

# POLICY

## Queen Anne's County Public Schools

POLICY TITLE: Family and Medical Leave Policy	
ADOPTION/EFFECTIVE DATE: February 13, 1989 Revised - July 10, 2013	
POLICY/PROCEDURE MANUAL SUMMARY CATEGORY: Personnel  Amendment:	

### I. Purpose

The Family Medical Act of 1993 (FMLA) is a federal law that provides unpaid, job protected leave to eligible employees, both male and female; in order to care for their families or themselves for specified family and medical conditions.

### II. Policy Statement

Each eligible employee will be granted family and/or medical leave of absence without pay for up to twelve (12) weeks during the twelve (12) month period from July 1st through June 30th. An eligible employee is one who has been employed with the Board of Education for Queen Anne County (hereinafter "the Board") for at least 12 months in total, and for at least 1,250 hours of worked during the 12 months prior to the commencement of his or her leave. Leave will be granted for one or more of the following reasons.

1. For the birth of the employee's child in order to care for the child;
2. For the adoption of a child or the placement of a foster child with the employee;
3. To care for a sick spouse, child, or parent who has a serious health condition; or
4. Due to the employee's own serious health condition that renders the employee incapable of performing the functions of his/her job.
5. For a spouse, son, daughter, parent or next of kin to take up to 26 workweeks of leave to care for 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.

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### III. Definitions

“Son or daughter” means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis who is either under the age of eighteen (18) or age 18 or older and incapable of self-care because of a mental or physical disability.

“Spouse” means a husband or wife as defined or recognized under State law for purposes of marriage in the state where the employee resides, including common law marriage in states where it is recognized.

“Parent” means a biological parent or an individual who stands or stood in loco parentis to an employee when the employee was a son or daughter.

“In loco parentis” means those persons with day-to-day responsibilities to care for and financially support a child or, in the case of an employee, who had such responsibility for the employee when the employee was a child.

“Serious health condition” means an illness, injury, or physical or mental condition that involves either:

A. Any period of incapacity or treatment connected with in-patient care (i.e., an overnight stay) in a hospital, hospice, or residential medical-care facility, and any period of incapacity or subsequent treatment in connection with such in-patient care; or

B. Continuing treatment by a health care provider which includes any period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) due to:

1. A health condition (including treatment for or recovery from) lasting more than three consecutive days, and any subsequent treatment or period of incapacity relating to the same condition, that also includes:

- treatment two or more times by or under the supervision of a health care provider, or
- One treatment by a health care provider with a continuing regime of treatment; or

2. Pregnancy or prenatal care (a visit to the health care provider is not necessary for each absence); or

3. A chronic serious health condition which continues over an extended period of time, requires periodic visits to a health care provider, and may involve occasional episodes of incapacity (e.g., asthma, diabetes). A visit to the health care provider is not necessary for each absence. Or,

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4. A permanent or long-term condition for which treatment may not be effective (e.g., Alzheimer's, a severe stroke, terminal cancer). Only supervision by a health care provider is required, rather than active treatment; or

5. Any absence to receive multiple treatments for restorative surgery or for a condition which would likely result in a period of incapacity of more than three days if not treated (e.g., chemotherapy or radiation treatments for cancer).

"Health Care Provider" means:

A. Doctors of medicine or osteopathy authorized to practice medicine or surgery by the state in which the doctors practice; or

B. Podiatrists, dentists, clinical psychologists, optometrists and chiropractors (limited to manual manipulation of the spine to correct a subluxation as demonstrated by X-ray or equivalent to exist) authorized to practice, and performing within the scope of their practice, under state law; or

C. Nurse practitioners, nurse midwives and clinical social workers authorized to practice, and performing within the scope of their practices, as defined under state law; or

D. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; or

E. Any health care provider recognized by the employer or the employer's group health plan benefits manager.

### IV. Implementation

#### A. Scope

The Board may require an employee to use his or her authorized paid annual leave, emergency leave, or sick leave for purposes of family and/or medical leave, prior to using his or her unpaid leave; however, in no event shall such leave exceed an aggregate of twelve (12) weeks during the twelve (12) month period from July 1st through June 30th.

In any case in which both spouses, who are employed with the Board, are entitled to family and/or medical leave, the aggregate number of work weeks of leave to which both are entitled to is limited to 12 work weeks during the 12 month period from July 1st through June 30th (rather than 12 weeks each) for the birth or adoption of a child or for the care of a sick parent.

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### **B. Conditions of Leave**

1. Written medical certification is required to support an employee's claim for leave on account of his or her own serious health condition or to care for a seriously ill child, spouse, or parent. Certification must include the date on which the health condition commenced; the probable duration of the condition; and the appropriate medical facts within the knowledge of the health care provider regarding the condition.

In the case of the employee's own serious health condition, a statement that the employee is unable to perform the functions of the position of the employee must be provided.

If an employee must take leave to care for a family member, a medical certification is needed regarding the reasons the employee is needed to care for a son, daughter, spouse or parent, and an estimate of the time needed to care for that family member.

The Board, in its discretion, may require a second medical opinion and periodic recertification, at its own expense.

2. If medically necessary for a serious health condition of the employee or his/her spouse, child or parent, leave may be taken on an intermittent or reduced leave schedule. The employee must submit in writing to the Board, the dates and duration of the treatment and a statement about the medical necessity. If the leave is foreseeable based on planned medical treatment, the Board may require the employee to temporarily transfer to an alternative position, with the equivalent pay and benefits, which better accommodates recurring periods of absence or a part-time schedule.

### **C. Notice & Reporting Requirements**

1. The employee has a duty to make a reasonable effort to schedule treatment so as not to unduly disrupt the operations of the school, subject to the approval of the health care provider of the employee or the health care provider of the son, daughter, spouse, or parent of the employee, as appropriate.

Additionally, the employee shall provide the Board with not less than 30 days' notice before the date the leave is to begin, except if such treatment requires leave to begin in less than 30 days, then the employee shall provide such notice as soon as practicable. In cases of illness, the employee, at the Board's discretion, may be required to report periodically on his or her leave status and intention to return to work.

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2. In cases where leave is taken because of the birth of a child, adoption or placement of a child for foster care and the leave is foreseeable, the employee shall provide the employer with not less than 30 days' notice, before the date the leave is to begin, except that if the date of birth or placement requires leave to begin in less than 30 days, the employee shall provide notice as soon as practicable.

### **D. Retention of Employee Benefits During Leave**

1. Any eligible employee who takes leave shall be entitled, on return from such leave, to be restored to the employee's position of employment held prior to the commencement of leave, or to an equivalent position with equivalent employment benefits, pay, and other conditions of employment. The taking of leave will not result in the loss of any benefits accrued prior to the date leave commenced.
2. The employee will not accrue any right, benefits, or position of employment other than any right, benefit, or position to which the employee would have been entitled had the employee not taken leave unless there is a contract provision or board policy so requiring.
3. As a condition of the restoration of employee benefits, an employee who takes leave because of his or her own serious health condition must receive certification from the health care provider of the employee that the employee is able to resume work.
4. The Board may deny restoration to an eligible employee if: (a) such denial is necessary to prevent substantial and grievous economic injury to the operations of the School; (b) the Board notifies the employee of its intent to deny restoration on such basis and at such time that it determines that such injury would occur; and (c) in any case in which the leave has commenced, the employee elects not to return to employment after receiving such notice.
5. The Board will maintain health care coverage under its group health plan to an employee who is granted an approved leave of absence at the level and under the conditions coverage would have been provided if the employee had continued in employment continuously for the duration of such leave. If the employee elects not to return to work after completing his or her leave, the Board may recover from the employee the cost of any premium payments made to maintain the employee's coverage, unless the failure to return to work is for reasons other than the continuation, recurrence, or

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onset of a serious health condition that entitles the employee to leave or other circumstances beyond the employee's control.

### **E. Procedures**

1. A request for family and/or medical leave of absence must be written, signed by the employee, submitted to the Director of Human Resources and approved by the Board of Education of Queen Anne's County.
2. All requests for leave of absence due to illness must include sufficient medical certification stating; (a) the date on which the serious health condition began; (b) the probable duration of the condition; and (c) the appropriate medical facts within the knowledge of the health care provider regarding the condition.
3. Additionally, the certificate for a request for leave to care for a child, spouse, or parent should give an estimate of the amount of time that the employee is needed to provide such care and a statement that the eligible employee is needed to care for the son, daughter, spouse, or parent.
4. If leave is due to the employee's own illness, the certificate must state that the employee is unable to perform the functions of his/her position.

### **F. Provisions Applicable to Employees in an Instructional Capacity**

The following provisions apply to employees who are employed principally in an instructional capacity by the Board and who are requesting leave to care for a family member with a serious health condition or because of the employee's own serious health condition. The main function of that employee must be to directly provide educational instruction. Teacher assistants, building service workers, bus drivers and other primarily non-instructional roles are not covered by these provisions.

#### **1. Intermittent Leave Or Leave On A Reduced Schedule**

Leave that is foreseeable based on planned medical treatment and where the employee would be on leave for greater than twenty (20) percent of the total number of working days in the period which the leave would extend, the Board may require that such employee elect either (A) to take leave for periods of a particular duration, not to exceed the duration of the planned medical treatment; or (B) to transfer temporarily to an available alternative position offered by the employer for which the employee is qualified and that has equivalent pay and benefits; and better accommodates recurring periods of leave that the regular employment position of the employee.

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### 2. Leaves Taken Near The Conclusion Of An Academic Term

#### a. Leave More Than 5 Weeks Prior To The End Of The Term

The Board may require the employee to continue taking leave until the end of such term, if:

- (1).the leave is of at least 3 weeks; and
- (2).the return to employment would occur during the 3-week period before the end of such term.

#### b. Leave Less Than 5 Weeks Prior To The End Of The Term

Except in cases where the employee takes leave due to his/her own serious health condition, the Board may require the employee to continue taking leave until the end of such term, if:

- (1).the leave is longer than 2 weeks; and
- (2).the return to employment would occur during the 2-week period before the end of such term.

#### c. Leave Less Than 3 Weeks Prior To The End Of The Term

Except in cases where the employee takes leave due to his/her own serious health condition, the Board may require the employee to continue to take leave until the end of such term.

### 3. Restoration Of Employment

Determinations regarding restoration of employment of employees employed by the Board in an instructional capacity shall be in accordance with school board policies and practices and any collective bargaining agreement, if applicable.

## V. References:

29 CFR Part 825 RIN 1215-AB35 "Family and Medical Leave Act" 1993;  
Final Rule - January 16, 2009