

# SMYRNA SCHOOL DISTRICT

## *POLICY*

<b>Section:</b>	<b>4000 Personnel</b>	<b>Office Responsible:</b>	<b>Human Resources</b>
<b>Policy:</b>	<b>4152 Family and Medical Leave Act (FMLA)</b>		
<b>Related Policies:</b>			

### I. Purpose

This Policy is intended to comply with the National Defense Authorization Act (NDAA) for FY 2008, the Family and Medical Leave Act of 1993 (the “FMLA”) as amended, the Department of Labor’s regulations implementing FMLA, and any applicable collective bargaining agreements, and shall be construed consistently with NDAA, FMLA and any applicable regulations.

The district complies with all applicable statutes and regulations governing leaves of absence. In addition to the Family Medical Leave Act, 29 U.S.C. § 2601 et seq., its implementing regulations, 29 C.F.R. Part 825, 14 Del. Code §1333 and any applicable Collective Bargaining Agreement, the District shall comply with the regulations set forth by the Delaware Department of Labor, Division of Paid Leave, in 19 Del. Admin. Code §1401 et. seq. regarding paid leaves of absence. The district reserves the right to deny any leave of absence which is not otherwise protected by law.

The district reserves all rights to revise or rescind this Section of the Policy if the Department of Labor, Division of Paid Leave, amends its regulations or if 19 Del. Admin Code §1401 et. Seq. is repealed.

This Section of the Policy shall take effect on January 1, 2026.

### II. Authority

Delaware Code, *Title 19 § 3701*

### III. Definitions

**12-Month Period:** "a 'rolling' 12-month period measured backward" is 12-month period measured backward from the date an employee uses any family and medical leave. Under the "rolling" 12-month period, each time an employee takes family and medical leave, the remaining leave entitlement would be the balance of the 12 weeks which has not been used during the immediately preceding 12-months. The district shall uniformly apply this “rolling 12-month period measured backward” to all employees. Any change to the district’s selected application year shall be made consistently with FMLA standards.

**Serious Health Condition:** an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider as defined in the FMLA. Employees with questions about what illnesses are covered under this FMLA policy are encouraged to consult with the Superintendent’s office.

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**Academic term or term:** the end of the 2nd marking period and the end of the school year. An example of leave falling within these provisions would be where an employee plans two weeks of leave to care for a family member which will begin three weeks before the end of the term. In that situation, the employer could require the employee to stay out on leave until the end of the term.

#### IV. Policy

##### A. Eligibility

Employees are eligible for unpaid family and medical leave (“FMLA leave”) under this Policy if they have been employed by the Smyrna School District (“the district”) for at least 12 months and have worked at least 1,250 hours during the 12-month period immediately preceding the commencement of the FMLA leave, which may or may not be consecutive, but only to the extent required by law.

Eligible employees are entitled to FMLA leave for one or more of the following reasons:

- For birth of a son or daughter of the employee, and to care for such newborn child.
- For placement with the employee of a son or daughter for adoption or foster care.
- To care for the employee’s spouse, son or daughter, or parent with a serious health condition.
- Because of a serious health condition that makes the employee unable to perform the functions of the employee’s job.
- Because of any qualifying exigency arising out of the fact that the employee’s spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in the U.S. Armed Forces in support of a contingency operation; and
- To care for a covered service member with a serious injury or illness sustained in the line of duty if the employee is the spouse, son, daughter, parent, or next of kin of the service member.

##### B. Amount of Leave

Unless otherwise required by law, the district will grant up to 12 weeks (26 weeks for certain service member family leave) of family and medical leave during any 12-month period to eligible employees. Except in the case of leave to care for a covered service member with a serious injury or illness, the district will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this policy. Each time an employee takes FMLA leave, the district will compute the amount of FMLA leave the employee has taken during the prior 12 months and subtract such leave from the 12 weeks of available leave time. The balance remaining is the amount the employee is entitled to take at that time.

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An eligible employee's FMLA leave entitlement is limited to a total of 26 workweeks of leave during a single 12-month period to care for a covered service member with a serious injury or illness. The "single 12-month period" in which the 26-weeks-of-leave-entitlement occurs is determined measured forward from the date an employee's first FMLA leave to care for the covered service member begins.

### **C. Notice by Employee**

Eligible employees must provide no fewer than 30 days' notice before the date the FMLA leave is to begin where the need for the leave is foreseeable. However, if circumstances require leave to begin in fewer than 30 days, the employee must provide such notice as is practicable. If an employee fails to provide reason for the leave, the leave may be denied. While on leave, employees are requested to report periodically to the district regarding the status of the medical condition and their intent and expected date to return to work.

If an employee anticipates that leave will be needed based on planned medical treatment, the employee must make a reasonable effort to schedule the medical treatment, subject to approval of the employee's health-care provider, in a manner that does not unduly disrupt the district's operations.

If an instructional employee does not give required notice of foreseeable FMLA leave to be taken intermittently or on a reduced leave schedule, the district may require the employee to take leave of a particular duration, or to transfer temporarily to an alternative position. Alternatively, the District may require the employee to delay the taking of leave until appropriate notice is provided.

### **D. Temporary Transfer**

In the situation of a request for intermittent leave or leave on a reduced schedule, the district may temporarily transfer the employee to an alternate job with equivalent pay and benefits if the employee is qualified for the position and it better accommodates recurring periods of leave than the employee's regular job.

### **E. Notice by District**

Upon receipt of notice form the employee of a need for an FMLA leave, the district will notify the employee of his or her obligations, including any certification requirement.

### **F. Certification**

A request for medical leave must be supported by a written certification issued by the employee's health-care provider. Likewise, a request for family care leave must be supported by a written certification issued by the health-care provider of the family member.

The district may ask for certification of the serious health condition. The district will use the U.S. Department of Labor Form WH-380, the *Certification of Health Care Provider*, to obtain this certification. The employee should respond to this request within 15 days or provide reasonable explanation for the delay. Failure to provide certification may result

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in a denial of continuation of leave. The district will request medical certification in writing as part of the employer's response to an employee's request for leave.

The district reserves the right, in requiring certification from a health care provider, to provide a statement of the essential functions of the employee's position for the health care provider to review. A sufficient medical certification must specify what functions of the employee's position the employee is unable to perform so that the district can then determine whether the employee is unable to perform one or more essential functions of the position.

The district reserves the right to ask for a second opinion from a physician or facility of their choice. If the District requests a second opinion, the cost of the second opinion will be paid for by the district. To resolve a discrepancy between the first and second opinions, a third opinion will be required which will be mutually agreed upon by the employee and the district. The cost of a third opinion will be paid by the district and will be the final determination of the employee's condition. The district reserves its right to require subsequent re-certifications on a reasonable basis.

With respect to family leaves involving care for a covered family member or service member, the certification must include a statement that the employee is needed to care for the family member and an estimate as to the amount of time the employee is needed to care for the family member.

For requests for intermittent or reduced leave schedules, the certification shall also include the expected duration and schedule of the intermittent or reduced leave schedule.

### **G. Substitution of Paid Leave Time**

FMLA leave is without pay except as set forth in the following paragraph. When permitted by the Act, an employee may elect to substitute available paid leave or disability leave to which he or she is entitled for all or any portion of the FMLA leave, provided also that the eligibility requirements for each form of such paid days off or leave are satisfied. In such a situation, whatever paid leave is taken will count against the allowable FMLA leave.

### **H. Group Health Coverage**

Coverage under the applicable group health plan in effect on the day before the FMLA leave begins will be continued for the duration of allowed leave at the same level and under the same conditions that coverage would have been provided if the employee had not taken FMLA leave. If an employee is normally required to pay a portion of the group health benefit premiums, such an employee on FMLA leave is required to continue paying his or her portion of group health benefit premiums based upon a payment arrangement specified by the district. If an employee does not return to work after the employee's leave expires, for reasons other than the continuation, recurrence, or onset of a serious health condition of the employee or the employee's family, or any other

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circumstance beyond the control of the employee, the district will be entitled to seek reimbursement from the employee for any premiums it paid for maintaining coverage during the leave.

### **I. Instructional Employees**

If an instructional employee begins leave more than five weeks before the end of an academic term, the district may require the employee to continue taking leave until the end of the term if:

- The leave will last at least three weeks, and
- 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 an academic term, the district may require the employee to continue taking leave until the end of the term if:

- The leave will last more than two weeks, and
- 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 an academic term, and the leave will last more than five working days, the district may require the employee to continue taking leave until the end of the term.

### **J. Return from Leave**

When an employee returns from FMLA leave, the district will restore the employee to the position of employment held when the FMLA leave commenced, or to an equivalent position that includes equivalent employment benefits, pay, seniority, and other terms and conditions of employment. However, the District reserves the right to withhold restoration of employment when allowed by law. This may occur when, for example, an employee would not have otherwise been employed at the time reinstatement is requested. An employee's failure to notify the district of availability for work, an employee's failure to return to work when called by the district, or an employee's continued absence from work after leave expires may be deemed a voluntary termination of employment with the district.

### **K. Leave Requests**

FMLA leave requests should be directed to the Superintendent's office. The district will comply with applicable state law to the extent that such law provides greater family or medical leave rights than those of the Act. If a particular leave qualifies for both FMLA leave and leave under state law, the leave used counts against the employee's entitlement under both laws.

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Board Approval Acknowledged by:



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Christine Malec, President  
Smyrna School District Board of Education

## **Policy Actions**

Adopted:

Revised: 8/19/2009

1/15/2025