

## PROFESSIONAL LEAVES AND ABSENCES

The District complies with all applicable statutes and regulations governing leaves of absence. In addition to the Family Medical Leave Act, 29 U.S.C. § 2601 et seq., its implementing regulations, 29 C.F.R. Part 825, 14 Del. Code §1333 and any applicable Collective Bargaining Agreement, the District shall comply with the regulations set forth by the Delaware Department of Labor, Division of Paid Leave, in 19 Del. Admin. Code §1401 et. seq. regarding paid leaves of absence. The District reserves the right to deny any leave of absence which is not otherwise protected by law.

The District elects to use the following definition of a 12-month period: "A 'rolling' 12-month period measured backward" is 12-month period measured backward from the date an employee uses any family and medical leave. Under the "rolling" 12-month period, each time an employee takes family and medical leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12-months. The District shall uniformly apply this "rolling 12-month period measured backward" to all employees. Any change to the District's selected application year shall be made consistently with FMLA standards.

The District reserves all rights to revise or rescind this Section of the Policy if the Department of Labor, Division of Paid Leave, amends its regulations or if 19 Del. Admin Code §1401 et. Seq. is repealed.

The Indian River Board of Education will consider requests for leaves on an individual basis. When leaves of absence are requested, the following conditions will govern, unless otherwise noted:

1. All requests for leave shall be in writing.
2. When evaluating requests for leaves, the best interests of the instructional program and the district will be considered paramount.
3. When an employee is on leave, that time does not accrue for either seniority or salary purposes, except FMLA or military leaves shall not be considered gaps in service.
4. All leaves of absence are subject to appropriate federal and state laws and State Board of Education regulations.
5. At the end of any leave, the professional employee shall be accepted into employment by the Board and assigned to the same or similar position to the one from which leave was granted. In the case of FMLA, the employee will be restored to the same job or to an "equivalent job" in terms of pay, benefits, and other employment terms and conditions (including shift and location).

The following types of leaves may be considered:

1. Family and Medical Leave

This Policy is intended to comply with the National Defense Authorization Act (NDAA) for FY 2008, the Family and Medical Leave Act of 1993 (the “FMLA”) as amended, the Department of Labor’s regulations implementing FMLA, and any applicable collective bargaining agreements, and shall be construed consistently with NDAA, FMLA and any applicable regulations. Unless otherwise required by law, the District will grant up to 12 weeks (26 weeks for certain service member family leave) of family and medical leave during any 12 month period to eligible employees.

To qualify for FMLA leave, the employee must meet all of the following conditions:

- The employee must have worked for the District for 12 months, which may or may not be consecutive, but only to the extent required by law.
- The employee must have worked at least 1,250 hours during the 12 month period immediately before the date the employee requests the leave to begin.
- The Fair Labor Standards Act (FLSA) will determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked, therefore those hours will not count toward determining the 1,250 hour eligibility test for FMLA eligibility.
- An employee returning from fulfilling his or her National Guard or Reserve military obligation shall be credited with the hours of service that would have been performed but for the period of military service in determining whether the employee worked the 1,250 hours of service.

To use FMLA leave, the purpose of leave must align with an eligible use under FMLA.

The entitlement to a leave for the birth, adoption or placement of a child expires twelve (12) months from the birth, adoption or placement of the child.

Employees who are husbands and wives and both eligible District employees are limited to a single twelve (12) month period for childbirth, adoption or placement of a child. For other types of family and medical leave, however, each spouse is treated individually.

An employee may take FMLA leave in 12 consecutive weeks, or to the extent required by FMLA, may use the leave (i) intermittently or (ii) to reduce the workweek or workday, resulting in a reduced-hour schedule. In all cases other than leave to care for a covered servicemember with a serious injury or illness, FMLA leave may not exceed 12 weeks over a 12 month period. Except in the case of leave to care for a covered servicemember with a serious injury or illness, the District will measure the 12 month period as a rolling 12 month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes FMLA leave, the District will compute the amount of FMLA leave the employee has taken during the prior 12 months and subtract such leave from the 12 weeks of available leave time. The balance remaining is the amount the employee is entitled to take at that time. The District may transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate an intermittent or reduced schedule.

An eligible employee's FMLA leave entitlement is limited to a total of 26 workweeks of leave during a single 12-month period to care for a covered servicemember with a serious injury or

illness. The "single 12-month period" in which the 26-weeks-of-leave-entitlement occurs is determined measured forward from the date an employee's first FMLA leave to care for the covered servicemember begins.

FMLA provides special rules affecting the taking of intermittent leave, leave on a reduced leave schedule, or leave near the end of an academic term (semester), by instructional employees. The District reserves its rights to limit, require, or modify leave according to FMLA provisions.

If an employee anticipates that leave will be needed based on planned medical treatment, the employee must make a reasonable effort to schedule the medical treatment, subject to approval of the employee's health-care provider, in a manner that does not disrupt unduly District operations. If an instructional employee does not give required notice of foreseeable FMLA leave to be taken intermittently or on a reduced leave schedule, the District may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the District may require the employee to delay the taking of leave until appropriate notice is provided.

Following the entitlement of a period of twelve (12) work weeks of absence for the birth of a child, the employee may, upon presentation of certification by the attending physician, continue to be absent under either of the following conditions:

- a. The employee may continue to use earned sick leave and remain on the payroll or;
- b. Request additional leave of absence as a reasonable accommodation of the employee under the Americans with Disabilities Act.

In order to qualify for the July or August state shares of health insurance, the employee on leave may choose to return to active employment on June 1 or use accrued sick leave to complete the marking period.

## 2. Education

The Board may grant an employee requested educational leave when the described educational leave is advantageous to both employee and employer. The employee requesting such leave must fully document said request.

Eligible employees who desire sabbatical leave should make a written request to the Board of Education by February 1 for leave to begin at the opening of the next year.

If more than one employee applies for sabbatical leave, a committee made up of representatives from the district's teacher and administrative staff will review the requests and make a recommendation to the Board of Education. The Board of Education will consider recommendations for sabbatical leave and render a final decision at its March meeting.

## § 1325 Sabbatical leave

Sabbatical leave may be granted to any properly certified professional employee under the following conditions and provisions:

- a. After seven (7) years of service as a fully certified professional employee defined as a teacher, nurse, supervisor, director, principal, superintendent, coordinator, psychologist and any other professional position in public education in this state, provided that at least five (5) consecutive years of such service shall have been in the employ of the school board from which leave of absence is sought, unless such board in its discretion shall allow a shorter period of time;
- b. For purposes of professional improvement or for the recovery of health after prolonged illness;
- c. The period of leave shall not be shorter than one-half school term or longer than one (1) full school term;
- d. While on leave, the employee shall not be allowed to engage in full time gainful employment, except by written agreement with the leave-granting board. However, this provision shall not preclude the employee from receiving grants such as scholarships, gifts, fellowships, part-time employment, or other grants of aid as frequently provided by colleges, universities, governmental agencies, corporations, trusts or other individuals to students or other persons engaged in study or travel for purposes of professional improvement;
- e. The professional employee shall agree in writing to return to service to the leave-granting board for a period of at least one full school year following the completion of his leave;
- f. Request for sabbatical leave shall be presented in writing to said leave-granting board at a regular meeting of such board before April 1 for leave to begin at the opening of the next term, and before November 1 for leave to begin at the opening of the second semester of the term;
- g. At the end of any such period of leave of absence the employee shall present evidence of his professional improvement in such terms as shall have been agreed upon between said employee and said leave-granting board at the time when such leave was granted. Such evidence may consist of college transcripts, degrees earned or written reports by the recipient of the leave of absence;
- h. Said leave-granting board shall accept the employee into full-time employment upon his return from leave and assign him to the position from which he left or to a similar position. In no case may assignment be made so as to invalidate the employee's certification status or to bring about a demotion in position or salary;
- i. For purposes of salary increments and pension eligibility and computation, a year of leave shall be considered a year of experience in covered employment under the provisions of local or state salary and pension programs, except that not more than two years of leave shall be applied toward salary increments and pension credits to any person. Failure of any employee to return to service of said leave-granting board shall be cause for forfeiture of salary increments and pension credits for the period of the leave;
- j. School boards may set a limit on the number of employees who may be granted leave each year, provided that, in any district having fewer than 20 professional employees, 1 eligible applicant may be granted leave each year;
- k. The leave-granting district shall provide to the employee granted leave, under subdivisions (1)-(10) of this section, compensation equal to one-half the salary to which the employee would have been entitled under full time employment; provided, however, that in no case shall the compensation paid exceed \$10,000 for a full school year leave or \$5,000 for a half school year. The state shall continue to pay the state share of other employment costs as specified in § 6340 of Title 29 for the employee on sabbatical leave.

(14 Del. C 1953, § 1325; 53 Del. Laws, c. 227; 54 Del. Laws, c. 262; 66 Del. Laws, c. 303, § 321.)

Reviser's note. – Section 307 of 70 Del. Laws, c. 118, effective July 1, 1995, provides: “It is the intent of the General Assembly that sabbatical leave authorized under § 1325 of this title, at state expense, be limited to one full year leave or two half year leaves per local school district during the fiscal year ending June 30, 1996. Nothing in this section, however, shall prevent a school district from granting additional sabbatical leaves if the district pays the salary and other employment costs for the employee who is on leave.”

### 3. Donated Leave Program

The Indian River School District's (the “District”) Donated Leave Program will assist its employees who have used all sick leave, personal leave, and at least half of vacation leave, if applicable, as a result of catastrophic illness or injury. The following guidelines have been established for donated leave program participation.

Donation of Days – Employees who wish to donate one or more accrued sick leave days may contact the Director of Personnel. Upon request, the Director of Personnel shall broadcast the request to building staff. Should no staff members at the building level donate leave within a two (2) week period, the Director of Personnel shall broadcast the request to District staff. Alternatively, when an employee contacts the Director of Personnel to request donated sick days, that employee may inform the Director of Personnel of the name of a willing donor. The Director of Personnel shall keep a listing of those donors. If there is surplus leave, it will be debited from donors in the order donated. No leave can be donated more than two calendar weeks after notice of a request for leave is communicated.

No person can sell accrued leave.

Eligibility for Donated Leave Program – Members of all employee groups within the District are eligible to participate in the District's donated leave program provided that they have been employed by the District for at least six months before that person is eligible for donated leave time.

Employees who are eligible for annual leave and who have used all of their sick and personal days and half of their vacation leave, and who have a catastrophic illness are eligible to apply for donated leave. When donated leave is for the catastrophic illness of a family member, the employee must have used all of that employee's sick days, personal days and annual leave. However, if an Employee is not eligible for annual leave, the Employee must have used all of the Employee's personal days and all but 3 of the Employee's sick days when donated leave is for the catastrophic illness of a family member.

Donated leave usage runs concurrently with any leave available under the Family and Medical Leave Act, 29 U.S.C. § 2601 et seq. If a long-term disability program is available to employees, a period of disability defined herein shall be limited to the waiting or elimination period defined in the policy.

Only in instances where an absence occurs because of a recipient's catastrophic illness, not a family member's catastrophic illness, donated leave may be used because for personal medical

treatments or personal illness directly related to the catastrophic illness as certified by a physician. Otherwise, the leave donated shall be used consecutively.

**Definition of Catastrophic Illness** – “Catastrophic illness” means any illness or injury to an employee or an employee’s family member which is diagnosed by a physician and certified by the physician as rendering the employee or employee’s family member unable to work, or, in the case of a family member who does not work, the medical equivalent of “unable to work”, for a period greater than 5 calendar weeks. Separate periods of disability lasting 7 consecutive work days or more each, and totaling more than 5 calendar weeks, resulting from the same or a related illness or injury and occurring within any 12-month consecutive period, are considered the same period of disability.

**Definition of Child** – “Child” means an immediate descendant by blood or adoption and of any age.

**Definition of Family Member** – “Family member” means an employee’s spouse, child, or parent who resides with the employee and who requires the personal attendance of the employee during the spouse’s, child’s, or parent’s catastrophic illness.

**Procedure for Requesting Donated Leave** – When an employee with a catastrophic illness or who has a catastrophic illness in their immediate family is in need of donated sick days, the employee shall complete the required documentation and contact the District Personnel Office.

**Donated Days Conversion** – The donated days must be in increments of whole days. The District shall convert the donated leave available for use by a recipient into cash value at the donor’s rate of pay, shall re-convert the cash value to hours of leave at the recipient’s rate of pay, and shall then credit the recipient’s account.

#### 4. Military

The Board will grant an employee requested military leave of absence in  
Education regulations.

### PROCEDURE FOR IMPLEMENTATION OF THE STATE OF DELAWARE SHORT-TERM AND LONG-TERM DISABILITY INSURANCE PLAN

A. **PURPOSE:** To provide a written procedure for administering the State of Delaware’s Short-Term and Long-Term Disability Plan pursuant to Title 29, Section 5253 of the Delaware Code.

B. **DEFINITION:** The Short-Term Disability Plan allows eligible employees to take up to 6 months of short-term income protection if the employee cannot perform one or more of the essential duties of their occupation due to injury, sickness, pregnancy or other medical condition covered by the Plan. This procedure (1) provides employees with information concerning short-term disability benefits and (2) provides employees with information concerning the process for

leave taken under the Short-Term Disability Plan (hereafter referred to as “STD”) and Long-Term Disability Plan (hereafter referred to as “LTD”).

C. PROCEDURE:

1. Eligibility:

a. Indian River School District employees enrolled in the State of Delaware’s Short-Term and Long-Term Disability Insurance Plan.

2. Guidelines:

a. Participating employees shall be eligible to utilize earned sick and/or annual leave for absences due to accident, illness, or injury during the 20-calendar day elimination period before disability benefits commence on the 21<sup>st</sup> calendar day under this plan, such that the participating employee receives 100% percent of creditable compensation for such periods, not to exceed the employee's sick leave balance.

b. All leaves for which the employee is eligible will run concurrently with STD, including but not limited to: Worker’s Compensation Leave, Family and Medical Leave (FMLA) and Donated Leave (during the 20-calendar day elimination period only).

3. Short-Term Disability Benefit:

a. An employee who is determined by the Plan Administrator, in its sole discretion, to be mentally or physically unable to perform the essential functions of the employee's position with reasonable accommodation as required by federal law, shall be entitled to receive STD benefits pursuant to this procedure.

b. STD benefits for participating employees shall commence upon the expiration of a 20-calendar day elimination period. Such elimination period shall begin on the first day following the onset of physical or mental incapacity as determined by the Plan Administrator. The 20-calendar day elimination period must commence and conclude within normal working periods for 10 and 11 month employees.

c. An employee may utilize accrued sick, annual or donated leave during the 20-calendar day elimination period to equal 100% of their pre-disability creditable compensation.

d. Except as otherwise noted, STD benefits pursuant to this procedure shall be payable at the rate of 75% of the participating employee's base pay prior to the onset of the disability during the period that an employee is disabled, as determined by the Plan Administrator.

e. An employee may utilize 25% of their earned sick or annual leave each day, to supplement STD benefits to equal 100% of pre-disability creditable compensation for the maximum period of 182-calendar days.

f. Donated leave may not be utilized upon completion of the 20-calendar day elimination period.

- g. Creditable compensation during periods an employee receives STD benefits shall include general salary increases awarded during the period of STD coverage.
- h. Once an employee exhausts their 20-calendar day elimination period, the employee will be deemed to have applied for benefits under this procedure and shall not be eligible to utilize paid sick or annual leave in lieu of applying for short-term disability.
- i. Failure of the employee to apply for short-term disability benefits in a timely manner (within 15 calendar days of the start of the absence) will result in the employee automatically being placed on an administratively assigned unpaid medical leave of absence.
- j. If an employee returns to work for 1 day or less during the 20-calendar day elimination period, but cannot continue to work thereafter, the period worked shall not be considered to have interrupted the 20-calendar day elimination period. The elimination period must commence and conclude within normal working periods for employees who work less than 12 months per calendar year.
- k. An employee who receives STD benefits pursuant to this procedure may be required, in the sole discretion of the Plan Administrator, to participate in rehabilitation or retraining services, or a combination thereof, under a program established by the State of Delaware and the Plan Administrator.
- l. If a participating employee returns to the employee's position on a full-time basis for 15 consecutive calendar days or longer, any succeeding period of disability for which the employee shall become eligible shall constitute a new period of short-term disability with a corresponding 20-calendar day elimination period.
- m. Employees enrolled in and receiving STD compensation shall receive a maximum of 100% of their base pay. If the employee is otherwise eligible for holiday pay, the employee will be granted a maximum 100% of their base pay on the day in question.
- n. When an employee is on an approved STD leave per this procedure and does not supplement the 75% STD payment with 25% leave for a period of greater than 30-calendar days, the employee will accrue leave on a pro-rata basis.
- o. Employees who return to work before the expiration of the 182-calendar day STD period, shall be placed into a vacant position within the District for which the employee qualifies.

4. Short Term Disability Pay

- a. For 10 and 11 month employees – beginning with the 2008- 2009 school year, pursuant to Section 5253(b) (6) of the Delaware Code, when an employee completes their 20 day elimination period, a “Days Worked” calculation will be completed to pay the employee for the days worked in the current school year through and including the 20-calendar day elimination period. All 10 and 11-month employees who elected 26 pays and would normally have received pay throughout the summer, will be paid off all monies owed and will be paid their per diem beginning the 21<sup>st</sup> calendar day.



b. As of the 21<sup>st</sup> calendar day, the employee's daily STD benefit will be calculated by dividing the employee's annual salary by the number of days to be worked in the school year. The employee's daily rate will then be multiplied by 75% to determine the employee's daily STD benefit.

c. Employees may elect to use ¼ days to supplement their daily rate to 100% of their pay.

d. Each pay period, the employee's daily STD benefit will be multiplied by the actual number of workdays in that period for the employee's classification according to the district calendar. Employees will not be paid for any days outside of their contract period. This includes, but is not limited to, winter break, spring break, summer and/or any other holiday or non-work day.

e. 12 month employees will continue to be paid under the current procedure.

5. Long-Term Disability Benefit:

a. Pursuant to Title 29, Section 5253c (5) of the Delaware Code, upon the exhaustion of the maximum STD benefit period, the employee shall no longer be an employee of the State of Delaware or any of its political subdivisions.

b. Upon approval by the Plan Administrator, LTD benefit payments will be 60% of pre-disability base earnings, paid on a monthly basis.

c. The maximum monthly payment will be \$8,000.

d. Within forty-five (45) days of the Plan Administrator's request, the employee is required to apply for Social Security Income (SSI) disability benefit. If denied SSI, the employee is required to follow and exhaust the Social Security appeals process.

e. Once approved for LTD, the employee may choose to participate in the State of Delaware's health care and dental coverage. If elected, the monthly health care and dental premium amounts will be automatically deducted from the employee's monthly LTD benefit payment.

f. While on LTD, the employee will continue to receive the benefit of payment for the State share of health insurance.

g. While on LTD, the employee will continue to receive creditable service towards the employee's pension.

D. INSURANCE FRAUD: Insurance fraud occurs when any employee with the intent to injure, defraud or deceive the Indian River School District and/or the State of Delaware and their Plan Administrator, provides false information or files a claim for benefits that contains any false, incomplete or misleading information. It is a crime for an employee to commit Insurance Fraud. Insurance Fraud is grounds for immediate termination and the District, State of Delaware and/or their Plan Administrator will also pursue all available legal remedies if an employee perpetrates Insurance Fraud.

E. REVIEW: The Indian River School District reserves the right to change, modify or amend this procedure as needed or as amended by Delaware Law.

For more information on the State of Delaware's Disability Insurance Program, employees may reference Title 29, Section 5253 of the Delaware Code, or visit [www.ben.omb.delaware.gov](http://www.ben.omb.delaware.gov) Section "Disability Insurance Program.

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