FAMILY AND MEDICAL LEAVE

A. Leave without Pay

1. Employees may take leave without pay when they have exhausted their leave benefits and need additional leave to cover personal illness, the illness of a spouse, child, or parent, or the birth or adoption of a child.

2. The employee's immediate supervisor may authorize leave without pay for up to two (2) days per year. Only the Director may approve leave without pay beyond two (2) days per year. An employee requesting leave without pay for more than two (2) days must put the request in writing.

3. An employee is not entitled to leave without pay unless

   a. that employee has been employed for at least twelve (12) months by the School Committee and

   b. that employee has worked at least 1250 hours in the previous 12 month period.

4. Extent of leave:

   a. An eligible employee may take up to twelve weeks of leave total during a twelve month period, including any paid leave used. The employee must exhaust all available paid vacation leave and personal leave before being entitled to take leave without pay.

   b. In any case where both husband and wife work for the School Committee, parental leave or family medical leave to care for a sick parent is limited to twelve work weeks total for the husband and wife. Except as otherwise provided, the husband and wife may divide the twelve workweeks leave in any way they may agree to.

5. Definitions:

   a. "Child" means a son or daughter, whether biological adopted, or foster child, or a stepchild, legal ward or child to whom the employee stands in loco parentis, if the child is either under the age of eighteen (18) years or is incapable of self-care because of a mental or physical disability.

   b. "Director" means the Director of Finance and Personnel or the designee of the Superintendent.

   c. "Health care provider" means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state where the doctor practices, or any person determined by the Secretary of Labor to be capable of providing health care services.

d. "Intermittent Leave" means leave taken in whole day periods but less than a whole workweek.

e. "Parent" means a biological parent of an employee or an individual who stood in loco parentis to an employee when the employee was a child.

f. "Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee. Except for teachers, no employee exempt from the overtime rules of the Fair Labor and Standards Act may take leave on a reduced leave schedule without the permission of the Director.

g. "Serious health condition" means an illness, injury, impairment, or physical or mental condition which involves--

(1) inpatient care in a hospital, hospice, or residential medical care facility, or

(2) continuing treatment by a health care provider.

h. "Spouse" means a husband or wife.

i. "Twelve Month Period" means the school system's fiscal year.

B. Types of Leave without Pay

1. Personal Medical Leave without Pay: The Director may grant a medical leave of absence without pay to an employee who, because of a serious health condition, is unable to perform the functions of his or her job.

a. An employee must exhaust all available sick leave, including leave from the sick leave bank, before taking leave without pay.

b. Licensure:

(1) The Director may require a licensure from the employee's health care provider, stating--

i. the date on which the health condition began,

ii. the probable duration of the condition,

iii. the appropriate medical facts within the health care provider's knowledge regarding the condition,

iv. a statement that the employee is unable to perform the functions of his/her job.

(2) If the Director has reason to doubt the validity of the licensure provided by the employee's health care provider, he or she may require, at the School Committee's expense, a second opinion. The employee must obtain the opinion of the Director's designated health care provider concerning the information in b., above. The health care provider giving the second opinion may not be a person regularly employed by the School Committee

(3) If the second opinion conflicts with the first, the Director may require, at the School Committee's expense, a third opinion. The health care provider shall provide a report concerning the information in b., above. The provider shall be final and binding on the School Committee and the employee.

(4) The Director may require an employee on medical leave without pay to provide relicensures at reasonable intervals.

c. If the necessity for leave is foreseeable based on planned medical treatment, the employee--

(1) Shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the School System, subject to the approval of the employee's health care provider.

(2) Shall give the employee's supervisor at least 30 days' notice, before the date the leave is to begin, of the employee's intention to take personal medical leave without pay, except that if the date of treatment requires the leave to begin in less than thirty days, the employee shall provide such notice as practicable.

d. Failure to provide notice as mandated by c. above shall result in the denial of leave until the required notice period has passed.

e. The employee may take intermittent leave or take leave on a reduced leave schedule when medically necessary.

f. Before the employee may resume work, the employee must present his or her supervisor with written licensure from the employee's health care provider that the employee is able to resume work.

2. Family Medical Leave without Pay: The Director may grant a medical leave of absence without pay to an employee who needs the time off to care for the employee's spouse, child or parent, if the spouse, child or parent has a serious health condition.

a. Licensure:

(1) The Director may require a licensure from the health care provider for the spouse, child, or parent, as the case may be, stating--

i. the date on which the health condition began,

ii the probable duration of the condition,

iii the appropriate medical facts within the health care provider's knowledge regarding the condition,

iv. a statement that the employee is needed to care for the spouse, child, or parents, as the case may be, and an estimate of the amount of time that such employee is needed to care for the spouse, child, or parent.

(2) If the Director has reason to doubt the validity of the licensure provided by the employee's health care provider, he or she may require, at the School Committee's expense, a second opinion. The employee must obtain the opinion of the Director's designated health care provider concerning the information in b., above. The health care provider giving the second opinion may not be a person regularly employed by the School Committee.

(3) If the second opinion conflicts with the first, the Director may require, at the School Committee's expense, a third opinion. The health care provider shall provide a report concerning information in b., above. The provider shall be final and binding on the School Committee and the employee.

(4) The Director may require an employee on medical leave without pay to provide relicensures at reasonable intervals.

b. If the necessity for leave is foreseeable based on planned medical treatment, the employee--

(1) Shall make a reasonable effort to schedule the treatments to as not to disrupt unduly the operations of the School System, subject to the approval of the health care provider for the spouse, child, or parent of the employee, as the case may be, and

(2) Shall give the employee's supervisor at least 30 days notice, before the date the leave is to begin, of the employee's intention to take family medical leave without pay, except that if the date of the treatment requires the leave to begin in less than thirty days, the employee shall provide such notice as practicable.

c. Failure to provide notice as mandated by b. above shall result in the denial of leave until the required notice period has passed.

d. The employee may take intermittent leave or take leave on a reduced leave schedule when medically necessary.

3. Parental Leave without Pay: An employee may take parental leave without pay within one year of the birth of the child in order to care for that child. An employee may take parental leave without pay within one year of the placement of a child with the employee for adoption or foster care.

a. When the need for parental leave without pay is foreseeable based on expected birth or placement, the employee shall give his or her supervisor at least 30 days' notice before the date the leave is to begin. If the date of the birth or replacement requires leave to begin in less than thirty days, the employee shall provide such notice as is practicable.

b. Failure to provide notice as mandated by a. above shall result in the denial of leave until the required notice period has passed.

c. An employee taking parental leave without pay may not take intermittent leave or work on a reduced leave schedule without the express consent of the Director in writing.

C. Special Rules

1. Rules Applicable to Instructors in Periods Near the Conclusion of the Academic Term: The following rules apply to any employee who takes leave without pay under this policy and who is employed principally in an instructional capacity.

a. If leave without pay begins more than five weeks before the end of an academic term, the Principal may require the employee to continue taking leave until the end of that academic term, if--

(1) the leave is of at least three weeks duration, and

(2) the return to work would occur during the three-week period before the end of the academic term.

b. If Parental or Family Medical leave without pay begins within five weeks before the end of an academic term, the Principal may require the employee to continue taking leave until the end of that term, if--

(1) the leave is of more than two weeks duration, and

(2) the return to work would occur during the two-week period before the end of the academic term.

c. If Parental or Family Medical leave without pay begins within three weeks before the end of an academic term the Principal may require the employees to continue taking leave until the end of that term, if the leave is for more than five working days.

d. If the School System requires a teacher to extend leave under these rules, the extended leave is counted against the teacher's FMLA allotment. If the teacher's FMLA allotment expires during the extension the additional time is nevertheless deemed FMLA leave.

2. Intermittent Leave and Reduced Leave Schedules:

a. If the intermittent leave or reduced leave schedule is foreseeable based on planned medical treatment, the Director may require the employee to transfer temporarily to an available alternate position--

(1) which is offered by the Director,

(2) for which the employee is qualified,

(3) which has equivalent pay and benefits, and

(4) which better accommodates recurring periods of leave than the regular employment position of the employee.

b. If a teacher does not give the School Committee the required 30 days notice for intermittent leave or a reduced leave schedule which is foreseeable, he or she must delay the taking of leave until the notice provision is met.

c. If a teacher takes intermittent leave or a reduced leave schedule which is for more than 20% of the normal working days over the period of the leave, that teacher must instead take the entire period as FMLA leave.

3. Benefits during Leave:

a. While the employee is on leave, the School System shall maintain coverage of that employee under its group health plan at the level and under the conditions which would have been provided if the employee had continued in employment instead of being on leave.

b. If the employee normally had a monthly payment to that plan, the employee must make that monthly payment. If the employee fails to make such payments, the School System shall, if possible, continue the benefits at the reduced rate permitted for the School System's payment alone. If such a reduced rate is not possible, then the employee shall be excluded from the group health plan.

4. Employment and Benefits upon Return to Work:

   a. Any employee who takes leave under this Policy for the intended purpose of the leave shall be entitled, on return from leave--

      (1) to be restored to his or her former job, or

      (2) to be placed in an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

   b. The taking of leave under this policy shall not result in the loss of any employment benefit accrued before the date on which the leave began.

   c. No employee shall accrue seniority or employment benefits during any period of leave, nor shall the employee be entitled to any right, benefit, or position of employment other than those to which the employee would have been entitled if the employee had not taken the leave. This policy does not change the legal requirement that probationary teachers teach at least 160 contractual teaching days during the school year in order to count the year toward the three years of service needed to attain continuing contract status.

   d. The Director may deny restoration to salaried employees who are among the highest paid 10 percent of the School System's employees, if

      (1) such denial is necessary to prevent substantial and grievous economic injury to the operations of the School System,

      (2) the Director notifies the employee of the intent of the School System to deny restoration on the basis of economic injury at the time the Director determines that such injury would occur, and

      (3) if the leave has begun, the employee does not return to work after receiving the notice of intent not to restore him or her.

5. Failure to Return from Leave: The School System may recover the premium which it paid for maintaining coverage of the employee under its group health plan during the employee's unpaid leave under this policy if--

   a. the employee fails to return from unpaid leave under this policy after the period of leave to which the employee is entitled has expired; and

   b. the employee fails to return to work for a reason other than--

      (1) the continuance, recurrence, or onset of a serious health condition which would entitle the employee to personal or family medical leave without pay, or

(2) other circumstances beyond the control of the employee.

6. Prohibited Acts:

a. No employee of the School System shall interfere with, restrain, or deny the exercise of or the attempt to exercise any right provided under this title.

b. No employee of the School System shall discriminate against any individual for opposing any practice contrary to this policy.

c. No employee of the School System shall discriminate against any individual for

(1) filing any charge, instituting or causing to be instituted any proceeding, under or related to this policy,

(2) giving, or being about to give, any information in connection with any inquiry or proceeding relating to any right provided under this policy, or

(3) testifying, or being about to testify, in any inquiry or proceeding relating to any right provided under this policy.

LEGAL REFS.: P.L. 103-3 "Family and Medical Leave Act of 1993"
29 U.S.C. S 2601 et seq.;
Department of Labor Regulations, 29 C.P.R. Part 825
Va Code S 22.1-303