HUMAN RESOURCES

Family Medical Leave

I. General

The purpose of this regulation is to provide procedures by which family medical leave shall be processed under the Family and Medical Leave Act (FMLA) of 1993, as amended. This regulation is intended to be consistent with the FMLA. In the event of any inconsistency between this regulation and the FMLA, the FMLA will govern. Should there be conflicting provisions in other Prince William County Schools (“School Division”) regulations regarding FMLA leave, this regulation shall take precedence. This regulation will also run concurrently with all other applicable School Division leave regulations.

II. Eligible Employees for FMLA Leave

A. To be eligible for FMLA leave, an employee must have worked for the School Division (i) for at least twelve (12) months and (ii) for at least 1250 hours during the 12-month period immediately preceding the projected date of commencement of the FMLA Leave.

III. Definitions

A. The term “parent” means the biological, adoptive, step or foster parent of an employee, or an individual who stands or stood in loco parentis to an employee when the employee was a minor. This term does not include parents “in law.”

B. The term “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 (i) under 18 years of age; or (ii) 18 years of age or older and incapable of self-care because of mental or physical disability. “Incapable of self care” means that the individual requires active assistance or supervision to provide daily self-care in several of the “activities of daily living,” as defined in the FMLA.

C. The term “spouse” means a husband or wife as defined or recognized under Virginia law for purposes of marriage.

D. The term “serious health condition” means an illness, injury, impairment, or physical or mental condition that involves:
i. Inpatient care in a hospital, hospice, or residential medical care facility including any period of incapacity or any subsequent treatment in connection with or consequent to such inpatient care; or

ii. Continuing treatment by a health care provider for a “serious health condition” involving any period of incapacity resulting in the inability to work, to attend school, or perform other regular daily activities of more than three calendar days; a chronic health condition; a long-term health condition for which treatment may not be effective; conditions requiring multiple treatments; or for pregnancy or prenatal care.

iii. Voluntary or cosmetic treatments which are not medically necessary are not serious health conditions, unless inpatient hospital care is required or complications develop.

E. The term “continuing treatment by a health care provider” means one or more of the following:

i. The employee or family member is treated by a health care provider or by a provider of health care services under orders of, or referral by, a health care provider, two or more times in a twelve (12) month period for the injury or illness, or the employee or family member is treated by a health care provider on at least one occasion which results in a regimen of continuing treatment with the supervision of the health care provider.

ii. The employee or family member is under the continuing supervision of a health care provider due to a serious long-term or chronic condition.

F. The term “reduced leave schedule” means a leave schedule that reduces the usual number of hours per workweek, or hours per workday of an employee for a period of time.

G. The term “intermittent leave” is FMLA leave taken in separate blocks of time due to a single qualifying reason.

H. The term “Related to Family Relationships under Military Caregiver Leave or Military Caregiver” means the inclusion of a “spouse”, “parent of a covered service member”, “son or daughter of a covered service member”, “next of kin of a covered service member” and “son or daughter on active duty or call to active duty status”, as those terms are defined under the FMLA.
I. The term “Qualifying Exigency” under FMLA Military Caregiver Leave means a non-medical activity that is directly related to the covered service member’s active duty or call to active duty status.

J. The term “instructional employees” are those employees whose principal function is to teach and instruct students in a class, a small group, or an individual setting. The FMLA defines “instructional employees” to include not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include, and the special rules in Section IX do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

IV. Permissible Uses of FMLA Leave

A. In General

i. Except as provided in Part VIII of this regulation, an eligible employee shall be entitled to a total of twelve (12) work weeks of unpaid FMLA leave during a twelve (12) month period. The twelve (12) month period will begin on the first day any eligible employee uses FMLA leave and will end three hundred sixty-four (364) days later.

ii. An eligible employee may take FMLA leave for any one or more of the following reasons:

1. the birth of a son or daughter of the employee, or in order to care for such son or daughter;

2. the placement of a son or daughter with the employee for adoption or foster care, and to care for the newly placed child;

3. the employee is needed to care for his/her spouse, son, daughter or parent, if such spouse, son or daughter or parent has a serious health condition; or

4. a serious health condition that makes the employee unable to perform one or more of the essential functions of his or her position.

iii. The entitlement to FMLA leave for a birth or adoptive or foster care placement of an employee’s son or daughter shall expire twelve (12) months
iv. after such birth or placement.

v. A husband and wife who are both eligible for FMLA leave and employed by the School Division may each take up to twelve (12) weeks of FMLA leave during the same twelve (12) month period for the birth of the employee’s child, adoptive or foster care placement of a child with the employee, or to care for a parent (but not a parent-in-law) with a serious health condition.

vi. The total workdays during which the School Division is closed do not count against an employee’s total FMLA leave entitlement.

B. FMLA Leave Taken Intermittently or on a Reduced Leave Schedule

i. FMLA Leave for the birth, adoptive, or foster care placement of a child with an employee may not be taken by an employee intermittently or on a reduced leave schedule without the advance written authorization of the employee’s Associate Superintendent (or designee).

However, the authorization of the Associate Superintendent (or designee) is not required for intermittent or reduced schedule FMLA leave during which the mother has a serious health condition in connection with the birth of her child or if the newborn child has a serious health condition.

ii. FMLA Leave for a serious health condition of an employee or an employee’s spouse, parent or child may be taken intermittently or on a reduced schedule when “medically necessary,” as that term is defined under the FMLA. The Director of Benefit & Retirement Services (or designee) may require the employee to transfer temporarily, during the period that the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified, with equivalent pay and benefits and, in the opinion of the employee’s Associate Superintendent (or designee), better accommodates recurring periods of leave than the regular employment position of the employee.

iii. FMLA leave taken intermittently or on a reduced leave schedule shall be counted in the increments actually taken.

C. Paid Leave and FMLA Leave to Run Concurrently
i. An employee eligible for FMLA leave must use any paid annual leave, sick leave, personal leave, or sick leave bank for which he/she is entitled under circumstances that would qualify as an FMLA-qualifying reason set forth in Part IV.A.ii of this regulation. That period of paid leave will run concurrently with any available FMLA leave, before any unpaid non-FMLA leave may be used for his/her own serious health condition or for the serious health condition of a parent, spouse, or child.

D. Designation of FMLA Leave.

i. If not initially designated as FMLA leave by the employee, the School Division may designate a request for paid or unpaid leave as FMLA leave if, based on the information the employee provides about the reason of the leave request, the School Division determines within five (5) working days of the leave request that it is an FMLA-qualifying reason. The School Division will provide written notice to the employee when such a designation is made. The School Division may also retroactively designate leave as FMLA leave with appropriate notice to the employee. Consistent with Section IV.C, the employee’s available FMLA leave shall run concurrently with any paid or non-FMLA unpaid leave taken.

V. Foreseeable and Unforeseeable FMLA Leave

A. Notice – In any case in which the necessity for FMLA leave is foreseeable based on an expected birth of an employee’s child, adoptive or foster care placement of a child with an employee, or planned medical treatment of an employee or an employee’s parent, spouse, or child, the employee shall request such FMLA leave not less than thirty (30) days before the date the FMLA leave is to begin, except that if the date of the birth or placement, or medical treatment requires the FMLA leave to begin in less than thirty (30) days, the employee shall provide as much notice as soon as practicable.

B. Duties of the Employee – In any case in which the necessity for FMLA leave for the serious health condition of an employee or of an employee’s spouse, parent, or child is foreseeable, based on planned medical treatment, the employee shall make a reasonable effort to schedule the treatment so as not to disrupt unduly the operations of the School Division.

C. Requests for FMLA Leave – Requests for FMLA leave, whether foreseeable or unforeseeable, shall be made in writing to the employee’s Supervisor for the approval by the Director of Benefit & Retirement Services (or designee).
D. Unforeseeable FMLA Leave – When the approximate timing of the need for leave is not foreseeable, the employee must provide notice to the School Division as soon as practicable under the particular facts and circumstances.

E. Sufficiency and Timing of Notice - The notice provided by the employee must be sufficient for the School Division to determine if the leave is potentially FMLA-qualifying. Failure of the employee to provide sufficient information may result in the denial of FMLA protections during the leave period, if the School Division is unable to determine whether the leave is FMLA-qualifying. When an employee fails to give timely advance notice as soon as practicable under the particular facts and circumstances, whether the need for leave is foreseeable or unforeseeable, the School Division may delay FMLA coverage for the leave depending on the facts of the particular case, for periods of time consistent with FMLA.

VI. Certification and Other Notifications

A. An employee requesting FMLA leave on account of a health condition must submit a medical certification on the FMLA form provided by the Office of Benefit & Retirement Services (Attachment A – Employee Certification or Attachment B – Family Member’s Certification) within 15 calendar days of the School Division’s request for such medical certification. The employee shall have seven (7) calendar days to cure any deficiencies in the certification identified by the School Division.

B. If, after review of the submitted certification, the Office of Benefit & Retirement Services has reason to doubt the validity of the certification for FMLA leave, the Director of Benefit & Retirement Services (or designee) may require that the employee obtain a second opinion of a provider designated or approved by the Director of Benefit & Retirement Services (or designee) concerning any information in the certification. The second opinion shall be at the School Division’s expense.

C. If the second opinion differs from the original certification, the Director of Benefit & Retirement Services (or designee) may require that the employee obtain a third opinion of a provider jointly approved by the employee and the Office of Benefit & Retirement Services. The third opinion shall be final and binding and shall be at the School Division’s expense.

D. The Office of Benefit & Retirement Services may require an employee to obtain subsequent certifications on a reasonable basis during the period the employee is on FMLA leave. Reasonable basis is no more than every thirty (30) calendar days.
E. Should the employee fail to provide the required medical certification, the employee’s request for FMLA leave may be denied, and any FMLA leave already taken by the employee following the expiration of the 15-day time period with respect to this request may be redesignated as non-FMLA leave. The School Division will provide the employee with notice of such redesignation. In such cases the employee will not be entitled to FMLA leave protections and is no longer eligible for reinstatement under the FMLA.

F. If while the employee is on FMLA leave, the employee fails to provide the Office of Benefit & Retirement Services with any recertification requested, the School Division may deny continuation of the FMLA leave protections until the employee produces a sufficient recertification. If the employee never produces the recertification and any leave taken after the deadline set for returning the recertification will be redesignated as non-FMLA unpaid leave, and the employee is no longer entitled to reinstatement under the FMLA.

VII. Employment and Benefits Protection

A. The Office of Benefit & Retirement Services may require an employee on FMLA leave to report periodically on the status and intention of the employee to return to work.

B. An employee who takes FMLA leave under this regulation shall, upon return from FMLA leave, be restored to the position he/she left or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment.

C. As a condition of restoring an employee to work, an employee who takes FMLA leave for his/her own serious health condition shall provide the Office of Benefit & Retirement Services with a certification of fitness for duty from the health care provider, on the prescribed FMLA form, that the employee is fully able to resume work.

D. If the employee does not return to work after the expiration of the FMLA leave because of reasons specified in Part IV.A.ii of this regulation, the Office of Benefit & Retirement Services may require the employee to provide a certification from a health care provider. The cost for such certification shall be at the employee’s expense, consistent with the FMLA.
E. If the employee fails to provide the required medical certification of the employee’s fitness for duty within thirty (30) days of the request, the employee will be obligated to repay all health benefit premiums paid by the School Division during the period of FMLA leave or coverage will be retroactively canceled based on the employee’s last premium contribution, and the employee will no longer be entitled to reinstatement under the FMLA.

F. During the period of FMLA leave, the School Division shall maintain the employee’s coverage under the School Division’s health plan at the employee’s level of coverage existing prior to taking the FMLA leave. During this time the employee is responsible to pay the employee portion of the premium. An employee may choose not to retain their coverage during the FMLA leave. However, when the employee returns from FMLA leave, the employee’s health plan coverage shall be entitled to be reinstated at the same level of coverage or change in level based on any qualifying change in status that may have occurred.

G. The School Division may recover any premiums that it paid for maintaining benefit coverages for an employee during the period of unpaid FMLA leave or retroactively cancel coverage based on the employee’s last premium contribution.

VIII. Additional Rules for Military Caregivers

A. For an eligible employee to take FMLA leave for a “qualifying exigency” while the employee’s spouse, son, daughter, or parent (the “covered military member”) is on active duty or called to active duty status, the activity must qualify as a “qualifying exigency” by falling within one of seven categories of activities, or be mutually agreed upon by the employer and employee. Qualifying exigencies are:

i. short-notice deployment (leave permitted up to seven days if the military member receives seven or less days’ notice of a call to active duty),
ii. military events and related activities,
iii. certain temporary childcare arrangements and school activities (but not ongoing childcare),
iv. financial and legal arrangements,
v. counseling by a non-medical counselor (such as a member of the clergy),
vi. rest and recuperation (leave permitted up to five days when the military member is on temporary rest and recuperation leave),
vii. and post-deployment military activities.

In addition to the requirements set forth above, an eligible employee may take up to 26 weeks of FMLA military caregiver leave during a single twelve (12) month period.
B. on a per-covered service member, per-injury basis (which may be taken continuously, intermittently, or on a reduced schedule basis). The single twelve (12) month period is measured forward from the date an employee’s leave to care for the covered service member begins. Once a single twelve (12) month period expires, the employee is eligible for another 26 weeks of FMLA military caregiver leave during a subsequent single twelve (12) month period to care for a different covered service member or to care for the same covered service member if he/she incurs a subsequent serious injury or illness (excluding aggravation or complication of an earlier serious injury or illness for which the employee took military caregiver leave).

C. If an employee takes FMLA military caregiver leave to care for more than one covered service member or to care for the same covered service member who has incurred a subsequent serious injury or illness, and if the single twelve (12) month period involved overlap with each other, the employee is limited to taking no more than twenty-six (26) total weeks of FMLA leave in each single twelve (12) month period. If an employee does not take all of the twenty-six (26) weeks of FMLA military caregiver leave during the applicable single twelve (12) month period, the balance is forfeited and no carry-over is permitted. In addition, during any single twelve (12) month period, the employee’s total FMLA leave entitlement is limited to a combined total of twenty-six (26) weeks for all qualifying reasons under FMLA and military caregiver leave.

IX. Special Rules Applicable to Instructional Employees

A. If an instructional employee begins FMLA leave more than five (5) weeks before the end of the school year or semester, the employee may be required to continue taking FMLA leave until the end of that school year or semester if the FMLA leave will last at least three (3) weeks in duration, and the employee would return to work during the last three (3) weeks of that school year or semester.

B. If an instructional employee begins FMLA leave during the five-week period before the end of the school year or semester for any of the reasons listed in Section IV.A.ii.1-3 of this regulation, or to care for a covered servicemember, the employee may be required to continue taking FMLA leave until the end of that school year or semester if the FMLA leave will last more than two (2) weeks, and the employee would return to work during the last two (2) weeks of that school year or semester.

C. If an instructional employee begins FMLA leave during the three-week period before the end of the school year or semester for any of the reasons listed in
Section IV.A.ii.1-3 of this regulation, or to care for a covered service member, the employee may be required to continue taking FMLA leave until the end of that school year or semester if the FMLA leave will last more than five (5) working days.

D. In the case of an employee who elects to take leave until the end of the school year or semester, but is ready and able to return to work prior to the end of that period, only the period of leave until the employee is ready and able to return to work shall be charged against the employee’s FMLA leave entitlement. The Division shall treat the employee’s election for leave for the remainder of that period to be a request for leave without pay, and charged as such in accordance with Regulation 544-1.

The Associate Superintendent for Human Resources (or designee) is responsible for the implementation and monitoring of this regulation.

The Associate Superintendent for Human Resources (or designee) is responsible for review of this regulation in 2014.