

The School District may require the employee requesting medical leave to present a certification from the health care provider of the person for whom the employee is taking the leave. Upon request by the School District, the employee must provide the certification to the School District within fifteen (15) days. The certificate shall include:

1. the date on which the serious health condition commenced;
2. the probable duration of the condition;
3. the appropriate medical facts within the knowledge of the health care provider regarding the condition;
4. a statement that the employee is needed to care for the family member and an estimate of the amount of time that such employee shall be needed or a statement that the employee is unable to perform the functions of the employee's position; and
5. the dates and duration of medical treatment if the request for intermittent leave is for a planned medical treatment.

If the School District doubts the validity of the certification, then, at the School District's expense, a second opinion may be required from a health care provider selected by the School District. The school physician cannot give this opinion. If the two opinions conflict, a third health care provider, at the School District's expense, may be chosen by the two parties to render a final opinion.

**Restoration**

An instructional employee, who begins any type of leave at least five (5) weeks before the end of an academic term, may be required not to return until the new term begins if the leave is at least three (3) weeks long and the employee would return during the last three (3) weeks of the term. An instructional employee who begins leave, for any purpose other than personal illness, less than three (3) weeks prior to the end of the term and the leave is longer than five (5) working days, may be required not to return until the new term begins.

**Failure to Return**

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The School District may recover the health care premiums paid during the leave if the employee fails to return from the leave. However, recovery cannot occur if the employee fails to return because of the continuation, recurrence, or onset of a serious health condition or due to circumstances beyond the control of the employee.

### Unlawful Acts

The School District shall not:

- interfere with, restrain, or deny the exercise of any right provided under FMLA; and
- discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA.

### Enforcement

An employee may file a complaint with the U.S. Department of Labor or may bring a private lawsuit against an employer. FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

The Board of Education shall provide family and/or medical leave required pursuant to the Family Medical Leave Act to all eligible employees, unless they are covered by a collective bargaining agreement which provides greater leave benefits than this Act.

The School District shall post a notice prepared or approved by the Secretary of Labor stating the pertinent provisions of the Family and Medical Leave Act, including information concerning enforcement of the law.

### Cross Ref:

Ref: 29 USC §§ 207; 2601; 2611; 2612; 2613; 2614; 2615; 2617; 2618; 2619  
29 CFR §§ 825.110; 825.309; 825.600; 825.601; 825.602; 825.603; 825.604

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