



# Clarke County School District

Better Every Day

## BOARD OF EDUCATION Executive Summary

<b>Subject:</b> Policy GBRIG - Federal Family and Medical Leave Act ( <b>Revise</b> )	<b>Category:</b> <input checked="" type="checkbox"/> Action <input type="checkbox"/> Discussion <input type="checkbox"/> Information
<b>Attachments:</b> Policy GBRIG - Federal Family and Medical Leave Act (Revise)	<b>Date for Consideration:</b> October 11, 2018
<b>Strategic Priority:</b>  <b>#5: Growing Professional Capacity</b>	

### Background

- The purpose of the Policy Committee is to evaluate Board policies and make policy-related recommendations to the full Board for consideration. The Committee shall ensure that Board policies provide for the effective operation of the school district, comply with applicable legal mandates, and are integrated with planning and priorities related to student achievement.
- The process we use to review policy in the CCSD is that all proposals to adopt, revise, or rescind Board policies shall be referred to the Policy Committee in accordance with applicable policy (BDC). The Board of Education directs the Superintendent to develop administrative regulations (sometimes referred to as rules) as necessary to implement Board policy. Such regulations should be presented to Policy Committee for recommendation and the Board for approval.

Strengths	Challenges
<ul style="list-style-type: none"> <li>• The policy is streamlined to remove wording that simply restates the Family Medical Leave Act.</li> <li>• Updates the title of Director of Human Resources.</li> </ul>	<ul style="list-style-type: none"> <li>• None- it is unnecessary to restate an entire law in our own policies. This policy is now more reader-friendly.</li> </ul>

**Recommendation**

It is the recommendation of the Administration that the Board of Education approve *Policy GBRIG - Federal Family and Medical Leave Act* to be placed for public comment for 30 days. Any public comment received will be shared with the Board of Education ahead of a final vote.

<b>Action Steps:</b>	<b>Timeline:</b>
<b>Responsible Leadership:</b>	<b>Status:</b>

**Report Back to the Board of Education:**

- 90 Days
- 180 Days
- Annually
- Written Report
- Presentation to the Board
- ✓ **Next Policy Cycle Review: September 2020**

**Submitted By:**

**Dr. Dawn Meyers, Associate Superintendent of Policy and School Support Services**

**Board of Education Action:**

- Approve
- Reject
- Research/Report Back

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Type: Policy  
Descriptor Code: GBRIG  
Title: **Federal Family and Medical Leave Act**  
Status: ADOPTED



The purpose of this policy to set out in summary form the provisions of the Family and Medical Leave Act ("FMLA"). It is the intent of the Clarke County Board of Education to comply with and adhere to all requirements set forth in the federal Family and Medical Leave Act of 1993 (FMLA) and all subsequent Acts. The Clarke County Board of Education does not intend by this policy to create any additional rights not provided by FMLA, except as outlined below. The Board does intend to elect certain options as are authorized by FMLA. Any portion of this policy inconsistent with or contrary to FMLA is unintentional and shall not be given effect. As to the interpretation of this policy, the Clarke County School District's employees should look to the Act itself FMLA and its implementing regulations.

#### **A. Eligible Employees and Qualifying Reasons for Leave**

Employees of the Clarke County School District are qualified for leave under the Federal Family and Medical Leave Act if they meet the eligibility requirements set forth in 29 C.F.R. 825.110. However, the Clarke County School District has lowered the minimum hour requirement to include bus drivers and employees working over 4 hours a day under the FMLA policy. However, the Clarke County School District has decided to grant bus drivers and other employees working four (4) or more hours a day the same leave rights and responsibilities as if they met the minimum service requirements under FMLA.

An eligible employee may request leave for one or more of the following reasons:-

- 1.— Birth and first year care of a newborn child;
- 2.— Adoption or foster parent placement of a child with the employee;
- 3.— To care for the employee's spouse, child or parent, if that person has a serious health condition; or
- 4.— Serious health condition of the employee that prevents the employee from performing the functions of his or her job; or
- 5.— Qualifying exigency leave.

In the event of the birth, adoption or foster placement of a child, all leave must be completed within twelve (12) months from the date of birth, adoption or foster placement.-

~~For purposes of FMLA leave taken for birth, adoption, foster placement, or to care for a family member with a serious health condition, "son, daughter, or child" means a biological, adopted or foster child, a stepchild, a legal ward, or a child for whom the employee acts as a parent. The son or daughter must be under the age 18 or, if the son or daughter is age 18 or older, he/she must be incapable of self-care on a daily basis due to a mental or physical disability.~~

## **B.—Qualifying Exigency Leave**

~~Eligible employees may take FMLA leave for a qualifying exigency while the employee's spouse, son, daughter, or parent (the military member or member) is on covered active duty or call to covered active duty status (or has been notified of an impending call or order to covered active duty).~~

~~An eligible employee may take FMLA leave for one or more of the following qualifying exigencies, all as further defined and limited in 29 C.F.R. 825.126:~~

- ~~1. Short notice deployment;~~
- ~~2. Military events and related activities;~~
- ~~3. Childcare and school activities;~~
- ~~4. Financial and legal arrangements;~~
- ~~5. Counseling;~~
- ~~6. Rest and Recuperation;~~
- ~~7. Post-deployment activities;~~
- ~~8. Parental care; and~~
- ~~9. Additional activities, i.e., to address other events which arise out of the military member's covered active duty or call to covered active duty status provided that the employer and employee agree that such leave shall qualify as an exigency, and agree to both the timing and duration of such leave.~~

~~The first time an employee requests leave because of a qualifying exigency arising out of the covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of a military member (see § 825.126(a)), the employee must provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the military member's covered active duty service, and must also complete and submit DOL Form WH-384. This information need only be provided to the employer once. A copy of new active duty orders or other documentation issued by the military may be required by the employer if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of the same or a different military member.~~

## **C.—Military Caregiver Leave**

Eligible employees are entitled to FMLA leave to care for a covered servicemember with a serious illness or injury. The terms "covered servicemember" and "serious illness or injury" are defined in 29 C.F.R. 825.127, and those definitions are incorporated herein by reference.

In order to care for a covered servicemember, an eligible employee must be the "spouse, son, daughter, or parent, or next of kin" of a covered servicemember, said terms also defined in 29 C.F.R. 825.127 and those definitions incorporated herein by reference.

An eligible employee is entitled to 26 workweeks of leave to care for a covered servicemember with a serious injury or illness during a single 12-month period, subject to the following:

(1) The single 12-month period described in paragraph (e) of this section begins on the first day the eligible employee takes FMLA leave to care for a covered servicemember and ends 12 months after that date, regardless of the method used by the employer to determine the employee's 12 workweeks of leave entitlement for other FMLA-qualifying reasons. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered servicemember during this single 12-month period, the remaining part of his or her 26 workweeks of leave entitlement to care for the covered servicemember is forfeited.

(2) The leave entitlement described herein is to be applied on a per-covered-servicemember, per-injury basis such that an eligible employee may be entitled to take more than one period of 26 workweeks of leave if the leave is to care for different covered servicemembers or to care for the same servicemember with a subsequent serious injury or illness, except that no more than 26 workweeks of leave may be taken within any single 12-month period. An eligible employee may take more than one period of 26 workweeks of leave to care for a covered servicemember with more than one serious injury or illness only when the serious injury or illness is a subsequent serious injury or illness. When an eligible employee takes leave to care for more than one covered servicemember or for a subsequent serious injury or illness of the same covered servicemember, and the single 12-month periods corresponding to the different military caregiver leave entitlements overlap, the employee is limited to taking no more than 26 workweeks of leave in each single 12-month period.

(3) An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the single 12-month period described herein, provided that the employee is entitled to no more than 12 workweeks of leave for one or more of the following: because of the birth of a son or daughter of the employee and in order to care for such son or daughter; because of the placement of a son or daughter with the employee for adoption or foster care; in order to care for the spouse, son, daughter, or parent with a serious health condition; because of the employee's own serious health condition; or because of a qualifying exigency. Thus, for example, an eligible employee may, during the single 12-month period, take 16 workweeks of FMLA leave to care for a covered servicemember and 10 workweeks of FMLA leave to care for a newborn child. However, the employee may not take more than 12 weeks of FMLA leave to care for the newborn child during the single 12-month period, even if the employee takes fewer than 14 workweeks of FMLA leave to care for a covered servicemember.

(4) In all circumstances, including for leave taken to care for a covered servicemember, the employer is responsible for designating leave, paid or unpaid, as FMLA-qualifying, and for giving notice of the designation to the employee as provided in 29 C.F.R. 825.300. In the case of leave that qualifies as both leave to care for a covered servicemember and leave to

~~care for a family member with a serious health condition during the single 12-month period described herein, the employer must designate such leave as leave to care for a covered servicemember in the first instance. Leave that qualifies as both leave to care for a covered servicemember and leave taken to care for a family member with a serious health condition during the single 12-month period described herein must not be designated and counted as both leave to care for a covered servicemember and leave to care for a family member with a serious health condition. As is the case with leave taken for other qualifying reasons, employers may retroactively designate leave as leave to care for a covered servicemember pursuant to 29 C.F.R. 825.301(d).~~

~~A husband and wife who are both eligible for FMLA leave and are both employed by the Clarke County School District may be limited to a combined total of 26 workweeks of leave during the single 12-month period described herein if the leave is taken for birth of the employee's son or daughter or to care for the child after birth, for placement of a son or daughter with the employee for adoption or foster care, or to care for the child after placement, to care for the employee's parent with a serious health condition, or to care for a covered servicemember with a serious injury or illness. This limitation on the total weeks of leave applies to leave taken for the reasons specified as long as a husband and wife are both employed by the District. If, however, one spouse is ineligible for FMLA leave, the other spouse would be entitled to a full 26 workweeks of FMLA leave.~~

~~The Board of Education elects to use DOL Form WH-385 to obtain certification regarding the employee's need for military caregiver leave. The same timing and procedural requirements for certification apply to all requests for FMLA leave, except that an invitational travel order ("ITO") or invitational travel authorization ("ITA") issued to any family member to join an injured or ill service member at his or her bedside will be sufficient certification for the period of time specified in the ITO or ITA. The District reserves the right to request clarification, authentication, and such other additional information and/or documentation as permitted by 29 C.F.R. 825.310.~~

#### **D.—Definitions**

~~"Contingency operation" means a military operation that:~~

~~(1) Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or~~

~~(2) Results in the call or order to, or retention on, active duty of members of the uniformed services under section 688, 12301(a), 12302, 12304, 12305, or 12406 of Title 10 of the United States Code, chapter 15 of Title 10 of the United States Code, or any other provision of law during a war or during a national emergency declared by the President or Congress. See also § 825.126(a)(2).~~

~~"Covered active duty" or "call to covered active duty status" means:~~

~~(1) In the case of a member of the Regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and,~~

~~(2) In the case of a member of the Reserve components of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a Federal call or order to active duty in support of a contingency operation pursuant to: Section 688 of Title 10 of the United States Code, which authorizes ordering to active duty retired members of the Regular Armed Forces and members of the retired Reserve who retired~~

~~after completing at least 20 years of active service; Section 12301(a) of Title 10 of the United States Code, which authorizes ordering all reserve component members to active duty in the case of war or national emergency; Section 12302 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Ready Reserve to active duty; Section 12304 of Title 10 of the United States Code, which authorizes ordering any unit or unassigned member of the Selected Reserve and certain members of the Individual Ready Reserve to active duty; Section 12305 of Title 10 of the United States Code, which authorizes the suspension of promotion, retirement or separation rules for certain Reserve components; Section 12406 of Title 10 of the United States Code, which authorizes calling the National Guard into Federal service in certain circumstances; chapter 15 of Title 10 of the United States Code, which authorizes calling the National Guard and state military into Federal service in the case of insurrections and national emergencies; or any other provision of law during a war or during a national emergency declared by the President or Congress so long as it is in support of a contingency operation. See 10 U.S.C. 101(a)(13)(B). See also § 825.126(a).~~

~~"Covered servicemember" means:~~

~~(1) A current 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, or~~

~~(2) A covered veteran who is undergoing medical treatment, recuperation, or therapy for a serious injury or illness.~~

~~"Covered veteran" means an individual who was a member of the Armed Forces (including a member of the National Guard or Reserves), and was discharged or released under conditions other than dishonorable at any time during the five-year period prior to the first date the eligible employee takes FMLA leave to care for the covered veteran. See § 825.127(b)(2).~~

~~"Incapacity" means inability to work, attend school or perform other regular daily activities due to a serious health condition, treatment for a serious health condition, or recovery from a serious health condition.—~~

~~"Instructional employee" or "teacher" means an employee employed principally in an instructional capacity by an educational agency or school whose principal function is to teach and instruct students in a class, a small group, or an individual setting, and includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. The term does not include teacher assistants or aides who do not have as their principal function actual teaching or instructing, nor auxiliary personnel such as counselors, psychologists, curriculum specialists, cafeteria workers, maintenance workers, bus drivers, or other primarily noninstructional employees.~~

~~"Intermittent leave" means leave taken in separate periods of time due to a single illness or injury, rather than for one continuous period of time, and may include leave of periods from an hour or more to several weeks. Examples of intermittent leave would include leave taken on an occasional basis for medical appointments, or leave taken several days at a time spread over a period of six months, such as for chemotherapy.—~~

~~"Parent"—means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined below. This term does not include parents "in law."~~

~~"Parent of a covered servicemember" means a covered servicemember's biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the covered servicemember. This term does not include parents "in law." See also § 825.127(d)(2).~~

~~"Reduced leave schedule" means a leave schedule that reduces the usual number of hours per workweek, or hours per workday, of an employee.~~

~~"Serious Health Condition" means an illness, injury, impairment or physical or mental condition that involves inpatient care as defined in § 825.114 or continuing treatment by a health care provider as defined in § 825.115. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not serious health conditions unless inpatient hospital care is required or unless complications develop. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of § 825.113 are met.~~

~~"Serious injury or illness" means:~~

~~(1) In the case of a current member of the Armed Forces, including a member of the National Guard or Reserves, an injury or illness that was incurred by the covered servicemember in the line of duty on active duty in the Armed Forces or that existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces and that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating; and~~

~~(2) In the case of a covered veteran, an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and manifested itself before or after the member became a veteran, and is:~~

~~(i) A continuation of a serious injury or illness that was incurred or aggravated when the covered veteran was a member of the Armed Forces and rendered the servicemember unable to perform the duties of the servicemember's office, grade, rank, or rating; or~~

~~(ii) A physical or mental condition for which the covered veteran has received a U.S. Department of Veterans Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and such VASRD rating is based, in whole or in part, on the condition precipitating the need for military caregiver leave; or~~

~~(iii) A physical or mental condition that substantially impairs the covered veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or~~

~~(iv) An injury, including a psychological injury, on the basis of which the covered veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers. See also § 825.127(c).~~



~~"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 age 18, or age 18 or older and "incapable of self care because of a mental or physical disability" at the time that FMLA leave is to commence.~~

~~"Son or daughter of a covered servicemember" means a covered servicemember's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age. See also § 825.127(d)(1).~~

~~"Son or daughter on covered active duty or call to covered active duty status" means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood in loco parentis, who is on covered active duty or call to covered active duty status, and who is of any age. See also § 825.126(a)(5).~~

~~"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.~~

### **E.B. Amount and Type of Leave Taken**

Except in the case of leave to care for a covered servicemember with a serious injury or illness where the leave entitlement would be 26 weeks as outlined in 29 C.F.R. 825.127, an eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period for any one, or more, of the reasons set forth in 29 C.F.R. 825.200.

The 12-month period shall be a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave. Each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 or 26 weeks which has not been used during the immediately preceding 12 months.

~~If both parents are employed by the School District and both are eligible for FMLA leave, they are authorized to take only a combined total of 12 weeks during any one twelve month period to care for a newborn or adopted child or a child placed with the employee for foster care. However, where both parents are employed by the School District, each is authorized to take 12 weeks of FMLA leave to care for a child with a serious health condition.~~

The School District will require that any accumulated paid leave to which the employee is entitled at the time application is made for FMLA leave be substituted for all or a part of the otherwise unpaid FMLA leave. In other words, leave under FMLA and accrued paid leave will run concurrently and not consecutively. In the instance of a birth of a child, when a new mother is released from care, the remaining time off will be considered "bonding time" and therefore leave without pay.

### **F.C. Intermittent or Reduced Leave**

FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances, as more specifically described at 29 C.F.R. 825.202, et. seq. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

The School District will require a certification to document the medical necessity of such intermittent or reduced leave, in accordance with 29 C.F.R 825.202(b), 825.306, and 825.310.

If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the School District's operations.

In accordance with 29 C.F.R 825.204, if an employee qualifies for intermittent leave or leave on a reduced schedule, the employee may be temporarily transferred during the period of intermittent or reduced leave to an available alternative position with equivalent pay and benefits for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position.

#### **G-D. Notification of Leave**

In accordance with 29 C.F.R 825.302 and 825.303, if the need for FMLA leave is foreseeable, an employee requesting leave must provide at least thirty (30) days advance notice to the ~~Assistant Superintendent for~~ Director of Human Resources. If such advance notice is not possible, the employee must give such notice to the ~~Assistant Superintendent for~~ Director of Human Resources as soon as practicable, ~~ordinarily within one or two working days~~ either the same day or the next business day of learning of the need for leave. When planning medical treatment, the employee should make a reasonable effort to schedule the treatment, subject to the approval of the health care provider, so that any corresponding leave will not unduly disrupt the operations of the School District.

#### **H-E. Benefits and Return to Work**

Employees will be eligible to maintain health care benefits provided by the School District while on FMLA leave. The School District will pay the employer's portion, if any, of such benefits. The employee will pay the same portion, if any, of such benefits as the employee paid before beginning the FMLA leave. If an employee's premium payments are more than 30 days late, the School District will provide written notice to the employee that payment has not been received. Such notice will be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless payment is received by that date.

The School District may recover any health care benefit premiums paid on behalf of an employee if the employee does not return to work after the leave period has expired, unless the employee did not return due to a serious health condition of the employee or the employee's spouse, parent or child, or other circumstances beyond the employee's control. The School District may require certification from the health care provider that a serious health condition of the employee or family member prevented the employee from returning to work. Employees must provide medical certification within 30 calendar days from the date it is requested.

With the exception of paid vacation, personal, medical or sick leave required to be substituted for unpaid leave under Section C above, the employee's absence during leave will not alter benefits which the employee accrued before taking leave. Any accrued benefits will not be lost during the leave.

Upon returning from leave, the employee is entitled to be reinstated to a position equivalent to the one the employee held when he/she left on FMLA leave, with equivalent pay, benefits and other terms and conditions of employment. Upon proper notice, however, the School

District may deny reinstatement under this policy to an employee whose salary is in the highest 10% of the employees employed by the School District if such denial is necessary to prevent substantial economic injury to the School District's operations, as determined by the School District.

#### **I.F. Required Certification and Reporting**

The Board of Education requires that a request for leave due to a serious health condition be supported by the certification of the appropriate health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee and elects to use DOL form WH-380-E or WH-380-F as appropriate ~~on a form to be provided by the School District~~. The employee must provide a complete and sufficient certification to the employer within 15 calendar days after the employer's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. If an employee fails to provide certification in a timely manner, FMLA coverage may be denied until the required certification is provided. A certification will be considered incomplete and insufficient if applicable entries have not been completed, or if information provided is vague, ambiguous, or non-responsive. Employees will be given seven calendar days to cure any such deficiencies in the medical certification. If the specified deficiencies are not cured in the resubmitted certification, the School District may deny the request for FMLA leave.

The employee will obtain the medical certification from health care providers described above on DOL forms WH-380-E or WH-380-F as appropriate ~~provided by the Department of Human Resources~~. The employee may print the form themselves or obtain a copy from Human Resources.

The Board of Education elects to use DOL Form WH-385 to obtain certification regarding the employee's need for military caregiver leave. The same timing and procedural requirements for certification apply to all requests for FMLA leave, except that an invitational travel order ("ITO") or invitational travel authorization ("ITA") issued to any family member to join an injured or ill service member at his or her bedside will be sufficient certification for the period of time specified in the ITO or ITA. The District reserves the right to request clarification, authentication, and such other additional information and/or documentation as permitted by 29 C.F.R. 825.310. The employee may print the form themselves or obtain a copy from Human Resources.

The School District, at its own expense, may require the opinion of a second health care provider of the School District's choice. If a conflict exists between the opinion in the certification and the second opinion, the School District may, at its own expense, require a third opinion from a health care provider upon which the School District and the employee jointly agree. Such third opinion as to the necessity for the FMLA leave is binding on both the School District and the employee.

Upon an employee's return to work after leave for the employee's own serious health condition, the employee must undergo a fitness for duty evaluation. An employee has the same obligation to participate and cooperate in the fitness-for-duty certification process as in the initial certification process. The cost of certification shall be borne by the employee. The employee's return to employment will be delayed until the employee submits the required fitness-for-duty certification.

The School District may require an employee on FMLA leave to report periodically to his/her principal or supervisor on the employee's status and intent to return to work.

If an employee is unable to resume his/her job responsibilities after expiration of FMLA leave entitlement and has no additional leave available, the employee may be terminated.

## **J.G. Special Provisions**

### 1. Instructional Employees.

When an instructional employee seeks intermittent leave or leave on a reduced schedule in connection with a family or personal illness that would constitute at least 20% of the total number of working days during which the leave would extend, the School District may require the employee (1) to elect to take leave in a block, and not intermittently, for the entire period, or (2) to transfer to an available alternative position with the School District that is equivalent in pay, for which the employee is qualified, and which better accommodates the needs of the School District.

If an instructional employee begins leave more than five weeks before the end of a semester, the School District may require the employee to continue in leave status until the end of the semester if:

- a. The leave will last at least three weeks; and
- b. The employee would return to work during the three-week period before the end of the term.

If an instructional employee begins leave for a purpose other than the employee's own serious health condition during the five-week period before the end of the semester, the School District may require the employee to continue in leave status until the end of the semester if:

- a. The leave will last more than two weeks; and
- b. The employee would return to work during the two-week period before the end of the term.

If an instructional employee begins leave for a purpose other than the employee's own serious health condition during the three-week period before the end of a semester, and the leave will last more than five working days, the School District may require the employee to continue in a leave status until the end of the semester.

### 2. Military Service

Employment periods preceding a break in service of more than seven years will be counted in determining whether an employee has been employed by the School District for at least 12 months where the employee's break in service is occasioned by the fulfillment of his or her Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, et seq., covered service obligation. The period of absence from work due to or necessitated by USERRA-covered service must be also counted in determining whether the employee has been employed for at least 12 months by the employer. However, this section does not provide any greater entitlement to the employee than would be available under the USERRA.

An employee returning from USERRA-covered service shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service in determining the employee's eligibility for

FMLA-qualifying leave. Accordingly, a person reemployed following USERRA-covered service has the hours that would have been worked for the employer added to any hours actually worked during the previous 12-month period to meet the hours of service requirement. In order to determine the hours that would have been worked during the period of absence from work due to or necessitated by USERRA-covered service, the employee's pre-service work schedule can generally be used for calculations.

**Last Revised Date:** 1/9/2014  
**Original Adopted Date:** 5/11/2000

Clarke County School District

**Policy Reference Disclaimer:** These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

**Note:** *The State of Georgia has moved the Georgia Code. This new environment no longer allows us to link directly to the Georgia Code. For example enter 20-02-0211 in the search window and the Georgia Code will appear.*

**State Reference**

O.C.G.A 20-02-0852

**Description**

[Maternity leave](#)

**Federal Reference**

29 CFR 1604.10

29 CFR Part 825

29 USC 2601

**Description**

[Employment policies relating to pregnancy and childbirth](#)

[The Family and Medical Leave Act of 1993 - Regulations](#)

[Family and Medical Leave Act](#)

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Type: Policy  
Descriptor Code: GBRIG  
Title: **Federal Family and Medical Leave Act**  
Status: ADOPTED



It is the intent of the Clarke County Board of Education to comply with and adhere to all requirements set forth in the federal Family and Medical Leave Act of 1993 (FMLA) and all subsequent Acts. The Clarke County Board of Education does not intend by this policy to create any additional rights not provided by FMLA, except as outlined below. The Board does intend to elect certain options as are authorized by FMLA. Any portion of this policy inconsistent with or contrary to FMLA is unintentional and shall not be given effect. As to the interpretation of this policy, the Clarke County School District's employees should look to the Act itself and its implementing regulations.

#### **A. Eligible Employees**

Employees of the Clarke County School District are qualified for leave under the Federal Family and Medical Leave Act if they meet the eligibility requirements set forth in 29 C.F.R. 825.110. However, the Clarke County School District has decided to grant bus drivers and other employees working four (4) or more hours a day the same leave rights and responsibilities as if they met the minimum service requirements under FMLA.

#### **B. Amount and Type of Leave Taken**

Except in the case of leave to care for a covered servicemember with a serious injury or illness where the leave entitlement would be 26 weeks as outlined in 29 C.F.R. 825.127, an eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during any 12-month period for any one, or more, of the reasons set forth in 29 C.F.R. 825.200.

The 12-month period shall be a "rolling" 12-month period measured backward from the date an employee uses any FMLA leave. Each time an employee takes FMLA leave the remaining leave entitlement would be any balance of the 12 or 26 weeks which has not been used during the immediately preceding 12 months.

The School District will require that any accumulated paid leave to which the employee is entitled at the time application is made for FMLA leave be substituted for all or a part of the otherwise unpaid FMLA leave. In other words, leave under FMLA and accrued paid leave will run concurrently and not consecutively. In the instance of a birth of a child, when a new

mother is released from care, the remaining time off will be considered "bonding time" and therefore leave without pay.

### **C. Intermittent or Reduced Leave**

FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances, as more specifically described at 29 C.F.R. 825.202, et. seq. Intermittent leave is FMLA leave taken in separate blocks of time due to a single qualifying reason. A reduced leave schedule is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday. A reduced leave schedule is a change in the employee's schedule for a period of time, normally from full-time to part-time.

The School District will require a certification to document the medical necessity of such intermittent or reduced leave, in accordance with 29 C.F.R 825.202(b), 825.306, and 825.310.

If an employee needs leave intermittently or on a reduced leave schedule for planned medical treatment, then the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the School District's operations.

In accordance with 29 C.F.R 825.204, if an employee qualifies for intermittent leave or leave on a reduced schedule, the employee may be temporarily transferred during the period of intermittent or reduced leave to an available alternative position with equivalent pay and benefits for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position.

### **D. Notification of Leave**

In accordance with 29 C.F.R 825.302 and 825.303, if the need for FMLA leave is foreseeable, an employee requesting leave must provide at least thirty (30) days advance notice to the Director of Human Resources. If such advance notice is not possible, the employee must give such notice to the Director of Human Resources as soon as practicable, either the same day or the next business day of learning of the need for leave. When planning medical treatment, the employee should make a reasonable effort to schedule the treatment, subject to the approval of the health care provider, so that any corresponding leave will not unduly disrupt the operations of the School District.

### **E. Benefits and Return to Work**

Employees will be eligible to maintain health care benefits provided by the School District while on FMLA leave. The School District will pay the employer's portion, if any, of such benefits. The employee will pay the same portion, if any, of such benefits as the employee paid before beginning the FMLA leave. If an employee's premium payments are more than 30 days late, the School District will provide written notice to the employee that payment has not been received. Such notice will be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless payment is received by that date.

The School District may recover any health care benefit premiums paid on behalf of an employee if the employee does not return to work after the leave period has expired, unless the employee did not return due to a serious health condition of the employee or the employee's spouse, parent or child, or other circumstances beyond the employee's control. The School District may require certification from the health care provider that a serious health condition of the employee or family member prevented the employee from returning

to work. Employees must provide medical certification within 30 calendar days from the date it is requested.

With the exception of paid vacation, personal, medical or sick leave required to be substituted for unpaid leave under Section C above, the employee's absence during leave will not alter benefits which the employee accrued before taking leave. Any accrued benefits will not be lost during the leave.

Upon returning from leave, the employee is entitled to be reinstated to a position equivalent to the one the employee held when he/she left on FMLA leave, with equivalent pay, benefits and other terms and conditions of employment. Upon proper notice, however, the School District may deny reinstatement under this policy to an employee whose salary is in the highest 10% of the employees employed by the School District if such denial is necessary to prevent substantial economic injury to the School District's operations, as determined by the School District.

#### **F. Required Certification and Reporting**

The Board of Education requires that a request for leave due to a serious health condition be supported by the certification of the appropriate health care provider of the eligible employee or of the son, daughter, spouse, or parent of the employee and elects to use DOL form WH-380-E or WH-380-F as appropriate. The employee must provide a complete and sufficient certification to the employer within 15 calendar days after the employer's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. If an employee fails to provide certification in a timely manner, FMLA coverage may be denied until the required certification is provided. A certification will be considered incomplete and insufficient if applicable entries have not been completed, or if information provided is vague, ambiguous, or non-responsive. Employees will be given seven calendar days to cure any such deficiencies in the medical certification. If the specified deficiencies are not cured in the resubmitted certification, the School District may deny the request for FMLA leave.

The employee will obtain the medical certification from health care providers described above on DOL forms WH-380-E or WH-380-F as appropriate. The employee may print the form themselves or obtain a copy from Human Resources.

The Board of Education elects to use DOL Form WH-385 to obtain certification regarding the employee's need for military caregiver leave. The same timing and procedural requirements for certification apply to all requests for FMLA leave, except that an invitational travel order ("ITO") or invitational travel authorization ("ITA") issued to any family member to join an injured or ill service member at his or her bedside will be sufficient certification for the period of time specified in the ITO or ITA. The District reserves the right to request clarification, authentication, and such other additional information and/or documentation as permitted by 29 C.F.R. 825.310. The employee may print the form themselves or obtain a copy from Human Resources.

The School District, at its own expense, may require the opinion of a second health care provider of the School District's choice. If a conflict exists between the opinion in the certification and the second opinion, the School District may, at its own expense, require a third opinion from a health care provider upon which the School District and the employee jointly agree. Such third opinion as to the necessity for the FMLA leave is binding on both the School District and the employee.



Upon an employee's return to work after leave for the employee's own serious health condition, the employee must undergo a fitness for duty evaluation. An employee has the same obligation to participate and cooperate in the fitness-for-duty certification process as in the initial certification process. The cost of certification shall be borne by the employee. The employee's return to employment will be delayed until the employee submits the required fitness-for-duty certification.

The School District may require an employee on FMLA leave to report periodically to his/her principal or supervisor on the employee's status and intent to return to work.

If an employee is unable to resume his/her job responsibilities after expiration of FMLA leave entitlement and has no additional leave available, the employee may be terminated.

## **G. Special Provisions**

### **1. Instructional Employees.**

When an instructional employee seeks intermittent leave or leave on a reduced schedule in connection with a family or personal illness that would constitute at least 20% of the total number of working days during which the leave would extend, the School District may require the employee (1) to elect to take leave in a block, and not intermittently, for the entire period, or (2) to transfer to an available alternative position with the School District that is equivalent in pay, for which the employee is qualified, and which better accommodates the needs of the School District.

If an instructional employee begins leave more than five weeks before the end of a semester, the School District may require the employee to continue in leave status until the end of the semester if:

- a. The leave will last at least three weeks; and
- b. The employee would return to work during the three-week period before the end of the term.

If an instructional employee begins leave for a purpose other than the employee's own serious health condition during the five-week period before the end of the semester, the School District may require the employee to continue in leave status until the end of the semester if:

- a. The leave will last more than two weeks; and
- b. The employee would return to work during the two-week period before the end of the term.

If an instructional employee begins leave for a purpose other than the employee's own serious health condition during the three-week period before the end of a semester, and the leave will last more than five working days, the School District may require the employee to continue in a leave status until the end of the semester.

### **2. Military Service**

Employment periods preceding a break in service of more than seven years will be counted in determining whether an employee has been employed by the School District for at least 12 months where the employee's break in service is occasioned by the fulfillment of his or

her Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301, et seq., covered service obligation. The period of absence from work due to or necessitated by USERRA-covered service must be also counted in determining whether the employee has been employed for at least 12 months by the employer. However, this section does not provide any greater entitlement to the employee than would be available under the USERRA.

An employee returning from USERRA-covered service shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service in determining the employee's eligibility for FMLA-qualifying leave. Accordingly, a person reemployed following USERRA-covered service has the hours that would have been worked for the employer added to any hours actually worked during the previous 12-month period to meet the hours of service requirement. In order to determine the hours that would have been worked during the period of absence from work due to or necessitated by USERRA-covered service, the employee's pre-service work schedule can generally be used for calculations.

**Last Revised Date:** 1/9/2014  
**Original Adopted Date:** 5/11/2000

Clarke County School District

**Policy Reference Disclaimer:** These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

**Note:** *The State of Georgia has moved the Georgia Code. This new environment no longer allows us to link directly to the Georgia Code. For example enter 20-02-0211 in the search window and the Georgia Code will appear.*

<b>State Reference</b>	<b>Description</b>
O.C.G.A 20-02-0852	<a href="#"><u>Maternity leave</u></a>
<b>Federal Reference</b>	<b>Description</b>
29 CFR 1604.10	<a href="#"><u>Employment policies relating to pregnancy and childbirth</u></a>
29 CFR Part 825	<a href="#"><u>The Family and Medical Leave Act of 1993 - Regulations</u></a>
29 USC 2601	<a href="#"><u>Family and Medical Leave Act</u></a>

