

COMMUNICABLE DISEASES AND OTHER DISABLING CONDITIONS

New Hanover County Schools shall not discriminate against any employee on the basis of a serious health condition or disability in violation of the [Family Medical Leave Act](#), [Americans with Disabilities Act](#), (ADA) [Section 504 of the Rehabilitation Act](#), or North Carolina Law. An employee or an applicant for employment who has had, has a record of having or who currently has a contagious or communicable disease, or physical or mental disability may be considered a "disabled person" under the provisions of the Americans with Disabilities Act, and, therefore, may not be subjected to illegal discrimination in any terms or conditions of employment based on his or her having or having had a contagious or communicable disease.

A "disability" within the meaning of the ADA requires an impairment that substantially limits a major life activity such as seeing, hearing, walking, working and performing manual tasks. The impairment must be permanent or long term and not temporary. Employees may have a disability if they are substantially limited in a major life activity despite having a corrective device. Factors to be considered include any corrective measure or medication's effect on an employee's ability to perform the essential functions of their job, the failure of the corrective measure or medication to correct the condition, and any remaining limitations after the corrective measure or medication is in effect.

Disqualification from Employment

An individual may not be "otherwise qualified" for initial employment or continued employment if the individual has tuberculosis or any other contagious or communicable disease, or any disability, physical or mental, which will impair or actually impairs the ability of the individual to perform the essential or major functions of the position for which he or she is employed or seeking employment even with reasonable accommodations or which will or does pose a reasonably foreseeable risk of harm to themselves or others in the school environment.

In determining whether or not an individual infected with a contagious or communicable disease is qualified for initial employment or continued employment, the school system shall consider the following factors:

- The nature of the risk of transmission in the school environment. The duration of the risk of transmission;
- The severity of the risk; and
- The probabilities the disease will be transmitted and will cause varying degrees of harm.

In determining whether or not an individual with a physical or mental disability is qualified for initial employment or continued employment, the school system shall determine the essential functions of the position and whether with or without a reasonable accommodation(s) the employee may or may not be able to perform the essential functions of the position.

Essential functions of a job are those that are fundamental and not marginal. The amount of time spent on performing the job function is a factor in determining whether it is an essential function of the job.

An accommodation is considered unreasonable when it places an undue hardship on the school system and is defined as being unduly costly, extensive, substantial, disruptive, or that would fundamentally alter the nature and operation of the school or school system.

Medical Examination

If the Superintendent or designee has reason to suspect that employees may be infected with a contagious or communicable disease or affected by a physical injury, illness or disability or suffers from a mental illness or disability and is either unable to perform the essential functions of their position effectively or poses an unreasonable risk of harm to themselves or others in the school environment, the Superintendent or designee may require them to submit to a medical examination, a mental health evaluation or an appropriate medical test for known contagious and communicable diseases as provided in [NCGS §115C-323](#).

Employees shall be notified in writing of the reason(s) for the requested medical examination and shall be given an opportunity to respond including the opportunity to submit a statement from their physician or mental health professional regarding the injury, illness, or disability. The examination shall be performed at New Hanover County Board of Education expense by a physician selected by mutual agreement of the employee and the Superintendent or designee.

Voluntary Medical Leave

If the Superintendent or designee has reason to suspect that an employee is infected with a contagious or communicable disease, affected by a physical injury, illness or disability or suffers from a mental illness or disability and is either unable to perform the essential functions of his or her position effectively or poses an unreasonable risk of harm to themselves or others in the school environment, the Superintendent or designee may ask an employee to take a medical leave voluntarily, until such time as the examining physician certifies that the employee is able to return to work. While on medical leave, the employee may use sick leave that he or she has earned and accumulated and, if eligible, may be provided disability income under the provision of the [North Carolina Disability Benefits Plan](#).

Involuntary Medical Leave

If employees disagree with the request of the Superintendent or designee, they shall be placed on a medical leave involuntarily, the employee shall have the right to request a review by an independent physician selected jointly by the Superintendent or designee and the employee. The request for an independent examination must be submitted to the Superintendent or designee within five (5) days of receiving written notice of the Superintendent's request that the employee be placed on a voluntary medical leave. The physician shall be appointed as soon as possible and shall have the authority to conduct whatever tests and examinations deemed medically necessary or appropriate in order to render a professional opinion concerning the employee's fitness for work.

If employees refuse to participate in any test or examination requested by the Superintendent for other than sincerely held religious beliefs, they shall have waived their right to a review by an independent physician.

The independent physician shall submit a written report to the Superintendent and to the employee on the medical findings, diagnosis and professional opinion concerning the employee's fitness for continued employment as soon as reasonably possible. Based on that report, both the Superintendent and/or the employee may reconsider their previous decisions concerning the appropriateness of a medical leave. The Superintendent may impose an involuntary medical leave for up to 60 days upon an employee, as set for the above. Career employees, as defined in NCGS §115C-325(a)(1a), whose involuntary leave will constitute a demotion pursuant to NCGS §115C-325(a)(4), due to a reduction in salary, shall have hearing rights as specified in NCGS §115C-325. All other employees have the right to a hearing before the Board concerning their involuntary leave, as provided in NCGS §115C-45(c). While on medical leave, employees may use any and all sick leave they have earned and accumulated and, if eligible, may be provided disability income under the provisions of the [North Carolina Disability Benefits Plan](#).

Dismissal and Non-renewal

Although it is the policy of this Board to encourage employees to use medical leave, sick leave and disability for those periods of time when, due to a temporary illness or physical disability, employees cannot perform the essential functions of their job effectively or an employee's presence at school would pose an unreasonable risk of harm to themselves or others, the Superintendent and the Board reserve the right and authority to dismiss or non-renew employees due to their inability to perform the functions of their job, consistent with federal and state law, Board policy and the policies and rules of the State Board of Education.

Confidentiality

The medical records of employees are confidential and not subject to public inspection, as provided by [NCGS §115C-319](#) and [Policy 6340](#) Personnel File. Only personnel and administrators with a legitimate educational and/or administrative need to know of an employee's medical condition shall have access to an employee's medical records.

LEGAL REFS: NCGS §115C-323, NCGS §115C-325(a)(1a); NCGS §115C-325 (a)(4); Family Medical Leave Act, 5 USC 6381 et seq.; Americans with Disabilities Act, (ADA), 42 USC 12101, et seq.; Section 504 of the Rehabilitation Act of 1973, 29 USC 794; North Carolina Disability Income Plan

CROSS REFS: Policy 6450 Grievance Procedures for Employees, Policy 6340 Personnel File

Adopted: 07/12/11