

# **PARK COUNTY SCHOOL DISTRICT #6**

## **BOARD OF EDUCATION POLICY**

### **FAMILY AND MEDICAL LEAVE**

Pursuant to the provisions of the Family and Medical Leave Act of 1993, as amended (the "FMLA") the District hereby adopts the following policy relating to family and medical leave for eligible employees.

#### **BENEFITS**

Eligible employees are entitled to up to a total of twelve (12) weeks of unpaid leave per year for the following leave situations. A year is defined as measured from the first day of leave forward.

1. the birth and first-year care of a child;
2. the placement of a child for adoption or foster care for up to one year after placement;
3. the "serious health condition" of an employee's spouse, parent, or child; and
4. the employee's own "serious health condition".
5. because of a "qualifying exigency" as defined by the United States Secretary of Labor, arising out of the fact that the employee's spouse, son, daughter or parent is a military member who is on covered active duty status (or has been notified of an impending call or order to covered active duty) in the Armed Forces, including the Reserve components of the Armed Forces.

For purposes of the benefits referred to above which pertain to leave for the care of a child with a serious health condition, the term "child" shall mean a son or daughter which is either a biological, adopted, or foster child, a step-child, a legal ward, or a child of a person standing in loco parentis, who is:

1. under eighteen (18) years of age; or
2. eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability.

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### **SERVICE MEMBER FAMILY LEAVE (“Military Caregiver Leave”)**

Subject to the requirements of this policy and Federal law, an eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member shall be entitled to a total of 26 workweeks of leave during a single 12-month period to care for the service member. During single the 12-month period described in this paragraph, an eligible employee shall be entitled to a combined total of 26 workweeks of leave for leave under this paragraph, and leave under the section entitled “Benefits.” The single 12-month period begins on the first day of leave needed for this purpose.

#### Definitions

1. “Covered Active Duty” means:

- A. in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed forces to a foreign country; and
- B. in the case of a member of a reserve components of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a) (13) (B) of Title 10.

2. “Covered service member” means:

- A. a 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
- B. a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the national Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation or therapy.

3. The term “outpatient status,” with respect to a covered service member, means the status of a member of the Armed Forces assigned to:

- A. a military medical treatment facility as an outpatient; or
- B. a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

4. The term “Next of Kin” means with respect to an individual, the nearest blood relative of that individual.

5. The term “serious injury or illness” in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in line of duty on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member’s office, grade rank or rating.

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#### **ELIGIBLE EMPLOYEE**

To be eligible for leave under this policy and to be considered an eligible employee, an employee must have been employed:

1. for at least twelve (12) months (which need not be consecutive); and
2. for at least 1,250 hours of service within the twelve (12) month period preceding the start of leave. Any paid or unpaid time off (i.e., sick leave, vacation leave, etc.) will not be counted in calculating hours of service.

In the case of employees only employed for nine (9) months or one hundred eighty (180) working days out of each twelve (12) month period, this will require that they worked at least 1,250 hours of service during those one hundred eighty (180) working days, or whatever number of working days are actually worked during the twelve (12) month period preceding the start of leave. Full-time Instructional Employees (i.e., classroom teachers) meet the 1,250 hours of service requirement unless the school district can demonstrate that the teacher did not meet the 1,250 hours of service requirement in the 12-month period prior to the start of leave.

#### **MAINTENANCE OF BENEFITS**

Any eligible employee who is entitled to the leave referred to above shall be entitled to continuation of health benefits and all other insurance benefits, as well as accrual of sick leave and/or other leave benefits during the period of leave, under the same terms and conditions as are provided to the employee prior to taking the leave. Any increase in premiums or deductibles that apply to active employees shall also apply to employees on FMLA leave. Any employee who fails to pay his required share of premium may be dropped from coverage under the group health plan. The District shall provide the employee a notice that coverage will be dropped at least fifteen (15) days before coverage will cease.

#### **RETURN TO WORK**

Any employee who is eligible for this leave and takes the FMLA leave is entitled to the same position or to an equivalent position with equivalent pay, benefits, and conditions of employment upon return to employment so long as the employee can continue to perform all the essential functions of the position. If an employee takes leave (except on an intermittent or reduced-schedule basis) for his or her own serious health condition, in order to return to work, the employee will be required to provide a completed fitness-for-duty certification form, which certifies that the health condition which created the need for the leave no longer renders the employee unable to perform the essential functions of the job. If such certification is required but not received, the employee's return to work may be delayed until the certification is provided, or reinstatement may be denied.

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#### **SUBSTITUTION OF PAID LEAVE**

This leave is not to be considered as leave in addition to other leave granted to the employee by School District policy for which the employee is otherwise eligible, but is intended only to supplement that leave to the extent it does not otherwise provide for twelve (12) weeks of leave. In other words, to the extent that any eligible employee would be entitled to receive sick leave, maternity leave, vacation or personal leave pursuant to other applicable School District policies, then the eligible employee must use the sick/personal leave benefits granted under other applicable District policies and only in the event that it does not provide the eligible employee with twelve (12) weeks of leave would the employee be able to use the leave granted under this policy. The leave for which the eligible employee may qualify under the provisions of this policy will not exceed twelve (12) weeks inclusive of the leave utilized under other District policies for any of the above described leave situations. (For example, if due to the illness of an employee, an employee desires to take leave for a period up to twelve (12) weeks and the employee has available six (6) weeks of sick leave which could be utilized for this leave, then the employee would be required to use the six (6) weeks of available sick leave and thereafter would qualify for six (6) weeks of unpaid leave pursuant to this policy. If the employee had available up to twelve (12) weeks of personal/sick leave which could be utilized, then this rule would not apply).

#### **LIMIT ON CHILD CARE BENEFIT**

The family leave benefit applicable to the birth, adoption, and foster placement for child care ends after (1) the child reaches age one; or (12) twelve months after adoption or placement.

If both spouses are eligible employees of the school district and request FMLA leave for (1) the birth of a child, (2) the placement of a healthy child by adoption or for foster care, or (3) to care for their parent with a serious health condition, they are entitled to a maximum combined total leave equal to twelve (12) weeks in any 12-month entitlement period. If either spouse uses a portion of the total 12-week entitlement for one of those reasons, the other spouse is still entitled to the difference between the amount his or her spouse has taken and the 12-week entitlement for FMLA leave for one or more of the FMLA purposes listed above

during any 12-month entitlement period. However, each spouse may each take up to twelve (12) weeks of FMLA leave for other FMLA-qualifying reasons, such as for their own serious health condition, or to care for a child with a serious health condition.

Both spouses who are eligible for FMLA leave are limited to a combined total of 26 workweeks of leave during the single 12-month period if one of the reasons is to care for a covered service member with a serious illness or injury and also for the birth of a child, the placement of a healthy child by adoption or for foster care, or to care for a parent with a serious health condition.

#### **PLANNED MEDICAL LEAVE**

When planning medical treatment for foreseeable FMLA leave, an employee must consult with his or her supervisor and make a reasonable effort to schedule the treatment so as not to disrupt unduly the school district's operations, subject to the approval of the health care provider. Ordinarily, the employee should consult with the supervisor prior to scheduling the treatment in order to work out treatment schedule which best suits the needs of the school district and the employee. The school district may, for justifiable cause, require an employee to attempt to reschedule treatment, subject to the approval of the health care provider as to any modification of the treatment schedule.

If foreseeable intermittent or reduced schedule leave is medically required based upon planned medical treatment of the employee or a family member, including during a period of recovery from a serious health condition, or if the school district agrees to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption or foster care, the school district

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may temporarily transfer the employee to another job with equivalent pay and benefits that better accommodates the type of leave requested.

In the event an eligible employee employed principally in an instructional capacity (classroom teacher or) requests leave due to a serious health condition or to care for a covered family member with a serious health condition, and the employee would be on leave for greater than twenty percent (20%) of the total number of working days in the period during which the leave would extend, the District may require that such employee elect either:

1. to take leave for periods of a particular duration, not to exceed the duration of the planned medical treatment; or accommodates recurring periods of leave than the regular employment position of the employee.

“Instructional Employee” means an employee employed principally in an instructional capacity whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily non-instructional employees.

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### **REQUEST FOR LEAVE NEAR THE CONCLUSION OF THE SEMESTER**

1. In the case of an employee principally employed in an instructional capacity (classroom teacher), if the eligible employee begins leave more than five (5) weeks prior to the end of the academic term (i.e., before the winter break or before the end of the school year), the District may require the employee to continue taking leave until the end of such term if:
  - A. the leave is of at least three (3) weeks duration; and
  - B. the return to employment would occur during the three (3) week period before the end of such term.
2. If the eligible employee begins leave, which leave is granted for any of the permissible reasons other than the employee's own serious health condition, and the leave period would commence within the last five (5) weeks prior to the end of a semester, the District may require the employee to continue taking leave until the end of such term if:
  - A. the leave is of greater than two (2) weeks duration; and
  - B. the return to employment would occur during the two (2) week period before the end of such term.
3. If the eligible employee requests leave for any reason other than the employee's own serious health condition, which period would commence during the three (3) weeks prior to the end of a semester and the duration of the leave is greater than five (5) working days, the District may require the employee to continue to take leave until the end of such term.
4. Whenever a teacher is required to extend his/her leave as provided for in Sections 1, 2 or 3 above, the "extra" leave required by the District does not count against the employee's twelve (12) workweek entitlement.

### **DUTIES OF EMPLOYEE**

In any case in which the reason for leave is due to the necessity of the employee to care for the spouse, son, daughter, or parent of the employee or because of the serious health condition that makes the employee unable to perform the functions of his/her position, the employee:

1. shall make a reasonable effort to schedule the treatment so as not to unduly disrupt the operations of the District, subject to the approval of the health care provider; and
2. shall provide the School District with timely notice by completing and submitting the electronic FMLA request form, such notice to be not less than thirty (30) days before the date the leave is to begin, of the employee's intention to take leave under such provision, except that, if the date of the treatment requires the leave to begin in less than thirty (30) days, the employee shall provide such notice as soon as practicable. "As soon as practicable" means the day the employee learns of the need for the leave or the next business day. If the employee does not give timely notice, the District may ask for an explanation, and the employee must respond. If an employee fails to give proper notice, the

District may delay or deny FMLA-protected leave.

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### **OUTSIDE EMPLOYMENT AND VACATION WHILE ON FMLA LEAVE**

An employee who is on FMLA leave for his or her own serious health condition may not engage in employment for any other employer or engage in self-employment while on leave. In addition, an employee on FMLA leave for his or her own serious health condition may not engage in personal travel (e.g., vacation) that involves any activities that incapacitates the employee from working his or her

job. If the employee is using paid sick leave that is running concurrently with FMLA leave, the employee must remain in the general vicinity of his or her place of residence during the period of such leave. Dishonesty related to such activities (i.e., work or personal travel) are violations of this policy.

In any case in which the necessity for leave under the section entitled "Service Member Family Leave" is foreseeable, whether because the spouse, or a son, daughter, or parent, of the employee is on covered active duty, or because of notification of an impending call or order to covered active duty, the employee shall provide such notice to the employer as soon as practicable.

### **SCHOOL DISTRICT RESPONSE: ELIGIBILITY NOTICE AND RIGHTS AND RESPONSIBILITY NOTICE**

The District shall notify the employee of eligibility within 5 business days of the employee's request

or of the District learning that leave may be covered by FMLA, unless there are extenuating circumstances. The notice must inform the employee if he or she is eligible. If the employee is not eligible for FMLA leave, the eligibility notice must specify at least one reason why the employee is not eligible.

The District must also give notice to the employees of their rights and responsibilities. The District may use a single form (including U.S. Department of Labor forms) for both the eligibility notice and the rights and responsibility notice.

### **CERTIFICATION**

The District may require that a request for leave to care for a relative with a serious health condition or because of the employee's own serious health condition, or a request for service member family leave, be supported by a certification issued by the health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee, or in the case of service member family leave, of the next of kin of an individual, as appropriate. The District must request the certification within 5 business days after the employee requests leave. The District must give the employee at least 15 calendar days to provide the certification. This may be done through the rights and responsibilities notice. It is the employee's responsibility to provide the District with a complete and sufficient certification. The employee shall provide a copy of such certification to the Superintendent, or his or her designee. The employee shall be responsible for the cost of such certification or re-certification.

If the certification is incomplete or insufficient, the District must notify the employee in writing of what additional information is needed, and must give the employee at least 7 calendar days to cure any deficiency in the certification. A certification is incomplete if an entry is blank, and is insufficient if information is vague, ambiguous or non-responsive. The District may deny FMLA leave if the deficiencies in the certification are not corrected, or there is no resubmitted certification.

The District may contact the health care provider for authentication (i.e., verifying that the health care provider completed and signed the certification) or clarification (i.e., understanding the handwriting or understanding the meaning of a response) but only after giving the employee a chance to clarify. The District superintendent, business manager, human resources manager or leave administrator (but not the employees direct

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supervisor) may contact the employee's health care provider.

**Second Opinion:** In any case in which the District has reason to doubt the validity of the certification provided by the employee for leave for medical care or for medical reasons, the District may require, at the expense of the District, that the eligible employee obtain the opinion of a second health care provider designated or approved by the District concerning any information certified under this section for such medical leave.

In any case in which the second opinion described above differs from the opinion in the original certification provided under this section, the District may require, at the expense of the District, that the employee obtain the opinion of a third health care provider designated or approved jointly by the District and the employee. The opinion of the third health care provider shall be considered to be final and shall be binding on the District and the employee.

The District may require a recertification once every 30 days in connection with the employee's absence for the same condition. However, if the original certification indicated that the condition will last more than 30 days and the leave involves the absence of the employee, the District will not ask for recertification during the period specified in that original certification. The District may ask for recertification every six months, regardless of the period specified in the certification.

### **DESIGNATION OF LEAVE AS FAMILY MEDICAL LEAVE**

Within five business days of when the District has enough information to know whether leave is for an FMLA qualifying reason (e.g. after getting a sufficient medical certification) the District will give written notification to the employee that the leave is designated as family medical leave. The notice must state whether the employee has FMLA time available and whether leave does or does not qualify as FMLA leave. If the employee is out for a FMLA qualifying reason and the District does not learn of the reason until the employee returns, the employee must give notice as soon as practicable after his or her return and the District. The District may also provisionally designate leave as FMLA qualifying leave while awaiting receipt of medical certification or a second or third medical opinion.

### **PENALTY FOR FAILURE TO RETURN**

The District may recover the premium that the District paid for maintaining coverage for the employee under the District's group health insurance plan during any period of leave under this policy if:

1. the employee fails to return from leave after the period of leave to which the employee is entitled has expired; and
2. the employee fails to return to work for a reason other than (1) the continuation, recurrence, or onset of a serious health condition that entitles the employee to leave either to care for an individual or on account of the employee's own serious health condition, or (2) other circumstances beyond the control of the employee.

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