

Board Meeting Agenda Item Executive Summary

Supt.'s Office Use Only

Board Meeting 12-18-07

Agenda Action

Item No. H. 1.

Board Meeting Date:	December 18, 2007
Submitted By:	Thomas L. Wittmer, Staff Attorney
Item Description:	Amendments to Policies 1430.01, <i>Family and Medical Leaves of Absence</i> , and 4430.01, <i>Family and Medical Leaves of Absence</i> -- First Reading

Purpose and Explanation:

These two policies were adopted by the Board on July 17, 2007. They pertain to Family and Medical Leave for employees, as provided by the Family and Medical Leave Act, 29 U.S.C. 2601 *et seq.* ("FMLA").

Under the federal regulations an employees is eligible for FMLA leave if he or she has been employed by the employer for at least 12 months and has been employed for at least 1,250 hours of service during the 12-month period immediately preceding the commencement of the leave. Full-time teachers are deemed to meet the 1,250-hour requirement; for other employees, the 1,250 hours must be determined through employment records, 29 CFR §825.110(c).

The exception for teachers is reflected in Policy 3430.01, *Family and Medical Leaves of Absence*, also adopted by the Board on July 17, 2007. However, the "deemed to meet" exception was erroneously incorporated into the two other FMLA policies, for administrators and support personnel, also. It has never been the policy or practice of the Board that employees other than teachers are deemed to meet the 1,250 hour requirement. It is appropriate that the Board amend the two policies for administrative and support personnel to remove the words under the "Eligibility" section on page one that are shown as ~~struck through~~ in the attached draft amendments.

RECOMMENDED ACTION: The Superintendent recommends that the Board approve the proposed amendments to Policies 1430.01, *Family and Medical Leaves of Absence*, and 4430.01, *Family and Medical Leaves of Absence*, as presented.

BUDGETARY IMPACT

Funding Source (Description):	Amount:
--------------------------------------	----------------

Staff Attorney Review & Approval <i>(For Contracts Only)</i>	Date: _____ Initial: _____	ADDITIONAL INFORMATION Yes: _____ No: _____
--	-------------------------------	--

FAMILY AND MEDICAL LEAVES OF ABSENCES ("FMLA")

In accordance with Federal law, the Board shall provide up to twelve (12) weeks of unpaid FMLA leave in any twelve (12) month period to eligible administrators. This policy shall not increase paid leave as provided for under State law and other Board policies.

Family and medical leave may be granted for a maximum of twelve (12) work weeks during any school year (July 1st - June 30th) for the following reasons:

A. Family Leave

1. the birth of a child and/or the care of a newborn child within one (1) year of the child's birth
2. the placement of a child with the staff member by way of adoption or foster care and/or to care for the child within one (1) year of the child's arrival

B. Medical Leave

1. the staff member is needed to care for a spouse, son, daughter, or parent if such individual has a serious health condition
2. the staff member's own serious health condition prevents him/her from performing the functions of his/her position

Eligibility

Administrators are "eligible" if they have worked for the Board for at least twelve (12) months, and for at least 1,250 hours over the twelve (12) months prior to the leave request. ~~All full-time administrators are deemed to meet the 1,250 hour requirement.~~

Serious Health Condition

"Serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that involves:

- A. Inpatient care, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or
- B. Continuing treatment by a healthcare provider, including:
 - 1. a period of incapacity of more than three (3) consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition, that also involves either treatment two (2) or more times by a healthcare provider, or treatment by a healthcare provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of a healthcare provider;
 - 2. any incapacity due to pregnancy or for prenatal care;
 - 3. any period of incapacity or treatment for such incapacity due to a chronic serious health condition;
 - 4. a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective;
 - 5. any period of absence to receive multiple treatments by a healthcare provider either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three (3) consecutive days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and/or kidney disease (dialysis).

- C. Conditions for which cosmetic treatment is administered are not "serious health conditions" unless inpatient hospital care is required or complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomachs, minor ulcers, headaches other than migraines, routine dental or orthodontia problems, periodontal disease, etc., are conditions that do not meet this definition and do not qualify for FMLA leave.

Use of Leave

- A. Family leave shall not be taken intermittently, nor shall employees work on a reduced schedule during family leave.
- B. Medical leave may be taken intermittently when medically necessary. Intermittent leave is defined as leave taken in separate, pre-scheduled blocks of time due to a single illness or injury. The taking of intermittent leave results in the total reduction of the twelve (12) weeks only by the amount of leave actually taken. Under such circumstances, the employee must try to schedule the leave so as not to unduly disrupt the operations of the Board. After discussion with the employee, the Superintendent may place an employee who requires intermittent medical leave in an alternative position which better accommodates intermittent leave.
- C. Family and medical leave is intended to provide assistance to employees who do not have other leaves available. Therefore, employees claiming family leave must first use any accrued paid vacation leave and personal leave; and employees claiming medical leave must first use any accrued paid vacation leave, personal leave, and sick leave.
- D. Paid leave used for FMLA purposes shall not be counted as a part of the twelve (12) week family and medical leave. The Board will not count paid leave taken for other reasons against the employee's twelve (12) week family and medical leave. Leave taken under this policy for birth or adoption (including foster care placement) must conclude within twelve (12) months after the birth or placement.

- E. A husband and wife who are both employed by the Board and both eligible may take only a combined total of twelve (12) weeks of leave during any school year if the leave is taken for birth of a child(ren); to care for the child after birth; for placement of a child for adoption or foster care; or to care for a child after placement; or for care for a parent (not a parent "in-law") with a serious health condition.

Notice for Leave

Except in unanticipated situations, an employee intending to take family or medical leave because of an expected birth or placement, or because of planned medical treatment, must submit an application for leave at least thirty (30) days before the leave is to begin. If leave is to begin within thirty (30) days, an employee must give notice to the work site supervisor as soon as the necessity for the leave arises. Except in unanticipated situations, failure to give proper notice may result in denial of entitlement to leave under this policy. When planning medical treatment, the staff member must consult with the Superintendent and make a reasonable effort to schedule the leave so as not to unduly disrupt the regular operation of the District, subject to the approval of the healthcare provider.

Medical Certification

When medical leave is taken, the staff member must provide medical certification from the healthcare provider of the eligible staff member or his/her immediate family member. (see Form 1430.01 F2)

When the need for medical leave is foreseeable and at least thirty (30) days notice has been provided, the staff member must provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the Superintendent within fifteen (15) calendar days after the staff member requests medical leave unless it is not practicable under the circumstances to do so despite the staff member's diligent and good faith efforts.

The Board reserves the right to obtain, at its expense, the opinion of a second healthcare provider and, in the event of conflict, the opinion of a third healthcare provider whose decision shall be binding and final.

A staff member who takes medical leave for his/her own serious health condition, prior to returning to work, must provide the Superintendent with a statement from his/her healthcare provider that s/he is able to resume work. (see Form 1430.01 F4)

Restoration of Employment

Upon return from any FMLA leave, the Board will restore the staff member to his/her former position or to a position with equivalent employment benefits, pay, and conditions of employment.

Benefits During Leave

- A. During FMLA leave, the Board shall maintain the staff member's current coverage under the Board's group health insurance program on the same conditions as coverage would have been provided if the staff member had been continuously working during the leave period. If the staff member was paying all or part of the premium payments prior to going on FMLA leave, the staff member must continue to pay his/her share during the leave. Failure of the employee to pay his/her share of the health insurance premium may result in a loss of coverage. Persons not eligible for insurance coverage, such as substitutes, will not become eligible by taking leave.
- B. If the employee fails to return to work after the expiration of the leave, or an extension of leave for the same or related purpose, the employee will be required to reimburse the Board for payment of health insurance premiums during the family or medical leave, unless the reason the employee fails to return is the presence of a serious health condition which prevents the employee from performing his/her job or to circumstances beyond the employee's control.
- C. An employee who takes family or medical leave is not entitled to the accrual of any seniority or employment benefits that would have accrued if not for the taking of leave. An employee who takes family or medical leave will not lose any seniority or employment benefits that accrued before the date leave began.
- D. A staff member who fraudulently obtains FMLA leave is not protected by this policy's job restoration or maintenance of health benefits provisions.

This policy supplements but does not supplant any provisions for leave contained in other Board policies and collectively bargained agreements.

**THE SCHOOL BOARD OF
ALACHUA COUNTY**

ADMINISTRATION
1430.01/page 6 of 6

The Superintendent shall prepare any procedures that are appropriate for this policy and ensure that the policy is posted properly.

The Superintendent shall provide a copy of the policy upon the request of a staff member.

F.S. 110.221, 1012.61
29 U.S.C. 2601 et seq.
29 C.F.R. Part 825
45 C.F.R. Part 160, 164

FAMILY & MEDICAL LEAVES OF ABSENCE ("FMLA")

In accordance with Federal law, the Board shall provide up to twelve (12) weeks of unpaid FMLA leave in any twelve (12) month period to eligible support staff members. This policy shall not increase paid leave as provided for under State law or other Board policies.

Family and medical leave may be granted for a maximum of twelve (12) work weeks during any school year (July 1st - June 30th) for the following reasons:

A. Family Leave

1. the birth of a child and/or the care of a newborn child within one (1) year of the child's birth
2. the placement of a child with the staff member by way of adoption or foster care and/or to care for the child within one (1) year of the child's arrival

B. Medical Leave

1. the staff member is needed to care for a spouse, son, daughter, or parent if such individual has a serious health condition
2. the staff member's own serious health condition prevents him/her from performing the functions of his/her position

Eligibility

Staff members are "eligible" if they have worked for the Board for at least twelve (12) months, **and** for at least 1,250 hours over the twelve (12) months prior to the leave request. ~~All full-time support staff members are deemed to meet the 1,250 hour requirement.~~

Serious Health Condition

"Serious health condition" is defined as an illness, injury, impairment, or physical or mental condition that involves:

- A. Inpatient care, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or
- B. Continuing treatment by a healthcare provider, including:
 - 1. a period of incapacity of more than three (3) consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition, that also involves either treatment two (2) or more times by a healthcare provider, or treatment by a healthcare provider on at least one (1) occasion which results in a regimen of continuing treatment under the supervision of a healthcare provider;
 - 2. any incapacity due to pregnancy or for prenatal care;
 - 3. any period of incapacity or treatment for such incapacity due to a chronic serious health condition;
 - 4. a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective;
 - 5. any period of absence to receive multiple treatments by a healthcare provider either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three (3) consecutive days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy), and/or kidney disease (dialysis).
- C. Conditions for which cosmetic treatment is administered are not "serious health conditions" unless inpatient hospital care is required or complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomachs, minor ulcers, headaches other than migraines, routine dental or orthodontia problems, periodontal disease, etc., are conditions that do not meet this definition and do not qualify for FMLA leave.

Use of Leave

- A. Family leave shall not be taken intermittently, nor shall employees work on a reduced schedule during family leave.
- B. Medical leave may be taken intermittently when medically necessary. Intermittent leave is defined as leave taken in separate, pre-scheduled blocks of time due to a single illness or injury. The taking of intermittent leave results in the total reduction of the twelve (12) weeks only by the amount of leave actually taken. Under such circumstances, the employee must try to schedule the leave so as not to unduly disrupt the operations of the Board. After discussion with the employee, the Superintendent may place an employee who requires intermittent medical leave in an alternative position which better accommodates intermittent leave.
- C. Family and medical leave is intended to provide assistance to employees who do not have other leaves available. Therefore, employees claiming family leave must first use any accrued paid vacation leave and personal leave; and employees claiming medical leave must first use any accrued paid vacation leave, personal leave, and sick leave.
- D. Paid leave used for FMLA purposes shall not be counted as a part of the twelve (12) week family and medical leave. The Board will not count paid leave taken for other reasons against the employee's twelve (12) week family and medical leave. Leave taken under this policy for birth or adoption (including foster care placement) must conclude within twelve (12) months after the birth or placement.
- E. A husband and wife who are both employed by the Board and both eligible may take only a combined total of twelve (12) weeks of leave during any school year if the leave is taken for birth of a child(ren); to care for the child after birth; for placement of a child for adoption or foster care; or to care for a child after placement; or for care for a parent (not parent "in-law") with a serious health conditions.

Notice for Leave

Except in unanticipated situations, an employee intending to take family or medical leave because of an expected birth or placement, or because of planned medical treatment, must submit an application for leave at least thirty (30) days before the leave is to begin. If leave is to begin within thirty (30) days, an employee must give notice to the worksite supervisor as soon as the necessity for the leave arises. Except in unanticipated situations, failure to give proper notice may result in denial of entitlement to leave under this policy. When planning medical treatment, the staff member must consult with the Superintendent and make a reasonable effort to schedule the leave so as not to unduly disrupt the regular operation of the District, subject to the approval of the healthcare provider.

Medical Certification

When medical leave is taken, the staff member must provide medical certification from the healthcare provider of the eligible staff member or his/her immediate family member. (Form 4430.01 F2)

When the need for medical leave is foreseeable and at least thirty (30) days notice has been provided, the staff member must provide the medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the Superintendent within fifteen (15) calendar days after the staff member requests medical leave unless it is not practicable under the circumstances to do so despite the staff member's diligent and good faith efforts.

The Board reserves the right to obtain, at its expense, the opinion of a second healthcare provider and, in the event of conflict, the opinion of a third healthcare provider whose decision shall be binding and final.

A staff member who takes medical leave for his/her own serious health condition, prior to returning to work, must provide the Superintendent with a statement from his/her healthcare provider that s/he is able to resume work. (Form 4430.01 F3)

Restoration of Employment

Upon return from any FMLA leave, the Board will restore the staff member to his/her former position or to a position with equivalent employment benefits, pay and conditions of employment.

Benefits During Leave

- A. During FMLA leave, the Board shall maintain the staff member's current coverage under the Board's group health insurance program on the same conditions as coverage would have been provided if the staff member had been continuously working during the leave period. If the staff member was paying all or part of the premium payments prior to going on FMLA leave, the staff member must continue to pay his/her share during the leave.
- B. If the employee fails to return to work after the expiration of the leave, or an extension of leave for the same or related purpose, the employee will be required to reimburse the Board for payment of health insurance premiums during the family or medical leave, unless the reason the employee fails to return is the presence of a serious health condition which prevents the employee from performing his/her job or to circumstances beyond the employee's control.
- C. Any employee who take family or medical leave is not entitled to the accrual of any seniority or employment benefits that would have accrued if not for the taking of leave. An employee who takes family or medical leave will not lose any seniority or employment benefits that accrued before the date leave began.
- D. A staff member who fraudulently obtains FMLA leave is not protected by this policy's job restoration or maintenance of health benefits provisions.

This policy supplements but does not supplant any provisions for leave contained in other Board policies and collectively bargained agreements.

The Superintendent shall prepare any procedures that are appropriate for this policy and ensure that the policy is posted properly.

The Superintendent shall provide a copy of the policy upon the request of a staff member.

F.S. 110.221, 1012.61
29 U.S.C. 2601 et seq.
29 C.F.R. Part 825
45 C.F.R. Part 160, 164