

**I. General Matters.**

**A. Types of Leave Authorized.**

Subject to the requirements set forth below, the Board of Education authorizes leaves from duty as follows:

- Annual Leave
- Bereavement/Funeral Leave
- Educational Leave
- Emergency Responder Leave
- Family and Medical Leave
- Holiday
- Jury Duty/Subpoena Leave
- Military Leave
- Personal Leave
- Professional Leave
- Sick Leave
- Undifferentiated Leave
- Sick Leave Bank
- Voting Time Leave
- Other Long-Term Unpaid Leave

**B. Advanced Approval Required.**

1. All leaves, with or without pay, require advance approval, except in emergency situations. The employee shall submit a Request for Leave Form as soon as the employee has knowledge that leave will be required.

2. Full pay will be deducted from an employee's salary for each unauthorized absence or for any absence not meeting the criteria specified in the policy covering the leave for which the absence was authorized.

**C. General Applicability.**

The following sections apply in all cases unless specifically modified in the individual leave sections II-XVI:

1. An employee granted leave of absence will be returned to a position comparable to that held at the time the leave was granted, unless otherwise noted in the applicable leave policy, provided that renewal of any leave extending beyond one (1) year, other than military leave, may be approved only on the condition that there is no guarantee of return to employment.

2. Employees who are granted extended leave in excess of sixty (60) work days must notify the superintendent or his/her designee of their intent to return to duty at least fifteen (15) work days prior to the date of return. Those granted leave for an entire year must notify the superintendent or his/her designee of their desire to return to duty no later than March 15 of the school year for which the leave was taken.

3. Except as provided in Section VI below, employees on unpaid leave of more than one month of consecutive workdays may continue group insurance by timely payment of the full premium, without any board contribution.

4. Except as otherwise provided for employees on leave, regular full-time employees who have been on unpaid medical leave for more than twenty (20) consecutive work days may continue their group insurance by timely payment of their portion of the premium for up to an additional forty (40) work days. The District will continue to make its usual premium contribution for the equivalent period of such leave provided a doctor's statement of the reasons for the extended leave is submitted.

5. Employees on 245-day contracts will continue to earn annual leave while on periods of paid leave which do not exceed sixty (60) work days.

6. When the reason for leave results in an absence for more than three (3) consecutive days and the reasons qualify under the Family and Medical Leave policy, Section VI, the District may count the time of absence against the twelve (12) weeks available under Section VI, providing the District notifies the employee in accordance with Section VI.D.

7. If an employee fails to return to work within three (3) work days after the expiration of any approved leave, including any approved extension, the employee will be deemed to have abandoned his or her job and to have resigned.

**II. Annual Leave.**

A. Regular, full time employees on twelve-month (245 day) contracts are eligible to accrue annual leave and shall earn paid annual leave days at the following rates:

Administrators, District-wide Managers	20 days per year
Classified Employees	
Under 2 years of employment	12 days per year
2 or more years of employment	15 days per year

If a current employee transfers to a 12-month contract, all previous experience with the District will count towards the two-year employment requirement.

B. Annual leave with pay shall be earned by twelve-month, part-time employees (i.e., any employee whose workday is less than eight (8) hours per day and/or forty (40) hours per week), on a pro-rata basis.

C. Annual leave accrues monthly on a prorated basis, provided that annual leave is not earned while the employee is on leave without pay. Annual leave may be accumulated to a maximum of sixty (60) days. Accrued, unused leave, not to exceed forty (40) days, will carry over from year-to-year. Upon termination, resignation (other than for job abandonment), retirement, or death, any twelve-month employee shall be entitled to and shall be paid for the accrued, unused annual leave days up to a maximum of thirty (30) days.

D. Annual leave will not be authorized for more than the number of days earned by the employee at the time leave is taken. Authorization will be granted only for such leave that will least interfere with the efficient operation of the schools, unless otherwise authorized by the Superintendent.

E. The board reserves the right to negotiate a separate annual leave agreement with the superintendent.

### **III. Bereavement/Funeral Leave.**

A. Bereavement/Funeral Leave is available to all employees.

B. In the case of death in the immediate family at any time during an employee's annual work period, the employee shall be allowed leave with pay for up to three (3) working days immediately following the date of such death. The immediate family is defined to include: husband, wife, domestic partner, child, grandchild, parents, grandparents, sister, brother, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, step-children, and step-parents.

C. Bereavement leave shall be utilized during the immediate grieving period. In extenuating circumstances, additional days for bereavement may be granted by the superintendent and charged to other accrued leave with pay, if available, or leave without pay.

D. Bereavement leave is not cumulative.

E. The Pojoaque Valley School District's funeral leave benefit shall apply to all employees. The immediate supervisor may grant leave to an employee to attend the funeral of a Pojoaque Valley School employee or student without loss of pay for up to three (3) hours provided there is no cost for a substitute and that classroom instruction continues. If in-house coverage is not available, the employee shall charge the absence against their leave accrual.

**IV. Educational Leave.**

Employees who wish to return to school for professional growth may apply for educational leave. If approved by the Superintendent, such leave may be granted as unpaid leave for a period of up to one (1) year.

**V. Emergency Responder Leave.**

A. As provided in the Volunteer Emergency Responder Job Protection Act, NMSA 1978, §§ 12-10C-1 et seq., an employee serving as a volunteer emergency responder in a declared emergency by the State Governor or President of the United States may not be terminated, demoted or otherwise discriminated against in the terms and conditions of employment when employee is absent from the District in order to respond to an emergency or disaster for not more than ten (10) regular work days in a calendar year.

B. The employee shall take reasonable efforts to notify his/her supervisor of his/her service as soon as possible. The employee shall provide written verification from the Office of Emergency Management or a state or local official managing an emergency or disaster of the date and times that the employee served as a volunteer emergency responder within three work days after conclusion of the declared emergency.

C. The employee's regular pay shall be charged for the permitted time that the employee is absent from employment while serving as a volunteer emergency responder.

**VI. Family Medical Leave Act.**

This policy is adopted to implement the rights provided to employees under the Family and Medical Leave Act of 1993, as amended, and its regulations promulgated thereto (FMLA). In the event that any conflict arises between the provisions of this or any other leave policy of the District and the terms, conditions, or limitations of the FMLA, the latter shall control.

**A. Definitions.**

1. **Covered active duty** means (A) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and (B) in the case of a member of the reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

**2. Qualifying exigencies** may include:

a. leave to address any issue arising from short notice deployment leave for seven (7) calendar days, beginning from the date a covered military member is notified of an impending call or order to active duty in support of a contingency operation;

- b. leave to attend military events and related activities;
- c. leave to arrange for alternative childcare, District enrollment or transfers, or District meetings;
- d. leave to address certain financial and legal arrangements;
- e. leave to attend certain counseling sessions;
- f. leave to attend rest and recuperation leave activities;
- g. leave to attend post-deployment activities; or
- h. leave to address other events arising out of the covered military member's call to active duty status, provided that the District and eligible employee mutually agree prior to the employee's leave (1) that such leave shall qualify as an exigency; and (2) to the timing and duration of such leave.

**3. Covered service member** means (A) 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; or (B) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

**4. Next of kin**, used with respect to an individual, means the nearest blood relative of that individual.

**5. Serious injury or illness** means (A) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in 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 line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and (B) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period described in paragraph (15)(B), means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in 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 line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

**6. Veteran** has the meaning given the term in section 101 of title 38, United States Code.

7. **Outpatient status with respect to a covered service member** means the status of a member of the Armed Forces assigned to (A) a military medical treatment facilities as an outpatient; or (B) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.

8. **Eligible Employee** means an employee who has worked for the District for at least twelve (12) months, and who has worked a total of 1,250 hours during the twelve (12) month period immediately preceding the commencement of leave.

9. **Healthcare Provider** means a doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or any other person determined by the Secretary of Labor to be capable of providing healthcare services, including podiatrists, dentists, clinical psychologists, optometrists, and chiropractors, in a limited manner, authorized to practice within the scope of their practice as defined under State law; and nurse practitioners, nurse-midwives, clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law.

10. **Intermittent Leave** means FMLA leave taken in separate blocks of time due to a single qualifying reason.

11. **Key Employee** means a salaried employee who is among the highest paid ten percent (10%) of all the employees employed by the District.

12. **Parent** means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the eligible employee or covered service member or covered military member. This term does not include parents-in-law.

13. **Reduced Leave Schedule** means a leave schedule that reduces an eligible employee's usual number of working hours per workweek, or hours per workday, normally from full-time to part-time.

14. **Serious Health Condition** means an illness, impairment, or physical or mental condition that involves either:

- a. an overnight stay in a medical care facility, or
- b. continuing treatment by a Healthcare Provider for a condition that either prevents the eligible employee from performing the functions of such employee's job, or prevents the qualified family member from participating in District or other daily activities.
- c. Serious health conditions generally do not include conditions for which cosmetic treatments are administered, the common cold, the flu, earaches, upset stomach, minor ulcers, headaches other than migraines, routine dental or orthodontia problems, periodontal disease, and routine physical examinations.

**15. Continuing treatment by a Healthcare Provider** means any one of the following:

- a. a period of incapacity of more than three (3) consecutive, full calendar days, and subsequent treatment or period of incapacity relating to the same condition, that also involves either (i) at least two visits to a Healthcare Provider within thirty (30) days of the first day of incapacity, unless extenuating circumstances exist; or (ii) at least one visit to a Healthcare Provider and a regime of continuing treatment under the supervision of a Healthcare Provider. The first visit to the Healthcare Provider must be in-person and occur within seven (7) work days of the first day of incapacity. Whether additional treatment visits or a regimen of continuing treatment are necessary within the thirty (30) calendar day period shall be determined by the Healthcare Provider.
- b. incapacity due to a pregnancy or prenatal care;
- c. incapacity due to a chronic serious health condition, which is one that requires periodic visits (at least twice a year) for treatment by a Healthcare Provider; continues over an extended period of time; and may cause episodic rather than a continuing period of incapacity;
- d. incapacity that is permanent or due to a long-term condition;
- e. conditions that require multiple treatments for (i) restorative surgery after an accident or other injury; or (ii) a condition that would likely result in a period of incapacity of more than three (3) consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation), severe arthritis (physical therapy), or kidney disease (dialysis).

**16. 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. A son or daughter of a covered service member, for the purpose of military caregiver leave, or covered military member, for purposes of leave for qualifying exigencies, may be of any age.

**17. Spouse** means a husband or wife as defined or recognized under State law for purposes of marriage.

**B. FMLA-Qualifying Reasons for Leave.** Eligible employees are permitted to take leave under FMLA for the following reasons:

1. For incapacity due to pregnancy, prenatal medical care, or child birth;
2. To care for the employee's child after birth, or placement for adoption or foster care;

3. To care for the employee's spouse, son or daughter, or parent who has a serious health condition;

4. For a serious health condition that makes the employee unable to perform any one of the essential functions of his or her position or requires the employee to take a necessary absence from work to receive medically necessary treatment;

5. Because of any qualifying exigency arising out of the fact that the spouse, or a son, daughter, or parent of the employee is on covered active duty in the Armed Forces;

6. To care for a covered service member who is the employee's spouse, son or daughter, parent, or next of kin.

### C. Use of FMLA Leave.

1. **Twelve (12) Workweeks of FMLA Leave.** An eligible employee is entitled to twelve (12) workweeks of unpaid leave during a twelve (12) month period for any FMLA-qualifying reason for leave. The twelve (12) month period within which such employee may take twelve (12) workweeks of leave under the FMLA shall be a "rolling" twelve (12) month period, measured backward for each such employee from the first time each such eligible employee uses leave under the FMLA.

2. The District may change to an alternative leave calculation method provided it gives at least sixty (60) calendar days notice to all employees and the transition to the alternative method allows eligible employees to retain the full benefit of twelve (12) workweeks of leave.

3. **Twenty-Six (26) Workweeks to Care for a Covered Service Member.** Eligible employees may take up to a combined total of twenty-six (26) workweeks during a single twelve (12) month period, counted from the first day such employee takes leave to care for a covered service member with a serious injury or illness until twelve (12) months after that date. Any other leave for a FMLA-qualifying reason, up to the allowed twelve (12) workweeks of leave for other FMLA qualifying reasons, is subject to a proportionate reduction in leave entitlement if taken in the same twelve (12) month period.

**Example:** If an eligible employee takes 16 workweeks of FMLA leave to care for a covered service member, and such employee requests additional leave for another FMLA-qualifying reason, such as the birth of a child, the eligible employee would be entitled to only 10 additional workweeks of leave within the single 12-month period.

**Note:** The leave to care for a covered service member taken within a single twelve (12) month period is always counted forward from the date that the eligible employee's first FMLA leave begins to care for the covered service member and will alter the method of calculation described in Section III.A., above, for other eligible FMLA leave requested during the same twelve (12) month period.

**4. Leave Adjustments for Spouses Employed by the District.** Spouses who both are eligible employees of the District are limited to a combined total of twelve (12) workweeks per twelve (12) month period for leave taken to care for a parent with a serious health condition, or for the birth or placement of a child, or a combined twenty-six (26) workweeks if leave is required to care for a covered service member with a serious injury or illness. For other FMLA-qualifying reasons, such as to care for a spouse or child with a serious health condition, or for the treatment of the eligible employee's own serious health condition, each spouse may take up to twelve (12) workweeks per twelve (12) month period.

**5. Intermittent Leave or Reduced Leave Schedule.** Leave may be taken intermittently or on a reduced leave schedule when medically necessary because of the eligible employee's own serious health condition, to care for a spouse, parent, or son or daughter with a serious health condition, or to care for a covered service member with a serious injury or illness. Intermittent leave or a reduced leave schedule also may be taken for qualifying exigencies. Eligible employees must make a reasonable effort to schedule the treatment so as not to disrupt unduly the District's operations. However, when leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an eligible employee may take leave intermittently or on a reduced leave schedule only with the express permission of such employee's supervisor and the Head of Human Resources.

**6. Calculation of Leave.** The actual workweek of the eligible employee is the basis for calculating leave entitlement, and only the amount of leave actually taken by such employee will be counted toward such employee's FMLA leave entitlement.

**Example:** If an eligible employee who usually works 40 hours a week takes off 8 hours in a week for an FMLA-qualifying reason, then such employee would use 1/5 of a week of FMLA leave. If an eligible employee usually works 30 hours per week, but works 20 hours a week under a reduced leave schedule, such employee's 10 hours of leave would constitute 1/3 of a week of FMLA leave for each week such employee works the reduced schedule.

**7. Temporary Positions.** During the period that the intermittent leave or reduced leave schedule is required, the District has the right to require the eligible employee to transfer temporarily to an available alternative position with equivalent pay and benefits for which the eligible employee is qualified and that better accommodates recurring periods of leave than does such employee's regular position.

#### **D. Notice Requirements; Employee Responsibilities.**

**1. Request for Leave.** An employee requesting leave shall submit a "Request for Leave" form to the employee's immediate supervisor. The Request for Leave form shall provide sufficient information permitted by FMLA for the District to determine if the leave requested qualifies for FMLA protection, as well as the anticipated timing and duration of the leave. Sufficient information may include that the employee is unable to perform job functions, the family member is unable to perform daily activities, the need for hospitalization or continuing treatment by a Healthcare Provider, or circumstances supporting the need for military family leave. Calling in sick, for example, without providing more information will not be

considered sufficient notice. Employees also must inform the District if the requested leave is for a reason for which FMLA leave was previously taken or certified. Leave shall be approved by both the employee's supervisor and the Head of Human Resources.

**2. Foreseeable Leave.** Employees must provide at least thirty (30) days advance notice of the need to take FMLA leave when the need is foreseeable, or as soon as practicable, based on an expected birth, placement for adoption or foster care, planned medical treatment for a serious health condition of the employee or covered family member, or the planned medical treatment for a serious injury or illness of a covered service member. For leave due to a qualifying exigency, notice must be provided as soon as practicable. When an employee becomes aware of a need for FMLA leave less than thirty (30) days in advance, the employee should provide notice of the need for leave either the same day or the next business day as the need is first known.

**3. Unforeseeable Leave.** When the need for leave is not foreseeable, the employee must provide notice as soon as practicable and in compliance with the District's stated call-in or reporting procedures, absent unusual circumstances. Notice may be given by the employee's spokesperson if the employee is unable to do so personally.

**4. Additional information.** In all cases, the District may inquire further of an employee if it is necessary to have more information about whether FMLA leave is being sought by the employee, and the District may obtain the necessary details of the leave to be taken.

**5. Certifications in Support of Leave.** All certification forms may be obtained from the Office of Human Resources and shall be returned to the Head of Human Resources.

**6. Medical Certifications.** An employee's leave to care for the employee's covered family member with a serious health condition, or due to the employee's own serious health condition shall be supported by a medical certification issued by the Healthcare Provider of the employee or the employee's family member and provided to the District. In general, employees should furnish the required certification at the time the employee gives notice of the need for leave or within five (5) business days thereafter, or, in the case of unforeseen leave, within five (5) business days after the leave commences. In certain circumstances identified by the FMLA, the District also may request certification at some later date, in which case the employee must provide the requested certification to the Head of Human Resources within fifteen (15) calendar days after the request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

**7. Opportunity to Cure.** The District shall advise an employee in writing whenever the District finds a certification incomplete or insufficient and advise what additional information is necessary to cure the insufficiency. The employee must provide the requested information within seven (7) calendar days, unless not practicable under the particular circumstances despite the employee's diligent good faith efforts to cure any deficiencies. If the deficiencies are not cured, the District may deny the taking of FMLA leave.

**8. Clarification and Authentication.** After the employee has been given an opportunity to cure any insufficiencies of the certification, the employee may authorize the District to contact the healthcare provider for purposes of clarification and authentication of the medical certification, provided that the employee authorizes the District to do so in compliance with the Health Insurance Portability and Accountability Act (HIPAA) (45 C.F.R., parts 160 and 164). The District may use a Healthcare Provider, human resource professional, leave administrator, or management official to contact the employee's healthcare provider, but in no event can the employee's direct supervisor contact the employee's healthcare provider. The employee is not required to provide such authorization. However, if the employee does not authorize the District to seek clarification or authentication and the employee does not otherwise clarify the certification, the District may deny FMLA leave.

**9. Second and Third Opinions.** If the adequacy of medical certification is questioned by the District, the District may require the employee, at the District's expense, to seek the opinion of a second Healthcare Provider who is not regularly employed by or contracted with the District. If the opinions of the first and second Healthcare Providers differ, the District may require a third opinion, at the District's expense, from a Healthcare Provider agreed upon by the employee and the District. The third opinion shall be final and binding.

**10. Annual medical certification.** When an employee's need for leave is due to the employee's own serious health condition, or the serious health condition of a covered family member lasts beyond a single leave year, the District may require the employee to provide a new medical certification in each subsequent leave year.

**11. Recertifications.** The employee must provide recertification, at the employee's expense, within fifteen (15) calendar days after request, unless it is not practical under the particular circumstances to do so despite the employee's diligent, good faith efforts. The District may request recertifications no more often than every thirty (30) calendar days in connection with an employee's absence, unless one of the following exists:

a. If the minimum duration on the medical certification is more than thirty (30) calendar days, the District must wait that minimum duration before requesting a recertification; or

b. The District may request recertification in less than thirty (30) calendar days if the employee requests an extension of leave; the circumstances described by the previous certification have changed significantly; or District receives information that casts doubt upon the employee's stated reason for absence or continued validity of certification.

c. In all cases, notwithstanding the foregoing restrictions, the District may request a recertification of a medical condition every six (6) months in connection with an employee's absence.

**12. Fitness-for-Duty Certification.** An employee must submit a fitness-for-duty certification prior to returning to work after FMLA leave if leave was taken as a result of

the employee's own serious health condition. The certification must provide that the employee can return to work and that the employee is able to perform the essential functions of the employee's job. The cost of this certification shall be borne by the employee.

**13. Certification related to covered active duty or call to covered active duty.** An employer may require that a request for leave for qualifying exigencies be supported by a certification issued at such time and in such manner as prescribed by FMLA regulations

**14. Certification to Care for a Covered Service Member.** When leave is requested to care for a covered service member with a serious injury or illness, an employee shall provide a certification completed by the covered service member's authorized Healthcare Provider on the approved FMLA form. The certification should provide sufficient facts to support the employee's request for leave. Only one certification is required. In addition, the employee shall provide confirmation of covered family relationship. Alternatively, invitational travel orders (ITOs) or invitational travel authorizations (ITAs) issued to any family member to join an injured or ill service member at his or her bedside will be accepted if a certification form is not provided. The District may seek authentication and clarification of the ITO or ITA, but will not request a second or third opinion or a recertification.

**E. Failure to Comply with Notice Requirements.**

**1. Foreseeable Leave - thirty (30) calendar days.** When the need for FMLA leave is foreseeable at least thirty (30) calendar days in advance and an employee fails to give timely advance notice with no reasonable excuse, the District may delay FMLA coverage until thirty (30) calendar days after the date the employee provides notice.

**2. Foreseeable Leave - less than thirty (30) calendar days.** When the need for FMLA leave is foreseeable less than thirty (30) calendar days in advance and an employee fails to give notice as soon as practicable, the District may delay FMLA coverage depending on the particular facts and circumstances.

**3. Unforeseeable Leave.** When the need for FMLA leave is unforeseeable and an employee fails to give notice as soon as practicable under the facts and circumstances, the District may delay FMLA coverage for leave based on the facts of the particular case.

**4. Failure to Comply with Certification Requirements.**

**a. Foreseeable Leave.** If the employee fails to provide certification at the time the employee gives notice of the need for leave or within five (5) work days thereafter, the District may deny FMLA coverage until the required certification is provided.

**b. Unforeseeable Leave.** If the employee fails to provide a certification within fifteen (15) calendar days from receipt of the request for certification, the District may deny FMLA coverage, unless the fifteen (15) calendar day requirement is not practical under the extenuating circumstances.

**c. Recertification.** If the employee fails to provide recertification within a reasonable time under the particular facts and circumstances, the District may deny continuation of FMLA leave protections until such employee provides sufficient recertification. If the employee fails to provide recertification, the leave will not be counted as FMLA leave.

**d. Fitness-for-Duty Certification.** The District may delay restoration of the employee's job until such employee provides a sufficient fitness-for-duty certification. Unless the employee provides either a fitness-for-duty certification or a new medical certification for a serious health condition at the time FMLA leave is concluded, the employee may be terminated.

## **F. District Responsibilities.**

**1. General Notice.** The District shall post and keep posted on its premises in conspicuous places where employees are employed, a notice explaining the provisions of FMLA and providing information concerning the procedures for filing complaints of violation of FMLA with the Wage and Hour Division. In addition, the District shall maintain a copy of this policy in every employee handbook, and distribute a copy to new employees upon hire.

**2. Eligibility Notice.** When an employee requests FMLA leave, or when the District acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the District shall provide written notice to the employee of whether the employee is eligible to take FMLA leave within five (5) work days, absent extenuating circumstances. If the employee is not eligible for FMLA leave, the District shall provide the employee at least one reason why the employee is not eligible.

**3. Notice of Rights and Responsibilities.** The District shall provide written notice to the employee about his or her rights and responsibilities under the FMLA leave within five (5) work days of receipt of the employee's request for leave or when the District acquires knowledge that an employee's leave may be for an FMLA-qualifying reason. The notice also shall detail the specific expectations and obligations of the employee set forth under FMLA's regulations and shall explain any consequences of a failure to meet these obligations.

### **4. Designation Notices.**

**a. FMLA Designation.** The District shall provide written notice within five (5) work days after the District has enough information to determine whether the leave is being taken by an eligible employee for an FMLA-qualifying reason, absent extenuating circumstances, whether the leave will be designated and counted as FMLA leave, how much FMLA leave is available if the amount of leave is known at the time of designation, including the number of hours, days or weeks counted against FMLA leave entitlement, and how much leave with pay, if any, will be substituted for FMLA leave. If the amount of time that will be counted against FMLA leave is not known at the time of designation, the District shall provide notice to the eligible employee upon request by such employee, but no more often than once in a thirty (30) calendar day period and only if leave was taken in that period. The Designation Notice also shall provide notice of any required certifications or the fitness-for-duty requirement before an

eligible employee returns to work. Only one notice of designation is required for each FMLA-qualifying reason during the applicable twelve (12) month period.

**b. Retroactive FMLA Designation.** The District may retroactively designate leave as FMLA leave after an eligible employee returns to work, provided that the District gives written notice of the designation to such employee within five (5) work days of the designation and the District's failure to timely designate leave does not cause harm or injury to such employee, such as lost compensation and benefits or other actual monetary losses. Alternatively, the District and the eligible employee may mutually agree that leave can be retroactively designated as FMLA leave.

## **5. Benefits and Protections.**

**a. Use of Paid Leave.** Accrued sick, annual, or personal leave shall be utilized for any FMLA-qualifying reason, and the amount of such leave will be counted against an eligible employee's FMLA entitlement. If the requested leave period extends beyond the eligible employee's accrued number of paid days of leave, the remaining FMLA-qualifying leave shall be unpaid.

**b. Health Insurance.** During the period of FMLA leave, the District will maintain the eligible employee under the District's group health plan if such employee is currently enrolled therein. However, such employee is responsible for paying such employee's monthly portion of the premium. If an eligible employee fails to make payment of such employee's share of health insurance premiums within thirty (30) calendar days after such payment is due, coverage of such employee shall be discontinued. If group health plan coverage is discontinued because of such employee's failure to pay, the employee will be eligible for benefits under COBRA. If the eligible employee fails to return to work following leave under the FMLA for any reason other than (1) the continuation of the FMLA-qualifying circumstances upon which the need for leave was originally based, or (2) circumstances beyond the control of the eligible employee, such employee shall be required to reimburse the District for the cost of any health insurance premiums the District paid to maintain coverage for the eligible employee during the leave period.

**c. Other Accrued Benefits.** Upon return to work from FMLA leave, eligible employees, other than "key eligible employees" will be restored to their original or equivalent positions with equivalent pay, benefits, and other employment terms. Use of FMLA leave shall not result in the loss of any employment benefit that accrued prior to the start of the eligible employee's FMLA leave. However, benefits do not continue to accrue while the eligible employee is on FMLA leave.

**d. COBRA Eligibility and Benefits.** Employees who are terminated voluntarily or involuntarily for reasons other than gross misconduct and employees whose hours of employment are reduced may be eligible for COBRA benefits when they are no longer a covered employee under the District's health insurance plans. COBRA benefits are managed through the New Mexico Public School Insurance Authority (NMPSIA).

**6. Key Eligible Employees.** A key eligible employee may be denied job restoration if the District determines that the restoration will cause substantial and grievous economic injury to the operations of the District. If the District believes that reinstatement may be denied to a key eligible employee, the District will provide the key eligible employee written notice at the time the eligible employee gives notice of the need for FMLA leave, or as soon as practicable, that he or she qualifies as a key eligible employee, as well as the potential consequences with respect to reinstatement and maintenance of health benefits if the District should determine that substantial and grievous economic injury to the District's operations will result if the eligible employee is reinstated from FMLA leave.

**7. Unlawful Acts and Enforcement.** FMLA makes it unlawful for the District to interfere with, restrain, or deny the exercise of any right provided under the FMLA; and to discharge or discriminate against any person for opposing any practice made unlawful by FMLA or for involvement in any proceeding under or relating to FMLA. FMLA does not affect any Federal or State law prohibiting discrimination, or supersede any State or local law or collective bargaining agreement which provides greater family or medical leave rights.

**8. Recordkeeping Requirements.** The District shall make, keep, and preserve records consistent with the recordkeeping requirements of Section 11(c) of the Fair Labor Standards Act and FMLA, including, but not limited to, an eligible employee's basic payroll and identifying data; dates FMLA leave is taken; the hours of leave taken if FMLA leave is taken in increments of less than one full day; copies of the notices furnished to the eligible employee by the District; records related to the eligible employee's benefits; and records and documents relating to medical certifications, recertifications, or medical histories, for a minimum of three (3) years or longer as required by State law. All records and documents relating to medical certifications, recertifications, or medical histories shall be maintained as confidential medical records in separate files or records from the usual personnel files and in accordance with 29 C.F.R. ' 1630.14(c)(1) of the Americans with Disabilities Act.

## **VII. Holiday.**

A. The Board of Education shall approve the school calendar which shall list the holidays to be observed during each school year.

## **VIII. Jury Duty/Subpoena Leave.**

A. An employee who is summoned for jury duty or subpoenaed to testify as a witness (other than as a plaintiff, defendant, or as a witness in a case involving the employee's immediate family) in court will be granted leave with pay subject to the following conditions:

1. The Court's Order or Subpoena requiring the employee's presence is provided to the employee's immediate supervisor as soon as possible, but no later than the day immediately preceding the date on which the employee is required to appear.

2. The District will deduct from the employee's wages for the jury leave period the statutory jury fee (the highest prevailing state minimum wage rate per day) unless the employee endorses to the District all fees, other than mileage, paid as jury or witness fees.

**IX. Military Leave.**

A. Any employee who is a member of an organized unit of the National Guard, or a reserve unit of any of the military branches, shall be given military leave, with no deduction of pay, not to exceed fifteen (15) work days annually when ordered to active duty training with such organized units.

B. Such leave is to be in addition to other leaves to which the employee is otherwise entitled.

C. Any employee who is drafted or called into duty by the armed forces of the United States in excess of fifteen (15) work days may request to use accrued leave with pay during such period of service. Such employee shall be placed on leave-without-pay after exhaustion of all accumulated leave. Such employees shall be eligible for return to duty in the first available position for which the employee is licensed, or in the case of non-licensed employees, the first available position of the same job category held by the employee at the time of induction into the armed forces, provided that the employee has fewer than five (5) years of cumulative service in the uniformed services while employed in this District.

D. Employees are encouraged to perform voluntary and/or discretionary duties, e.g., training sessions, during the summer rather than during student instructional times of the year.

E. While employees are on active duty, employees may elect to continue benefits (i.e., health benefits) provided by the District for the maximum period of time provided for under federal and state laws. The amount of premium for which the employee is responsible shall be determined in accordance with federal and state laws.

1. Upon reinstatement, there shall be no waiting period imposed under the District's benefits plan for an employee who qualifies for such benefits. A qualifying employee is one who (a) has served five (5) years or less of cumulative service in the uniformed services while with the District; (b) has not been separated from service with a disqualifying discharge or under other than honorable conditions; and (c) applies for reinstatement within a timely manner after conclusion of service.

2. The District's benefit plan shall not apply to any illness or injury determined by the Secretary of Veteran Affairs to have been incurred in, or aggravated during, service in the uniformed services.

F. Employees who are drafted or called to active duty are expected to provide a copy of their duty orders.

**X. Personal Leave; Twelve Month Employees.**

A. Three (3) days of personal leave will be credited to all twelve-month employees at the beginning of each fiscal year for personal business which cannot be handled except during work hours. Employees who begin employment after the commencement of the work year shall be credited with personal leave on a pro-rata basis. Employees who leave prior to the end of their contract year or are on extended leaves in excess of sixty (60) contract work days shall have personal leave reduced on a pro-rata basis. The employee is not required to state the reason for taking such leave; however, such leave is subject to advance approval by the employee's supervisor.

B. Personal leave will normally not be granted on the last work day prior to or the first workday following a holiday or the beginning or ending of the school year. Personal leave shall not be approved during the first or last five (5) work days of the academic year. In the case of emergency, however, the Superintendent, or his/her designee, may grant personal leave for these days. The Superintendent's, and/or his/her designee's, decisions on these matters shall not be interpreted in a manner which establishes a precedent, practice, or other future entitlement.

C. Personal leave days that are not used during the current fiscal year will be converted to sick leave days for the following fiscal year.

#### **XI. Professional Leave.**

A. Leaves from duty without deduction from pay or other earned leave balances may be granted to any employee for professional visitation and attendance at job-related meetings, conferences, and training sessions or other activities which, in the Superintendent's judgment, would be beneficial to the work of the employee or to the District as a whole. Such leaves may or may not involve the reimbursement of expenses, including substitutes, depending upon the arrangements made prior to approval of the leave. Any expenditure proposed beyond the amount budgeted for such purposes must receive prior approval of the Board of Education.

B. One-half day of professional leave may be granted by the superintendent or designee for use by an employee for the oral examination for an advanced degree.

#### **XII. Sick Leave; Twelve Month Employees.**

A. Sick leave shall be granted to twelve-month (245 days) employees, in accordance with this policy and Section VI relative to the FMLA, for illness of self, spouse, or dependent children. With prior approval of the immediate supervisor, an employee who is not eligible for FMLA leave may also use sick leave for the care of a dependent relative or domestic partner.

B. Employees shall earn nine (9) sick days per year, accrued at a rate proportional to the employee's Full Time Equivalent.

C. Employees who are on an approved leave of absence without pay under Section XVI shall not forfeit unused accumulated leave but shall not earn additional leave while absent.

D. All earned accumulated sick leave is forfeited upon termination or discharge from employment by the District for any reason, with no payment in lieu thereof. Sick leave is not transferable.

E. In all cases, when an employee terminates employment during the annual contract year, the appropriate salary deduction will be made from the final paycheck for any used but unearned sick leave.

F. Paid sick leave is a privilege granted to employees to protect the health and welfare of both the employees and their families. Abuse of this privilege is subject to disciplinary actions. If a supervisor becomes aware of facts, circumstances, or conduct that give rise to reasonable suspicion that sick leave is being abused, the employee shall provide a physician’s statement to support the leave of absence, if requested to do so.

G. For periods of sick leave longer than three (3) consecutive days, the superintendent may require a physician's statement attesting to the reason for absence and a physician’s statement that the employee is able to return to work. Sick leave in excess of three (3) days may be counted as leave under Section VI.

H. Sick leave benefits shall not be paid during any period for which an employee is eligible for workers’ compensation payments unless the employee has elected in writing to assign or pay his/her workers’ compensation payment to the District for the period during which the sick leave benefits are paid. In no event shall an employee be entitled to both sick leave benefits and workers’ compensation payments during the same period. In the event an employee receives both sick leave benefits and workers’ compensation payments for the same period, the District will deduct the amount of sick leave benefits paid (in the event no election has been made) or the amount of workers’ compensation payments received by an employee (in the event an election has been made) from the next amount due the employee from the District.

I. Subject to the availability of funds, retiring employees may receive monetary payment for accrued, unused leave at the following rates:

<u>Category</u>	<u>Rate of Compensation</u>	<u>Maximum</u>
Certified	\$25.00/day	\$2,500.00
Non-certified	\$15.00/day	\$1,500.00

J. Departing employees who leave employment with the District and remain eligible for rehire shall not receive monetary compensation for any accrued, unused sick leave. However, if such employees return to the District, they shall receive re-instatement of 50% of the Sick Leave total that had accrued, but was unused, at the time they left their previous employment with the District. This paragraph J. is retroactive to the beginning of the 1992-1993 school year.

K. Upon the death of a current employee, the beneficiary(ies) of said employees shall receive the accrued, unused sick leave payment at the rate outlined in paragraph I., above.

**XIII. Undifferentiated Leave; Employees on less than Twelve Month Contracts.**

A. The Pojoaque Valley School Districts undifferentiated leave benefit shall apply to all non-twelve (12) month employees.

B. Undifferentiated leave with pay shall be made available to eligible employees, proportionally to the employee's Full Time Equivalent (FTE) or contract length. Four (4) days shall be credited to the employees account at the start of the school year. The remaining days shall be credited thirty (30) calendar days following the employee's first date of employment, subject to the employee completing the contract year.

C. An employee who does not complete the contract shall have his or her leave prorated for the time of service.

D. Should employment terminate during the contract year, used but unearned leave shall be deducted from the employee's final pay.

E. Employees shall accrue leave as follows:

<u>Contract Length</u>	<u>Number of Days Accrued</u>
179-183 Days	12
195 Days	12.5
201-205 Days	13
210 Days	13.5
216 Days	14

The site administrator shall acknowledge a request for leave no later than the end of the second working day, not counting the day on which the request is received.

F. **Extended Leave Usage.** For other than emergency purposes, requests for extended undifferentiated leave must be made one month in advance. Leave may be used in excess of three days consecutively for illness or family emergency only. For periods of leave due to illness longer than three (3) consecutive working days, the site administrator may require a physician's statement. The site administrator may approve such a request provided substitutes are available and the absence would not create a situation that would result in 15% or more of the staff being absent.

G. **Leave Usage Before or After Holidays.** Except for illness or family emergencies, leave will not generally be approved for days immediately before or after a holiday. The site administrator may approve a request unrelated to illness or family emergency provided substitutes are available and the absence would not create a situation that would result in 15% or more of the staff being absent.

**XIV. Sick Leave Bank.**

**A. Purpose.** The purpose of the Sick Leave Bank is to provide an available pool of leave days for eligible employees who experience major medical issues, catastrophic or life threatening illnesses, such as an accident, emergency major surgery, or injuries to the employee or an immediate family member. Immediate family members are defined as a spouse, parent, domestic partner, children, or when guardianship applies.

**B. Membership Eligibility.** To be eligible for participation in the Sick Leave Bank, an employee must have completed one (1) contract year with the District and voluntarily contributed one (1) day of accrued leave to the bank within the first month of employment. In the event that the Sick Leave Bank falls below sixty (60) days, each member shall donate one additional day of leave in order to maintain membership in the Sick Leave Bank. All days donated by an employee are irretrievable.

**C. Administration.** The Sick Leave Bank shall be administered by the Sick Leave Bank Committee ("SLBC"), which shall consist of seven (7) members. The Head of Human Resources shall be a member of the SLBC and act as its chairperson. The certified staff at each school shall designate one member as its representative on the SLBC. The Head of Human Resources shall designate two (2) non-certified employees to serve on the SLBC. Members of the SLBC shall be selected during the first week of each school year, and shall serve until the first week of the following school year. The chairperson of the SLBC shall announce the members of the SLBC during the second week of school each school year.

**D. Sick Leave Awards.** The SLBC shall determine awards of leave from the Sick Leave Bank.

**1. Eligibility for Use of Sick Leave Bank Days.** In order to be eligible for use of days from the Sick Leave Bank, a member of the Sick Leave Bank must have used all available leave plus one (1) day of leave without pay.

**2. Application.** An employee requesting use of leave from the Sick Leave Bank shall submit an application letter to the Chairperson of the SLBC that identifies the amount of leave the employee is requesting to use and the reason for the leave. The application letter also shall include a physician's statement which explains the catastrophic or life threatening illnesses or injuries to the employee or employee's immediate family member and the need for the requested leave. The application letter shall contain a waiver that authorizes the SLBC to contact the physician for purposes of clarification or authentication of the physician's statement.

**3. Determination.** The SLBC shall approve or deny the request within seven (7) calendar days after receipt by the chairperson of the application.

**4. Amount of Leave.** A maximum award of two, fifteen (15) day periods (total of 30 days) per contract year per employee is allowed. If an employee does not use all of the Sick Leave Bank days awarded to him/her during a current contract year, the unused days shall be credited back to the Sick Leave Bank. The employee shall have no right to awarded, but unused Sick Leave Bank days in any subsequent school year.

E. In the event that the Sick Leave Bank is dissolved, the leave days remaining in the Sick Leave Bank shall be distributed equally among the eligible members at the time of dissolution.

F. Retiring employees may donate any accrued, unused leave days to the Sick Leave Bank.

#### **XV. Voting Time Leave.**

A. On election days, District employees eligible to vote shall be given two hours leave to vote. The two hours leave shall be on a schedule determined by the employee's immediate supervisor.

B. Employees whose workday begins after 10:00 a.m. or employees whose workday ends no later than 4:00 p.m. shall not be eligible for such leave.

C. School personnel eligible to vote shall submit their preference for time off to their supervisor at least one (1) full day in advance of the election to allow for appropriate staff coverage.

#### **XVI. Other Long-Term Unpaid Leave.**

A. Other unpaid leaves of absence, not expressly authorized above, may be granted to employees based on the following:

**1. Short term leave without pay.** Up to ten (10) working days may be taken without pay in a fiscal year, subject to the sole discretion of the site administrator. In determining whether to grant short term leave without pay, the site administrator's decision should be based on the following:

- a. Purpose of leave;
- b. Amount of consecutive leave days requested, not to exceed 10;
- c. Hardship to the District; and
- d. Work performance of the requestor.

**2. Long term leave without pay.** Any leave without pay in excess of ten (10) working days, but not to exceed one (1) school year, may be granted in the sole discretion of the Superintendent, based on the following:

- a. Purpose of leave;
- b. Length of leave requested, not to exceed one school year;
- c. Hardship to District;

- d. Work performance of requester;
- e. Written approval of supervisor; and
- f. Tenure status (only those employees who have worked on a full time basis for at least three (3) consecutive years for the District are eligible for long term leave without pay).

**3. Written Requests/Notices.**

a. Any request for leave without pay shall be submitted to the site administrator in writing. Requested leaves in excess of 10 working days shall be forwarded by the site administrator to the Superintendent. A written request for an extended leave without pay for an entire fiscal year shall be submitted to the site administrator by March 15 of the school year preceding the period of leave. The Superintendent, in his or her sole discretion, may waive the March 15 deadline in the event of documented, extenuating circumstances which prevent the employee from meeting this deadline.

b. An employee using an extended leave of absence shall provide written notice to the Superintendent of the employee's intent to return to work no later than March 15 of the year in which employee is taking the leave.

4. A leave without pay shall not be used for the primary purpose of seeking or assuming other employment.

5. If the Superintendent determines that the reason for the employee's request for leave has been misrepresented or is substantially different, the employee may be subjected to disciplinary action as deemed appropriate under the circumstances, including, but not limited to, revocation of the leave or termination or discharge of employment.

6. Should a reduction in force become necessary, an employee on leave shall be subject to the same reduction in force criteria as established by the Board of Education.

References: 38 U.S.C. § 4303 *et seq.*, Uniformed Services Employment and Reemployment Rights Act  
29 U.S.C. § 2601 *et seq.*, Family Medical Leave Act  
NMSA 1978, § 12-10C-3.