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**4011**  
**FAMILY AND MEDICAL LEAVE ACT POLICY**  
**(FMLA)**

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The school district shall provide leave to its employees in accordance with the Family and Medical Leave Act (“FMLA”). The terms used herein shall have the meaning ascribed to them under the FMLA. Employees may also qualify for leave under the Nebraska Family Military Leave Act, which is covered under the district’s policy for that law. If an employee qualifies for leave under both the Family Medical Leave Act and the Nebraska Military Leave Act, any leave taken by the employee will count concurrently toward the leave limits of both acts.

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**I. Qualifying for Leave**

**A. Qualified Employees**

1. To be eligible for unpaid leave under this policy, an employee must:
  - a. Make the request for leave at a time when the school district employs 50 or more workers;
  - b. Have been working for the school district for at least 12 months prior to the request; and
  - c. Have worked a minimum of 1,250 hours during the 12-month period immediately preceding the commencement of the leave.
2. The applicable 12-month period for computing an employee's entitlement to FMLA leave shall be the 12-month period measured forward from the date such employee's first FMLA leave begins.
3. Employees ineligible for FMLA leave for any reason may be eligible for leave under the Nebraska Family Military Leave Act and should consult policy 4011.1.

**B. Qualified Circumstances Necessitating Leave**

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1. The school district will grant an eligible employee up to a total of 12 workweeks of unpaid leave under the following conditions:
  - a. for birth of a son or daughter, and to care for the newborn child;
  - b. for placement of a son or daughter with the employee for adoption or foster care;
  - c. to care for the employee's spouse, son, daughter, or parent with a serious health condition;
  - d. because of a serious health condition that makes the employee unable to perform the functions of his or her job; or
  - e. because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a Military Member on Covered Active Duty (or has been notified of an impending call or order to Covered Active Duty) in the National Guard, Reserved, and/or Regular Armed Forces in support of a contingency operation; or
  
2. The school district will grant an eligible employee who is the spouse, son, daughter, parent or next of kin of a covered service member a total of 26 workweeks of unpaid leave during a 12-month period to care for the service member *as permitted under the FMLA*. The leave described in this paragraph shall only be available during a single 12-month period.  
*For purposes of this provision and this policy, "Covered Servicemember" includes both Military Members and covered Veterans, so long as the covered Veteran 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.*
  
3. During the single 12-month period described in paragraph I(B)(2), an eligible employee shall be entitled

85 to a combined total of 26 workweeks of leave under  
86 paragraphs I(B)(1) and I(B)(2). Nothing in this  
87 paragraph shall limit the availability of leave under  
88 paragraph I(B)(1) during any other 12-month period.

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90 **C. Limitations on Leave**

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92 1. Leave for birth or placement for adoption or foster care  
93 must conclude within 12 months of the birth or  
94 placement.  
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96 2. In any case in which a husband and wife both employed  
97 by the school district are entitled to FMLA leave:  
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99 a. the aggregate number of workweeks of FMLA  
100 leave to which both are entitled is limited to 12  
101 during any 12-month period if such leave is taken  
102 (i) because of the birth of a son or daughter of the  
103 employee and in order to care for such son or  
104 daughter; (ii) because of the placement of a son  
105 or daughter with the employee for adoption or  
106 foster care; or (iii) to care for a sick parent who  
107 has a serious health condition; and  
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109 b. the aggregate number of workweeks of FMLA  
110 leave to which both that husband and wife are  
111 entitled is limited to 26 during the single 12-month  
112 period in which leave is taken to care for a  
113 covered Servicemember and the husband and  
114 wife employees are both either the son, daughter,  
115 parent, or next of kin of such Covered  
116 Servicemember, if the leave is taken for this  
117 reason or a combination of this reason and one of  
118 the three reasons described in paragraph  
119 I(C)(2)(a). If the leave taken by the husband and  
120 wife includes leave described in paragraph  
121 I(C)(2)(a), the limitation in paragraph I(C)(2)(a)  
122 shall apply to the leave described in I(C)(2)(a).  
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124 **D. Qualifying Notice and Certification**

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126 Employees seeking to use FMLA leave will be required to  
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1. 30-day advance notice when the need to take the leave is foreseeable, provided, if (a) the leave is for the need of treatment which is required to begin in less than thirty days or (b) the leave is for the reason set forth in paragraph I(B)(1)(e), then the employee shall provide notice to the school district as is reasonable and practical;
2. medical certification supporting the need for leave due to a Serious Health Condition affecting the employee or family member or to care for a Military Member, and/or due to a Serious Injury or Illness to care for a Veteran.
3. second or third medical opinions and periodic recertifications (at the school district's expense);
4. certification supporting the need for leave because of a qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is a Military Member on Covered Active Duty (or has been notified of an impending call or order to Covered Active Duty) in the National Guard, Reserves, and/or Regular Armed Forces in support of a contingency operation; and
5. periodic reports during leave, at a frequency reasonably requested by the superintendent, regarding the employee's status and intent to return to work.

**E. Scheduling Leave**

1. When leave is needed to care for a family member, for the employee's own illness, or to care for a Covered Servicemember, and such leave is foreseeable based on planned medical treatment, the employee must attempt to schedule treatment so as not to unduly disrupt the school district's operations.

**II. Relationship with District During Leave**

**A. Leave to Be Unpaid**

All leave provided to employees under the provisions of the FMLA and this policy shall be unpaid leave.

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**B. Substitution of Paid Leave**

1. The school district requires employees to substitute any accrued paid vacation leave, paid personal leave, paid family leave, paid medical leave or paid sick leave for FMLA leave. However, nothing in this policy shall require the school district to provide paid sick or medical leave in any situation in which the school district would not normally provide such paid leave.
2. If an employee uses paid leave under circumstances which do not qualify as FMLA leave, the leave will not count against the number of workweeks of FMLA leave to which the employee is entitled.
3. Any paid leave which is substituted for FMLA leave will be subtracted from the number of workweeks of unpaid leave provided by the FMLA and this policy.

**C. Group Health Plan Benefits**

1. The school district will continue group health plan benefits on the same basis as coverage would have been provided if the employee had been continuously employed during the FMLA leave period.
2. Any share of health plan premiums which have been paid by the employee prior to FMLA leave must continue to be paid by the employee during the FMLA leave period.

**D. Intermittent or Reduced-Schedule Leave**

1. Leave may be taken under this policy intermittently or on a reduced-leave schedule under certain circumstances.
  - a. When leave is taken because of a birth or because of a placement of a child for adoption or foster care, an eligible employee may take leave intermittently or on a reduced-leave schedule only

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with the agreement of the school district. In such a case, the superintendent shall have the authority to approve or disapprove such intermittent or reduced leave schedule, in the superintendent's sole discretion.

- b. When leave is taken to care for a sick family member, for an employee's own serious health condition, or to care for a covered Veteran or Military Member, an eligible employee may take leave intermittently or on a reduced-leave schedule when medically necessary.
- c. When leave is taken by an eligible employee because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter or parent is a Military Member on Covered Active Duty (or has been notified of an impending call or order to Covered Active Duty) in the National Guard, Reserves, and/or Regular Armed Forces in support of a contingency operation, the employee may take leave intermittently or on a reduced-leave schedule.
- d. When leave is taken by an eligible employee to care for a Covered Servicemember, including 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.
- e. Intermittent or reduced leave shall not result in a reduction in the employee's total amount of leave beyond the amount of leave actually taken.
- f. When an instructional employee seeks to take intermittent leave in connection with a family or personal illness (e.g. physical therapy or periodic

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care for a sick relative) or to care for a covered Veteran or Military Member, and when such leave would constitute at least 20 percent of the total number of working days in the period during which the leave would extend, the school district may require the employee to elect to take leave in a block, instead of intermittently, for the entire period or to transfer to an available alternative position within the school system that is equivalent in pay, for which the employee is qualified, and which better accommodates the intermittent leave.

2. If an eligible employee requests intermittent leave or leave on a reduced-leave schedule that is foreseeable based on planned medical treatment, including during a period of recovery from a serious health condition, the school district may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. Such alternative position must have equivalent pay and benefits as the employee's permanent position.

3. Leave taken on an intermittent or reduced-schedule basis will be tracked hourly.

### **III. Return From Leave**

#### **A. Restoration to Position**

1. On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave commenced, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.
2. Any leave taken under this policy will not result in the loss of any employment benefits accrued prior to the date on which the leave commenced.

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3. An eligible employee is not entitled to accrual of any seniority or employment benefits during any period of leave, or any right, benefit, or position of employment other than to which the employee would have been entitled had the employee not taken leave.

**B. Denial of Restoration**

1. The school district reserves the right to deny restoration to any eligible employee who is a "key employee" (that is an employee who is salaried and among the highest paid 10% of the employees of the school district) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the school district.
2. If the school district intends to deny restoration to such an employee, it will:
  - a. notify the employee of his/her status as a "key employee" in response to the employee's notice of intent to take FMLA leave;
  - b. notify the employee as soon as the school district decides it will deny job restoration and explain the reasons for this decision;
  - c. offer the employee a reasonable opportunity to return to work from FMLA leave after giving this notice; and
  - d. make a final determination as to whether reinstatement will be denied at the end of the leave period if the employee then requests restoration.

**C. Failure to Return from Leave**

If an employee fails to return from FMLA leave after the period of leave to which the employee is entitled has expired, the employee shall reimburse the district for any premiums the employer paid for maintaining health insurance coverage for the employee during the employee's FMLA leave unless the

342 reason the employee does not return is due to: (1) the  
343 continuation, recurrence, or onset of the serious health  
344 condition which entitled the employee to FMLA leave and the  
345 employee provides the district with sufficient certification from  
346 the proper health care provider of such continuation,  
347 recurrence, or onset of the serious health condition or (2)  
348 other circumstances beyond the employee's control.  
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350 **IV. Notice to Employees**  
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352 A. The school district will post in conspicuous places where  
353 employees are employed notices explaining the FMLA and  
354 providing information concerning the procedures for filing  
355 complaints of FMLA violations with the U.S. Wage and Hour  
356 Division.  
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358 B. When an employee provides notice of the need for FMLA  
359 leave, the school district shall provide the employee with a  
360 copy of the "section 301(c) notice" which is attached to this  
361 policy.  
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363 C. To the extent that any provision in this policy is in any manner  
364 inconsistent with the provisions of the Act or the regulations  
365 promulgated there under, the Act and regulations shall prevail  
366 over the provisions of this policy. The school district reserves  
367 the right to modify this policy from time to time in its sole  
368 discretion.  
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370 D. Employees may direct any questions or concerns regarding  
371 FMLA leave to the superintendent.  
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373 Adopted on: September 11, 2007

374 Revised on: November 11, 2008; June 12, 2018

375 Reviewed on: July 10, 2012; December 8, 2015; June 12, 2018