

FAMILY AND MEDICAL LEAVE

1. Statement of Policy.

It is the policy of the School Board to support employees and their families in difficult times by complying in all respects with the Family and Medical Leave Act of 1993 as amended by provisions in the National Defense Authorization Act of 2008 (the “FMLA”), and the Indiana Military Family Leave Act (the “IMFLA”). These statutes provide eligible employees with leave in specific circumstances and an assurance of reinstatement upon their compliance with these Acts.

2. Definitions of Terms Used in this Policy.

As used in this Policy:

“Armed forces of the United States” and *“uniformed services”* mean the active or reserve components of the United States Army, the United States Navy, the United States Air Force, the United States Coast Guard, the United States Marine Corps, or the Merchant Marine.

“Contingency operation” means a military operation that is designated by the Secretary of Defense as an operation in which members of the armed forces of the United States are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or results in the call or order to, or retention on, active duty of members of the uniformed services.

“Continuing Treatment” means one or more of the following:

a. **Incapacity and treatment:** a period of incapacity (i.e., inability to work, attend school or perform other regular daily activities) of more than three (3) consecutive full calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves treatment by a health care provider:

1. Two or more times within thirty (30) days of the first day of incapacity;
or
2. On at least one occasion that resulted in a regimen of continuing treatment under the supervision of the health care provider.

b. **Pregnancy or prenatal care:** any period of incapacity due to pregnancy or for prenatal care; or

c. Chronic conditions: any period of incapacity or treatment of such incapacity due to a chronic, serious health condition; or

a. Permanent or long-term conditions: a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective; or

b. Conditions requiring multiple treatments: any period of absence to receive multiple treatments by a health care provider for:

3. Restorative surgery after an accident or other injury; or

4. 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.

“Covered military member” means an employee’s spouse, son, daughter or parent on active duty or called to active duty status in the Armed Forces for federal active duty for initial training or continuing training; state active duty for the Indiana National Guard; inactive duty drills and annual training for members of the Indiana National Guard or Reserves; absence from work for an examination to determine a person's fitness for federal or State duty; or funeral honors duty.

“Covered service member” means a current member of the Armed Forces, including a member of the National Guard or a reserve component of the Armed Forces, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status or is on the temporary disability retired list for a serious injury or illness incurred in the line of duty on active duty.

“Eligible employee” means an employee who has worked for the Board for at least twelve (12) months and has worked for a minimum of one thousand two hundred and fifty (1,250) hours during the twelve (12) months immediately preceding the commencement of FMLA leave.

“Health care provider” means a medical doctor (MD) or a osteopathic doctor (“DO”) licensed to practice medicine in Indiana; a podiatrist, dentist, clinical psychologist, optometrist, nurse practitioner, nurse midwife, clinical social worker (licensed under Indiana law); a chiropractor (limited to treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated by x-ray); a Christian Science Practitioner listed with the First Church of Christian Science in Boston, MA; a health care provider licensed in another country when practicing in that country; and any care provider accepted by the Board’s group health insurance.

“Human Resources” means The Personnel Office of the MSD of Wayne Township.

“Incapable of self-care” means a circumstance in which a person requires active assistance or supervision to provide daily self-care in one or more than one activity of daily living or instrumental activity of daily living. For purposes of this definition, ***“activities of daily living”*** include caring appropriately for one’s grooming and hygiene, bathing, dressing, and eating; and ***“instrumental activities of daily living”*** include cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using a telephone and directories, and using a post office.

“Instructional employee” means an employee employed in an instructional capacity by the Board whose principle function is to teach students in a class, small group, or individually. The term includes athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired, but does not include teacher aides or assistants who do not teach as their principal function; and does not include counselors, curriculum specialists, and other non-instructional employees.

“Key employee” means a salaried FMLA-eligible employee who is among the highest paid ten percent (10%) of all Board employees.

“Next of kin of a covered service member” means the nearest blood relative other than the covered service member’s spouse, parent, son or daughter, in the following order of priority: blood relatives who have been granted legal custody of the covered service member, brothers and sisters, grandparents, aunts and uncles and first cousins, unless the covered service member has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA in which case the designated individual shall be deemed to be the covered service member’s only next of kin.

“Parent” means the biological, adoptive, step or foster father or mother of an employee, or any other individual who had day-to-day responsibilities to care for and financially support an employee when the employee was a child. This term does not include parents “in law.”

“Qualifying exigency” means any one or more of the following when it relates to an employee’s spouse, son, daughter or parent who is notified of an impending call or order to active duty in support of a contingency operation:

a. Short-notice deployment: to address any issue that arises from the fact that a covered military member is notified of an impending call or order to active duty in support of a contingency operation seven (7) or fewer calendar days prior to the date of the deployment; or

b. Military events and related activities: to attend any official ceremony, program or event sponsored by the military that is related to the covered military member’s active duty or call to active duty, or to attend family support or assistance programs and informational briefings sponsored by the military, military service organizations or the American Red Cross; or

d. *Childcare and school activities:* to arrange for alternative childcare, provide childcare on an urgent, immediate needs basis, enroll in or transfer a child to a new school or day care facility or attend meetings with staff at a school or daycare facility, when any of these activities is necessitated by the covered military member's active duty or call to active duty; or

c. *Financial and legal arrangements:* to make or update financial or legal arrangements to address an absence due to the covered military member's active duty or call to active duty, or to act as the covered military member's representative before a federal, state or local agency for the purposes of obtaining, arranging or appealing military service benefits while the covered military member is on active duty or call to active duty status; or

d. *Counseling:* to attend counseling provided by someone other than a health care provider for the covered military member or a child of the covered military member, provided that the need for counseling arises from the active duty or call to active duty of the covered military member; or

e. *Rest and recuperation:* to spend time with a covered military member who is on short-term, temporary rest and recuperation leave during the period of deployment (eligible employees may take up to five (5) days of leave for each instance of rest and recuperation); or

f. *Post-deployment activities:* to attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following termination of the covered military member's active duty status, or to address issues that arise from the death of a covered military member while on active duty status; or

g. *Additional activities:* to address other events that arise out of the covered military member's active duty or call to active duty status, provided that the Board and the employee agree that such leave shall qualify as an exigency and agree to both the timing and duration of such leave.

"Rolling twelve (12) month period" means a period which begins on the first day leave is taken pursuant to this Policy and ends three hundred and sixty-five (365) days prior to the first day leave is taken.

"Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves either an overnight stay in a medical care facility, or continuing treatment by a health care provider for a condition that either prevents the employee from performing the functions of the employee's job, or prevents the qualified family member from participating in school or other daily activities.

"Serious injury or Illness" means an injury or illness incurred by a covered service member in the line of duty on active duty in the Armed Forces that may render the

service member medically unfit to perform the duties of his or her office, grade, rank or rating.

“Son or daughter” means a biological, adopted or foster child, a step child, a legal ward or a child of a person standing in place of a parent, who is either under eighteen (18) years of age or who is eighteen (18) years of age or older and incapable of self-care because of a mental or physical disability. The age limit does not apply when leave is requested for active duty of a son or daughter or to care for a son or daughter who is a covered service member.

“Spouse” means a husband or wife as recognized by Indiana law.

“Unable to perform the functions of the employee’s position” means the circumstance in which a health care provider finds that the employee is unable to work at all or is unable to perform any one of the essential functions of the employee’s position within the meaning of the American with Disabilities Act (ADA), 42 USC 12101 *et seq.*, and the regulations at 29 CFR § 1630.2(n). An employee who must be absent from work to receive medical treatment for a serious health condition is considered to be unable to perform the essential functions of the position during the absence for treatment.

3. Eligibility for FMLA Leave: Twelve (12) Weeks Maximum.

An eligible employee may take up to twelve (12) weeks of unpaid leave in any rolling twelve (12) month period for one or more of the following reasons:

- h. Childbirth:*** For birth of the employee's son or daughter, and to care for the newborn child;
- i. Adoption or Foster Care:*** For placement with the employee of a son or daughter for adoption or foster care;
- j. Family Member’s Serious Health Condition:*** To care for the employee's spouse, son, daughter or parent with a serious health condition;
- k. Employee’s Serious Health Condition:*** Because of a serious health condition that makes the employee unable to perform the essential functions of the employee’s position with reasonable accommodation; or
- l. Qualifying Exigency:*** For any qualifying exigency as defined in this Policy arising out of the fact that the spouse, son, daughter or parent of the employee is a covered military member on active duty or has been notified of an impending call or order to active duty in support of a contingency operation.

Leave Entitlement: During the twelve (12) month period described in this section, an employee shall be entitled to a combined total of twelve (12) weeks of leave for all

FMLA qualifying reasons defined in this section. This cap does not apply to “Caregiver Leave” pursuant to Section 4 of this Policy. The twelve (12) month eligibility period for taking leave under the conditions described above is a rolling twelve (12) month period counted back from the first day of FMLA leave.

4. Leave to Care for a Member of the Armed Forces with a Line of Duty Injury or Illness: Twenty Six (26) Weeks Maximum.

An eligible employee may take up to twenty-six (26) weeks of unpaid leave in any single twelve (12) month period to care for a covered service member who has a serious injury or illness incurred in the line of duty on active duty for which the service member is undergoing medical treatment, recuperation, or therapy; or otherwise in outpatient status; or otherwise on the temporary disability retired list if the employee is the covered service member's spouse, son, daughter, parent or next of kin.

The leave entitlement to care for a covered service member is applied on a per-covered service member, per injury basis. An eligible employee may be entitled to more than one twenty-six (26) week period of leave if the leave is to care for different covered service members or to care for the same service member with a subsequent serious illness or injury, except that an eligible employee may take no more than a total of twenty-six (26) weeks in a single twelve (12)-month period.

The single twelve (12) month period begins on the first day the eligible employee takes FMLA leave to care for a covered service member and ends twelve (12) months after that date. If an eligible employee does not take all of the employee’s twenty-six (26) weeks of leave entitlement during this single twelve (12) month period, the remaining part of the twenty-six (26) weeks is forfeited.

Leave to care for a covered service member may be taken continuously, or, if medically necessary, intermittently or through a reduced work schedule.

Leave Entitlement: During the single twelve (12) month period described in this section, an employee shall be entitled to a combined total of twenty-six (26) weeks of leave for all FMLA qualifying reasons. However, the employee is entitled to no more than twelve (12) weeks of leave during a rolling twelve (12) month period for one or more of the following: birth of the employee's child, to care for the newborn child; placement with the employee of a child through adoption or foster care; to care for the employee's spouse, son, daughter or parent with a serious health condition; the employee’s serious health condition; or leave for a qualifying exigency involving a covered service member.

1. Intermittent FMLA Leave.

FMLA leave may be taken intermittently in separate blocks of time for a single qualifying reason or through a reduced schedule consisting of fewer hours per day or fewer days per week for:

- m. The care of the employee's spouse, child or parent with a serious health condition;
- n. The employee's own serious health condition, if medically necessary, or a qualifying exigency for a covered service member.

Intermittent or reduced schedule FMLA leave for the birth or placement of a child may be taken only with the prior written approval of Human Resources.

An employee on intermittent or reduced schedule leave may be required to transfer temporarily to an alternative position for which the employee is qualified and which better accommodates the recurring periods of intermittent leave than the employee's regular position. The alternate position will offer equivalent pay and benefits.

6. Procedure for Requesting FMLA Leave.

An employee need not specifically name the Family & Medical Leave Act in order to assert his or her rights under the FMLA. If the employee provides at least verbal notice sufficient to make the employee's supervisor aware that the employee qualifies for FMLA leave, it is the responsibility of the supervisor to ensure that the employee is referred to Human Resources in order to complete a request for FMLA leave. Human Resources will provide the employee with a copy of a fact sheet from the United States Department of Labor Wage & Hour Division explaining the FMLA which can be found at: <https://www.dol.gov/whd/regs/compliance/whdfs28.htm>

An employee needing FMLA leave is required to follow the usual and customary call-in procedures for reporting an absence applicable to the employee's position absent unusual circumstances.

Whenever the need for leave is reasonably foreseeable (e.g., birth or placement of child, planned medical care), the employee shall provide Human Resources with not less than thirty (30) days advance notice of intended FMLA leave. If circumstances prevent the employee from providing thirty (30) days advance notice, the employee shall provide as much notice as is reasonable and practicable. In an emergency, notice may be given by employee's spouse, adult family member or other responsible representative of the employee. If the employee fails to provide required notice of foreseeable leave with no reasonable excuse, Human Resources may delay the FMLA leave to the extent permitted by law.

Once an employee requests FMLA leave, Human Resources will give the employee notice of eligibility or ineligibility and required forms to be completed at the time of the request or within five (5) business days of the request. The employee must return the completed certification form to Human Resources within fifteen (15) calendar days after receipt of the required forms from Human Resources, unless it is not practicable under

the particular circumstances for the employee to do so despite the employee's diligent, good faith efforts.

The Board reserves the right to designate, with notice, any qualifying leave as FMLA leave regardless of whether the employee has specifically requested FMLA leave. An employee who uses or plans to use more than five (5) consecutive sick days shall apply for, or be considered to have applied for, FMLA leave.

In addition to the requirements outlined below, an employee who is substituting paid leave for unpaid FMLA leave is required to comply with customary notice and procedural requirements for requesting such paid leave applicable to the employee's position, absent unusual circumstances.

An employee is also expected to make a reasonable effort to schedule medical treatment and other eligible appointments and events so as not to unduly disrupt the ongoing operations of his or her school or department, subject to the approval of the employee's health care provider.

7. Use of Department of Labor Forms to Document the Need for FMLA Leave.

The Board requires employees and Human Resources to use the following Department of Labor Wage-Hour Division forms to document the need for FMLA leave:

- c. WH-380-E:* Certification of Health Care Provider for Employee's Serious Health Condition
- d. WH-380-F:* Certification of Health Care Provider for Family Member's Serious Health Condition
- e. WH-381:* Notice of Eligibility and Rights & Responsibilities
- f. WH-382:* Designation Notice
- g. WH-384:* Certification of Qualifying Exigency For Military Family Leave
- h. WH-385:* Certification for Serious Injury or Illness of Covered Service member -- for Military Family Leave
- i. WH-385-V:* Certification for Serious Injury or Illness of a Veteran for Military Caregiver Leave

If FMLA leave is for the care of a family member with a serious health condition, to care for a covered service member or the employee's own serious health condition, a written medical certification must be obtained from the patient's health care provider (or in the case of a covered service member, an authorized Department of Defense provider) and submitted along with the leave of absence request form, or within the time frame stated in the Notice of Rights and Responsibilities provided by Human Resources.

In any case in which Human Resources has reason to doubt the validity of the certification provided by the employee's healthcare provider, Human Resources may:

1. Require, at the Board's expense, that the employee obtain the opinion of a second

health care provider designated by Human Resources concerning any information certified as a basis for leave; or

2. After giving the employee an opportunity to cure any gaps in the certification, contact the employee's healthcare provider, with permission from the employee, to obtain missing information needed to determine eligibility for FMLA leave. If the employee does not provide clarifying information or grant permission to clarify information with the health care provider, Human Resources may deny the taking of the FMLA leave if the certification is unclear.

The health care provider designated to provide the second opinion as to the existence of a serious health condition shall be selected and compensated by Human Resources and shall not be employed on a regular basis by the Board. If the second opinion of the healthcare provider differs from the opinion from the employee's healthcare provider, the Board may require, at its expense that the employee obtain the opinion of a third healthcare provider agreed to by the Board and the employee. The agreement of the Board and employee shall not be unreasonably withheld. The third healthcare provider's opinion concerning the information certified as a basis for leave shall be final and binding on both the Board and the employee.

If leave is taken for a qualifying exigency, the employee must complete a certification form and submit it within the time period stated in the Notice of Rights and Responsibilities provided by Human Resources. The first time an employee requests leave for a qualifying exigency, he or she will also be required to provide a copy of the military member's active duty orders. The orders need not be provided again unless the qualifying exigency arises out of a different active duty or call to active duty. If an employee fails to provide the required certification in a timely manner, the employee may be denied FMLA leave until such certification is provided.

Human Resources will review all leave requests and provide the employee with a written Notice of Eligibility and Rights & Responsibilities within five (5) working days of receipt, absent extenuating circumstances. The Notice of Eligibility will indicate whether the employee is eligible for FMLA leave, and, if not, why not. The Notice of Rights and Responsibilities will detail the specific expectations and obligations of the employee and explain any consequences of a failure to meet these obligations. After all required documentation is provided by the employee and/or his or her health care provider, Human Resources will send Designation Notice, informing the employee whether or not the leave will be designated FMLA leave.

Recertification. Employees may be required to provide a periodic recertification of a continuing need for FMLA leave. The Board may require such recertification no more frequently than every thirty (30) days, and only in connection with an absence by the employee, except in the following circumstances:

- a. ***More than thirty (30) days:*** If the medical certification indicates that the minimum duration of a condition is more than thirty (30) days, the Board must wait until the minimum duration passes before requesting a

recertification. However, in no case is the Board required to wait more than six months before requesting a recertification.

b. ***Less than thirty (30) days:*** The Board may request recertification in less than thirty

(30) days if the employee requests an extension of the leave, the circumstances described by the previous certification have changed significantly or the Board receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.

If an employee is requesting leave to care for a family member with a serious health condition, a qualifying exigency, or to care for a covered service member, the Board may also require the employee to provide reasonable documentation of the existence of a family relationship between the employee and the service member.

8. Compensation and Benefits While on Family and Medical Leave Act Leave.

Applicable Paid Leave is Concurrent with FMLA Leave. Leave taken pursuant to the Family Medical Leave Act is unpaid. However, the Board requires employees to utilize all paid leave applicable to the type of FMLA leave taken; thus, all applicable paid leave must be taken concurrently with the use of FMLA leave. For example, for a serious health condition that causes the employee to be unable to perform the essential functions of the employee's position with reasonable accommodation, the employee is required to use paid sick leave concurrent with FMLA leave for the same serious health condition. Where an employee has paid leave that may be used for family illness, the employee is required to use that leave concurrent with any FMLA unpaid leave to care for the employee's spouse, child or parent with a serious health condition, or to care for a covered service member.

FLSA Compensatory Time May Be Used. For employees who are not exempt from the overtime provisions of the federal Fair Labor Standards Act, the employee may elect, but is not required, to use compensatory time off prior to beginning unpaid leave.

Benefits Not Affected by FMLA Leave. Taking FMLA leave shall not result in the loss of any employment benefit accrued prior to the date the FMLA leave commences. The following benefits are not affected during *unpaid* FMLA leave:

Group health insurance coverage. Group health insurance coverage will continue on the same basis as coverage would have been provided had the employee been continuously employed during the leave period provided that the employee pays the employee portion of the premium on the same schedule and in the same amounts as the employee contribution would be withheld pursuant to payroll deduction from the employee's pay. Before these conditions are enforced, the employee must be advised of them in writing.

Employee Default on Premium Payment Obligation. An employer's obligations to

maintain an employee's health insurance coverage ceases if an employee's premium payment is more than thirty (30) days late. In order to drop the coverage for an employee whose premium payment is late, Human Resources will provide written notice to the employee that the payment is due and has not been received. This notice must be mailed to the employee at least fifteen (15) days before coverage is to cease. The written notice must advise the employee that coverage will be dropped on a specified date at least fifteen (15) days after the date of the letter unless the payment has been received by the Board at the end of business on that date.

Failure of the Employee to Return to Work at the End of FMLA Leave. Failure of the employee to return to work for a period of at least thirty (30) calendar days at the end of the leave shall give the Board the right to collect the employer-paid portion of premium contributions made while the employee was on leave, to the extent permitted by law. An employee who chooses not to retain the Board's health coverage during FMLA leave will be entitled, upon return from leave, to reinstatement on the same terms as prior to taking the leave.

Other Group Insurance. Group term life insurance, accidental death and dismemberment insurance and short-term disability insurance will remain in force at the Board's expense.

ISTRF & PERF. Employee and employer contributions to the Public Employees Retirement Fund and the Indiana State Teachers Retirement Fund will not be made during an unpaid leave pursuant to the FMLA, but no break will be reflected in the employee's service credit.

Benefits Effected by FMLA Leave. The following benefits are affected during any portion of FMLA leave that is unpaid:

Paid Leave. An employee shall not accrue paid time off (PTO) for any bi-weekly pay period for which the employee receives no pay.

Premium Pays. An employee shall not receive holiday pay for any holiday that falls during a period of unpaid leave.

Light Duty Assignments. Any period of "light duty" is not considered as FMLA leave unless the length of the employee's work day or work week is also reduced.

9. Other Work While on FMLA Leave.

An employee on leave pursuant to this Policy may not work for any other employer or perform work as an independent contractor during leave pursuant to this Policy unless the employment or work is submitted for review and approved by Human Resources. Applications submitted to Human Resources shall include a general statement of the duties of the proposed work.

Human Resources will review the duties of the proposed work to determine if the other work proposed by the employee involves the same or similar essential functions as the

employee's employment by the Board and indicates that the employee could perform the essential functions of the employee's employment by the Board with reasonable accommodation. If the essential functions of the proposed work indicate the employee could perform the essential functions of the employee's position with the Board with reasonable accommodations, the application for other employment will be denied by Human Resources, and the employee's continuing eligibility for FMLA leave shall be reviewed.

10. Travel While on FMLA Leave.

An employee is required to remain in the immediate vicinity of his/her home while on leave pursuant to this Policy, except to receive medical treatment or to attend ordinary and necessary activities directly related to personal or family needs. An employee who feels he or she has a need to leave the immediate vicinity of his or her home while on leave pursuant to this Policy must submit a request for review by Human Resources. Human Resources will review the request to determine whether travel is warranted and will be approved.

11. Employee Obligations During & Following FMLA Leave.

Periodic Reports During FMLA Leave.

The Board may require an employee on FMLA leave to report periodically on his or her status and intent to return to work. If the circumstances change and it becomes necessary for an employee to take either more or less leave than originally anticipated, the employee is required to provide notice of the changed circumstances to Human Resources within two (2) business days of the employee's knowledge of this change. If an extension is requested by an employee on FMLA leave, a recertification of the need for continued leave from a health care provider may be required by Human Resources. In no case may an employee other than an instructional employee be required to take more leave than necessary to resolve the circumstance that resulted in the need for leave.

Reinstatement Rights. In general, upon return from FMLA leave an employee is entitled to be reinstated to the same position he or she held when leave commenced, or to an equivalent position with equivalent pay, benefits, working conditions and other terms and conditions of employment. In addition, the position in which the employee is placed will have substantially similar duties, skill, effort, responsibility and authority. The right to reinstatement is not absolute. Reinstatement may be denied if:

- j.* The employee would not have been employed by the Board at the time reinstatement is requested even if he or she had not taken leave; or
- k.* The reinstatement of a key employee will cause substantial and grievous economic injury to the operations of the Board; or

- c. The employee is unable to perform an essential function of his or her position or an equivalent position with reasonable accommodation because of a physical or mental condition; or

- a. FMLA leave has been fraudulently obtained.

Where the Board is considering denial of reinstatement of a key employee, the employee will be notified by the Board in writing of his/her status as a "key" employee and the reasons for denying job restoration, and the Board will provide the employee a reasonable opportunity to return to work after so notifying the employee.

Fitness for Duty Exam as a Condition for Reinstatement: As a condition for reinstatement following leave for an employee's own serious health condition, an employee is required to provide a certification from a health care provider that the employee is able to return to work and perform the essential functions of the employee's position with reasonable accommodation. The Board may require that the certification specifically address the employee's ability to perform the essential functions of the employee's position with reasonable accommodation. If the employee fails to provide a fitness-for-duty certification, return from leave shall be denied until the certificate is submitted. At Human Resources' discretion, an employee who fails to provide either a fitness-for-duty certification or a new medical certification for a serious health condition may be recommended for termination by the Board.

If Human Resources questions an employee's ability to return to work and perform the essential functions of the employee's position with reasonable accommodation, the Board may require an examination by a healthcare provider selected and compensated by the Board. The examination shall be based upon criteria that are job related and consistent with medical necessity.

Notice of Intent Not to Return. If an employee gives unequivocal notice of intent not to return to work, the Board has no obligations under FMLA to maintain health benefits or preserve the employee's position for return to work.

11. Limitations on Total FMLA Leave.

In the case of husband & wife who are both eligible Board employees, FMLA leave taken by these employees in any twelve (12) month period shall be limited to a combined total of twelve (12) weeks if the leave is taken for the birth or placement of a child or to care for a parent with a serious health condition. If the leave is taken to care for a covered service member, or for a combination of caring for a covered service member and any qualifying reason, the spouses are limited to a total of 26 weeks of leave in a single twelve (12) month period.

Entitlement to FMLA leave for the birth or placement of a child with an employee's family shall expire at the end of the twelve (12) month period beginning on the date of birth or placement.

Any period of leave that began as FMLA qualifying leave that extends beyond twelve (12) weeks in a rolling twelve (12) month period (or 26 weeks to care for a covered service member) is not FMLA leave. After the twelve (12) weeks or twenty-six (26) weeks entitlement is exhausted, an employee is no longer entitled to reinstatement or the protection of the FMLA. However, additional leave will be considered as an accommodation to any disability the employee has exhibited under the Americans with Disabilities Act. Additional leave may be denied where the impact of additional leave on the recipients of Board services is substantially adverse and, therefore, not reasonable.

12. Special Circumstances Applicable to Return From Leave For Instructional Employees.

An “instructional employee” as defined in this Policy beginning any leave pursuant to this Policy more than five (5) weeks before the end of a semester may be required to continue on leave until the end of a semester if the leave is of at least three (3) weeks duration and the instructional employee’s return from leave would otherwise fall within the three (3) weeks preceding the end of the semester.

An instructional employee beginning leave pursuant to this Policy for a reason other than the instructional employee’s own serious health condition during the five (5) weeks prior to the end of a semester may be required to continue on leave until the end of the semester if the leave will last more than two (2) weeks and the employee would otherwise return to work during the two (2) week period before the end of the semester.

An instructional employee beginning leave pursuant to this Policy of more than five (5) working days for a purpose other than the employee’s own serious health condition during the three (3) week period before the end of a semester may be required to continue on leave until the end of the semester.

1. Additional Information Concerning the FMLA.

Human Resources is available to assist employees and their families in applying this Policy, and a poster summarizing employee rights & responsibilities under the FMLA is posted to insure that employees are fully informed.

A Fact Sheet from the United States Department of Labor Wage & Hour Division explaining the FMLA can be found at:

<https://www.dol.gov/whd/regs/compliance/whdfs28.htm>

2. Indiana Military Family Leave Act Leave.

Eligibility for IMFLA Leave. The Indiana Military Family Leave Act, Ind. Code 22-213, (the “IMFLA”) provides that an employee who has been employed by the Board for at least twelve (12) months and has worked at least one thousand five hundred (1,500)

hours during the twelve (12) month period immediately preceding the day the IMFLA leave begins, who is the spouse, parent, grandparent, child or sibling of a service member who is ordered to active military duty for a period that exceeds eighty-nine (89) consecutive calendar days may take up to ten (10) days of unpaid IMFLA leave in each calendar year, if the employee's need for leave does not meet the FMLA criteria for a qualifying exigency leave.

a. **Use of IMFLA Leave.** An employee who qualifies for IMFLA leave may take IMFLA leave during one or more of the following periods:

3. Thirty (30) days before the covered military member's active duty orders take effect;

2. During the covered military member's active duty;

3. Thirty (30) days after the end of the covered military member's active duty.

Procedure for Requesting IMFLA Leave. An employee requesting IMFLA leave must submit a Military Family Leave Request Form, with a copy of the covered military member's active duty orders attached. The request must be submitted at least thirty (30) days prior to the beginning date of the requested leave unless the orders are issued less than thirty (30) days before the requested leave date. The Board may require verification of eligibility for the leave if the active duty orders are unclear. If the employee does not provide verification of eligibility on a timely basis, the absence may be considered unexcused.

IMFLA leave is unpaid, but the Board requires that an employee utilize all eligible paid leave concurrent with unpaid IMFLA leave.

An employee who is eligible for ten (10) or more days of FMLA leave for a qualifying exigency shall not also be eligible for IMFLA leave for the same "qualifying exigency" as the term is used in the FMLA in the same calendar year.

LEAVE FOR ACTIVE MILITARY SERVICE AND TRAINING

4. Statement of Policy.

In addition to leave pursuant to the Family and Medical Leave Act and the Indiana Military Family Leave Act addressed in Board Policy D375, the Board supports employees when they need to be absent from work for military duty.

To implement this Policy, the Board complies in all respects with the provisions for leave for military purposes in the Uniformed Services Employment and Reemployment Rights Act of 1994 (“USERRA”), and the Indiana Military Family Leave Act (“IMFLA”).

5. Definition of Terms in This Policy.

As used in this Policy:

“Armed Forces of the United States” means the active or reserve components of the United States Army, the United States Navy, the United States Air Force, the United States Coast Guard, the United States Marine Corps, or the Merchant Marine.

“Calendar year” means a twelve (12) month period beginning on January 1 and concluding on December 31.

“Covered service member” means a current member of the Armed Forces, including a member of the National Guard or a reserve component of the Armed Forces, who is undergoing medical treatment, recuperation or therapy, is otherwise in outpatient status or is on the temporary disability retired list for a serious injury or illness incurred in the line of duty on active duty.

“Military training” & “active duty” means an order from a branch of the Armed Forces of the United States to report for training or service.

6. Qualification for Military Leave.

a. Fifteen (15) Day Paid Leave for Annual Training.

Eligible employees are entitled to a paid leave of absence of up to 15 days for active duty in one of the Armed Forces. The employee receives pay for all scheduled workdays during the training period.

This paid leave will start on the first scheduled work day following the start of the military order and will continue until fifteen (15) consecutive workdays have elapsed -- or until the employee returns to work -- whichever occurs first. Paid leave will not exceed fifteen (15) days in any calendar year. (January 1 through December 31).

Employees are entitled to this fifteen (15) day paid leave each calendar year for active duty, training duties, or reserve call-ups for which the employee has an order to duty in the Armed Forces.

b. Leave for Weekend Training.

Normally, paid military leave is not applicable to training drills regularly scheduled on the weekend. To receive pay for weekend drills, an employee must meet all three of the following criteria:

5. The employee's regular work schedule must include Saturdays or Sundays.
6. The employee must be scheduled to work the weekend of the training.
7. The employee must be ordered for military training and not given an option to schedule training at a time that does not conflict with the employee's work schedule.

Any such paid time will be deducted from the fifteen (15) day paid leave annual allotment in paragraph (a) above.

c. Training in Excess of Fifteen (15) Days in a Calendar Year.

If an employee is absent for more than fifteen (15) days for military training, he or she may do the following:

8. Charge the absence to accrued time off (PTO, vacation, income protection time, compensatory time, or holidays)
 1. Be absent without pay and with time off accrual.

Using accrued time off will not count against the maximum amount of PTO or vacation allowed in a year.

d. Submitting Military Orders with Payroll Voucher.

Employees must submit written military orders to their department head in advance of the absence or as soon as they are available.

Supervisors and Principals must report the number of hours to be charged to military training to Human Resources.

e. Extended Active Military Duty.

The Uniformed Services Employment and Reemployment Rights Act and the

regulations implementing this Act (the “USERRA”) establish rights for employees who serve or have served in the Armed Forces of the United States.

7. Notice of Active Duty Service. As soon as a supervisor is informed or becomes aware that an employee is going to leave or has left for military service, the supervisor or department head shall immediately consult with Human Resources to insure Board compliance with USERRA.

9. Employees in Temporary Positions Ineligible. Extended unpaid military leave of absence without pay shall be granted for employees in positions other than those that are temporary. The regulations define “Temporary Position” for this purpose means a position that exists for a brief, non-recurrent period with no reasonable expectation that the employment would have continued for a significant period.

10. Criteria for Extended Active Duty Leave. To be eligible for extended active duty leave to a maximum of five (5) years accumulation, an employee must meet one of the following criteria:

- o.** The employee is inducted through Selective Service (not currently occurring).
- p.** The employee enlists voluntarily.
- q.** The employee is called to active duty through membership in the Armed Forces; the Army National Guard; the Air National Guard; the commissioned corps of the Public Health Service; and, for USERRA coverage only, service as an intermittent disaster response appointee upon federal activation of the National Disaster Medical System (NDMS) or attending NDMS authorized training in support of its federal mission.
- r.** The limit on the cumulative time away from Board employment for military service with retention of USERRA rights is five (5) years.

The military leave of absence covers the dates that the employee is actively performing service. The five (5) year limit may also extend to a later date when the employee is able to obtain a release from active duty. Time between completing the uniformed service and reporting back to work or requesting to return does not count against the five year limit. The law provides for other exceptions which are to be discussed with Human Resources if a case arises.

An employee who completes active military service with an

accumulated total military active duty service of five (5) years or less and makes an oral or written request to return to work is to be returned within two weeks of the request if the employee meets the following criteria:

- s. The employee was discharged from military service under honorable conditions.
- t. The employee requests to return to work within the time limits specified in the USERRA based on time spent on military duty. For service of less than thirty-one (31) days, the service member must return to work at the beginning of the next regularly scheduled work period on the first full day after release from military service, taking into account safe travel home plus an eight-hour rest period. For service of more than thirty (30) days but less than one hundred & eighty-one (181) days, the service member must submit an application for reemployment within fourteen (14) days of release from service.
- u. For service of more than one hundred & eighty (180) days, an application for reemployment must be submitted within ninety (90) days of release from service.
- v. The cumulative period of time away from work in military service five (5) years, or if it does, the exceptions provided for in USERRA apply. The employee meeting these criteria shall be returned to the status that the employee would have attained with reasonable certainty if the military absence had not occurred. This includes the completion of any probationary period that would have expired during this time.

The right to return to work exists even if the employee gave an explicit, written statement at the start or during the leave that he or she did not intend to return to work for the Board and resigned or was separated based on this statement. The right to return to work exists whether the employee was placed on a leave of absence or separated employment for military service.

An employee returned to work under the provisions of USERRA may not be terminated except for cause for one hundred & eighty (180) days after return if the most recent period of uniformed service was less than one hundred & eighty-one (181) days, or for one year after return if the most recent period of uniformed service was more than

one hundred & eighty (180) days.

An employee request to return to work after a general or dishonorable discharge from the Armed Forces will be reviewed by Human Resources on an individual basis. Human Resources will make a recommendation to the Board concerning the employee's reinstatement.

Employees requesting to return to work with a general discharge from the Armed Forces will be considered to be eligible to return to work, subject to a finding by the Board that the employee is no longer fit for employment by the Board. An employee requesting to return to work after a dishonorable discharge from the Armed Forces will be not be returned to work unless Human Resources recommends to the Board that the employee be returned to work and the Board accepts that recommendation.

MSD of Wayne Township, Marion County, Indiana

Adopted: August 1, 1994

Revised: December 20, 1999

Revised: March 15, 2004

Revised: April 19, 2010

Revised: June 3, 2013

Revised: May 13, 2019