Note: This policy summarizes the Family and Medical Leave Act (FMLA) and implementing regulations, including FML for an employee seeking leave because of a relative's military service. For provisions on leaves in general, see DEC. For provisions addressing leave for an employee's military service, see DECB.

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SECTION I: GENERAL PROVISIONS

COVERED EMPLOYER

The School is a covered employer under the FMLA. The term "employer" includes any person who acts directly or indirectly in the interest of the School to any of the School's employees. *29 U.S.C. 2611(4), 2618(a); 29 C.F.R. 825.104(a)*

ELIGIBLE EMPLOYEE

"Eligible employee" means an employee who:

Has been employed by the School for at least 12 months. The 12 months need not be consecutive;

Has been employed by the School for at least 1,250 hours of service during the 12-months immediately preceding the commencement of leave; and

Is employed at a worksite where 50 or more employees are employed by the School within 75 miles of that worksite.

29 U.S.C. 2611(2); 29 C.F.R. 825.110

QUALIFYING REASONS FOR LEAVE

The School shall grant leave to eligible employees:

For the birth of a son or daughter, and to care for the newborn child;

For placement with the employee of a son or daughter for adoption or foster care [For the definitions of "adoption" and "foster care," see 29 C.F.R. 825.122.];

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 [For the definition of "serious health condition," see 29 C.F.R. 825.113.];

Because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a military member on active duty or called to covered active duty status (or has been notified of an impending call or order to covered active duty) [For the definition of "military member," see 29 C.F.R. 825.126(b). For the definition of "covered active duty" and "call to covered active duty status," see 29 C.F.R. 825.102.]; and

To care for a covered servicemember with a serious injury or illness incurred in the line of duty if the employee is the spouse, son, daughter, parent, or next of kin of the servicemember. [For the definitions of "covered

servicemember" and "serious injury or illness," see 29 C.F.R. 825.102, .122.]

29 U.S.C. 2612(a); 29 C.F.R. 825.112

For provisions regarding treatment for substance abuse, see 29 C.F.R. 825.119.

QUALIFYING EXIGENCY

An eligible employee may take FMLA leave for one or more of the following qualifying exigencies as they relate to a covered servicemember:

Short-notice deployment.

Military events and related activities.

Childcare and school activities.

Financial and legal arrangements.

Counseling.

Rest and recuperation.

Post-deployment activities.

Parental care.

Additional activities, provided that the School and employee agree that the leave shall qualify as an exigency and agree to both the timing and duration.

29 C.F.R. 826.126

PREGNANCY OR BIRTH

Both parents are entitled to FMLA leave to be with a healthy newborn child (i.e., bonding time) during the 12-month period beginning on the date of birth. In addition, the expectant mother is entitled to FMLA leave for incapacity due to pregnancy, for prenatal care, or for her own serious health condition following the birth of the child. The expectant mother is entitled to leave for incapacity due to pregnancy even though she does not receive treatment from a health-care provider during the absence and even if the absence does not last for more than three consecutive calendar days. A spouse is entitled to FMLA leave if needed to care for a pregnant spouse who is incapacitated, during her prenatal care, or following the birth of a child if the spouse has a serious health condition. [For the definition of "needed to care for," see 29 C.F.R. 825.124.] *29 C.F.R. 825.120*

DEFINITIONS

"NEXT OF KIN"

"Next of kin of a covered servicemember" (for purposes of military caregiver leave) means:

The blood relative specifically designated in writing by the covered servicemember as his or her nearest blood relative for purposes of military caregiver leave under the FMLA. The designated individual shall be deemed to be the covered servicemember's only next of kin; or

When no such designation has been made, the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority:

Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions,

Brothers and sisters,

Grandparents,

Aunts and uncles, and

First cousins.

If there are multiple family members with the same level of relationship to the covered servicemember, all such family members shall be considered the covered servicemember's next of kin and may take FMLA leave to provide care to the covered servicemember, either consecutively or simultaneously.

29 C.F.R. 825.127(d)(3)

"PARENT"

"Parent" (for purposes of family, medical, and qualifying exigency leave) means a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter. This term does not include parents "in law." *29 C.F.R. 825.122*

For the definition of "parent of a covered servicemember" for purposes of military caregiver leave, see 29 C.F.R. 825.127(d)(2).

"SON OR DAUGHTER"

"Son or daughter" (for purposes of family and medical leave) 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. *29 C.F.R. 825.122*

For the definition of "son or daughter on active duty or call to active duty status" for purposes of qualifying exigency leave, see 29 C.F.R. 825.122.

For the definition of “son or daughter of a covered servicemember” for purposes of military caregiver leave, see 29 C.F.R. 825.127(d)(1).

“SPOUSE”

“Spouse” means a husband or wife. For purposes of this definition, husband or wife refers to the other person with whom an individual entered into marriage as defined or recognized under state law for purposes of marriage in the state in which the marriage was entered into or, in the case of a marriage entered into outside of any state, if the marriage is valid in the place where entered into and could have been entered into in at least one state.

This definition includes an individual in a same-sex or common law marriage that either:

1. Was entered into in a state that recognizes such marriages; or

If entered into outside of any state, is valid in the place where entered into and could have been entered into in at least one state.

29 C.F.R. 825.102, .122

SECTION II: LEAVE ENTITLEMENT AND USE

AMOUNT OF LEAVE

Except in the case of military caregiver leave, an eligible employee's FMLA leave entitlement is limited to a total of 12 workweeks of leave during a 12-month period for any one or more of the qualifying reasons.

Spouses who are both employed by the School may be limited to a combined total of 12 weeks of FMLA leave during any 12-month period if leave is taken for the birth of a son or daughter, the placement of a child for adoption or foster care, or to care for a parent with a serious health condition.

29 U.S.C. 2612(a), (f); 29 C.F.R. 825.120(a)(3), .200, .201

DETERMINING THE 12-MONTH PERIOD

Except with respect to military caregiver leave, the School may choose any one of the following methods for determining the “12-month period” in which the 12 weeks of leave entitlement occurs:

The calendar year;

Any fixed 12-month “leave year,” such as a fiscal year or a year starting on an employee's “anniversary” date;

The 12-month period measured forward from the date any employee's first FMLA leave begins; or

A "rolling" 12-month period measured backward from the date an employee uses any FMLA leave.

29 C.F.R. 825.200(b)

MILITARY CAREGIVER LEAVE

In the case of military caregiver leave, an eligible employee's FMLA leave entitlement is limited to a total of 26 workweeks of leave during a "single 12-month period." The "single 12-month period" is measured forward from the date an employee's first FMLA leave to care for the covered servicemember begins, regardless of the method used by the School to determine the 12-month period for other FMLA leaves. During the "single 12-month period," an eligible employee's FMLA leave entitlement is limited to a combined total of 26 workweeks of FMLA leave for any qualifying reason. *29 C.F.R. 825.200(f), (g)*

Spouses who are both employed by the School may be limited to a combined total of 26 weeks of FMLA leave during the "single 12-month period" if leave is taken as military caregiver leave, for the birth of a son or daughter, for the placement of a child for adoption or foster care, or to care for a parent with a serious health condition. *29 C.F.R. 825.127(e)(3)*

SUMMER VACATION AND OTHER EXTENDED BREAKS

If the School's activity temporarily ceases and employees generally are not expected to report for work for one or more weeks (e.g., a school closing for two weeks for the Christmas/New Year holiday), those days do not count against the employee's FMLA leave entitlement. Similarly, the period during the summer vacation when the employee would not have been required to report for duty is not counted against the employee's FMLA leave entitlement. *29 C.F.R. 825.200(h), .601(a)*

INTERMITTENT OR REDUCED LEAVE SCHEDULE

FMLA leave may be taken intermittently or on a reduced leave schedule under certain circumstances. "Intermittent leave" is FMLA leave taken in separate blocks of time due to a single qualifying reason. A "reduced leave schedule" is a leave schedule that reduces an employee's usual number of working hours per workweek, or hours per workday.

For leave taken because of the employee's own serious health condition, to care for a spouse, parent, son, or daughter with a serious health condition, or military caregiver leave, there must be a medical need for leave and it must be that such medical need can be best accommodated through an intermittent or reduced leave schedule. Leave due to a qualifying exigency may also be taken on an intermittent or reduced schedule basis.

When leave is taken after the birth of a healthy child or placement of a healthy child for adoption or foster care, an employee may

take leave intermittently or on a reduced leave schedule only if the School agrees.

29 U.S.C. 2612(b); 29 C.F.R. 825.102, .202

TRANSFER TO ALTERNATIVE POSITION

If an employee requests intermittent or reduced schedule leave that is foreseeable based on planned medical treatment, the School may require the employee to transfer temporarily to an available alternative position for which the employee is qualified and which better accommodates recurring periods of leave than does the employee's regular position. *29 U.S.C. 2612(b)(2); 29 C.F.R. 825.204*

CALCULATING LEAVE USE

When an employee takes leave on an intermittent or reduced schedule, only the amount of leave actually taken may be counted toward the employee's leave entitlement. The School must account for intermittent or reduced schedule leave using an increment no greater than the shortest period of time that the School uses to account for use of other forms of leave, provided the increment is not greater than one hour. *29 C.F.R. 825.205*

SPECIAL RULES FOR INSTRUCTIONAL EMPLOYEES

Special rules apply to instructional employees of the School. These special rules affect leave taken intermittently or on a reduced schedule, or taken near the end of an academic term (semester) by instructional employees.

“Instructional employees” are those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

29 C.F.R. 825.600

FAILURE TO PROVIDE NOTICE OF FORESEEABLE LEAVE

If an instructional employee does not give required notice of foreseeable leave to be taken intermittently or on a reduced schedule, the School may require the employee to take leave of a particular duration or to transfer temporarily to an alternative position. Alternatively, the School may require the employee to delay the taking of leave until the notice provision is met. *29 C.F.R. 601(b)*

20 PERCENT RULE

If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered

servicemember, or for the employee's own serious health condition; the leave is foreseeable based on planned medical treatment; and the employee would be on leave for more than 20 percent of the total number of working days over the period the leave would extend, the School may require the employee to choose:

To take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or

To transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

“Periods of a particular duration” means a block or blocks of time beginning no earlier than the first day for which leave is needed and ending no later than the last day on which leave is needed, and may include one uninterrupted period of leave. If an employee chooses to take leave for “periods of a particular duration” in the case of intermittent or reduced schedule leave, the entire period of leave taken will count as FMLA leave.

29 U.S.C. 2618(c); 29 C.F.R. 825.601, .603

LEAVE AT THE END OF A SEMESTER

As a rule, the School may not require an employee to take more FMLA leave than the employee needs. The FMLA recognizes exceptions where instructional employees begin leave near the end of a semester. As set forth below, the School may in certain cases require the employee to take leave until the end of the semester.

The school semester, or “academic term,” typically ends near the end of the calendar year and the end of spring each school year. In no case may a school have more than two academic terms or semesters each year for purposes of the FMLA.

If the School requires the employee to take leave until the end of the semester, only the period of leave until the employee is ready and able to return to work shall be charged against the employee's FMLA leave entitlement. Any additional leave required by the School to the end of the semester is not counted as FMLA leave; however, the School shall maintain the employee's group health insurance and restore the employee to the same or equivalent job, including other benefits, at the end of the leave.

29 U.S.C. 2618(d); 29 C.F.R. 825.603

MORE THAN FIVE WEEKS BEFORE END OF SEMESTER

The School may require an instructional employee to continue taking leave until the end of the semester if:

The employee begins leave more than five weeks before the end of the semester;

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 semester.

DURING LAST FIVE WEEKS OF SEMESTER

The School may require an instructional employee to continue taKing leave until the end of the semester if:

The employee begins leave during the last five weeks of the semester for any reason other than the employee's own serious health condition or a qualifying exigency;

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 semester.

DURING LAST THREE WEEKS OF SEMESTER

The School may require an instructional employee to continue taking leave until the end of the semester if the employee begins leave during the three-week period before the end of the semester for any reason other than the employee's own serious health condition or a qualifying exigency.

29 C.F.R. 825.602

SUBSTITUTION OF PAID LEAVE

Generally, FMLA leave is unpaid leave. However, under state law, School employees must run all available applicable paid vacation and sick leave concurrently with FMLA leave prior to entering leave without pay status unless an employee is covered by Worker's Compensation and has elected to not use paid leave or is using paid parental leave for the reasons listed below.

29, C.F.R., 825.207(a); TX Government Code, Section 661.912(b); TX Labor Code 501.044

PAID PARENTAL LEAVE

Employees who are on FMLA leave for the reasons listed below may be eligible for paid parental leave.

- Birth of a child
- Birth of a child by the employee's spouse
- Birth of a child by gestational surrogate
- Adoption of a child

The employee is not required to use all available paid vacation and sick leave before the employee is entitled to take paid parental leave.

Employees who qualify for FMLA and give birth to a child are entitled to 40 days of paid parental leave.

Employees who qualify for FMLA and whose spouse gives birth to a child; whose gestational surrogate gives birth to a child or who adopt a child are entitled to 20 days of paid parental leave.

FMLA AND WORKERS' COMPENSATION

A serious health condition may result from injury to the employee "on or off" the job. If the School designates the leave as FMLA leave, the leave counts against the employee's FMLA leave entitlement. Because the workers' compensation absence is not unpaid, neither the employee nor the School may require the substitution of paid leave. However, the School and an employee may agree, where state law permits, to have paid leave supplement workers' compensation benefits.

If the health-care provider treating the employee for the workers' compensation injury certifies that the employee is able to return to a "light duty job" but is unable to return to the same or equivalent job, the employee may decline the School's offer of a "light duty job." As a result, the employee may lose workers' compensation payments, but is entitled to remain on unpaid FMLA leave until the employee's FMLA leave entitlement is exhausted. As of the date workers' compensation benefits cease, the substitution provision becomes applicable and the employee will be required to use available, applicable accrued paid leave.

29 C.F.R. 825.207(d); TX Labor Code 501.044

MAINTENANCE OF HEALTH BENEFITS

During any FMLA leave, the School must maintain the employee's coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously employed during the entire leave period.

An employee may choose not to retain dependent health coverage or optional coverages during FMLA leave. However, the School will continue employee only health coverage. When the employee returns from leave, the employee is entitled to be reinstated on the same terms as before taking leave without any qualifying period, physical examination, exclusion of pre-existing conditions, and the like.

29 U.S.C. 2614(c); 29 C.F.R. 825.209

PAYMENT OF PREMIUMS

During FMLA leave, the employee must continue to pay the employee's share of group health plan premiums. If premiums are

raised or lowered, the employee would be required to pay the new premium rates. *29 C.F.R. 825.210*

FAILURE TO PAY PREMIUMS

Employees on continuous FMLA leave who move from paid leave to leave without pay may have their dependent health coverage and/or optional coverage terminated if premium payments are not received by the last working day each month. In the event dependent health and optional coverages are terminated, the employee will be moved to employee only health coverage. Prior to terminating dependent and optional coverages, the School must provide written notice to the employee that the payment has not been received. Such notice must be mailed to the employee at least 15 days before coverage is to cease, advising that coverage will be dropped on a specified date at least 15 days after the date of the letter unless the payment has been received by that date.

Upon the employee's return from FMLA leave, the School must still restore the employee to coverage/benefits equivalent to those the employee would have had if leave had not been taken and the premium payment(s) had not been missed. The employee may not be required to meet any qualification requirements imposed by the plan, including any new preexisting condition waiting period, to wait for an open season, or to pass a medical examination to obtain reinstatement of coverage.

29 C.F.R. 825.212

RECOVERY OF BENEFIT COST

If an employee fails to return to work after FMLA leave has been exhausted or expires, the School may recover from the employee its share of health plan premiums during the employee's unpaid FMLA leave, unless the employee's failure to return is due to one of the reasons set forth in the regulations. The School may not recover its share of health insurance premiums for any period of FMLA leave covered by paid leave. *29 C.F.R. 825.213*

RIGHT TO REINSTATEMENT

On return from FMLA leave, an employee is entitled to be returned to the same position the employee held when leave began, or to an equivalent position with equivalent benefits, pay, and other terms and conditions of employment. An employee is entitled to reinstatement even if the employee has been replaced or his or her position has been restructured to accommodate the employee's absence. However, an employee has no greater right to reinstatement or to other benefits and conditions of employment than if the employee had been continuously employed during the FMLA leave period. *29 C.F.R. 825.214(a), .216(a)*

REINSTATEMENT OF SCHOOL EMPLOYEES

The School shall make the determination of how an employee is to be restored to "an equivalent position" upon return from FMLA leave on the basis of established school board policies and

practices. The “established policies” must be in writing, must be made known to the employee before the taking of FMLA leave, and must clearly explain the employee's restoration rights upon return from leave. Any established policy which is used as the basis for restoration of an employee to “an equivalent position” must provide substantially the same protections as provided in the FMLA. For example, an employee may not be restored to a position requiring additional licensure or certification. *29 C.F.R. 825.604*

PAY INCREASES AND BONUSES

An employee is entitled to any unconditional pay increases that may have occurred during the FMLA leave period, such as cost of living increases. Pay increases conditioned upon seniority, length of service, or work performed must be granted in accordance with the School's policy or practice with respect to other employees on an equivalent leave status for a reason that does not qualify as FMLA leave.

Equivalent pay includes any bonus or payment, whether it is discretionary or non-discretionary. However, if a bonus or other payment is based on the achievement of a specified goal such as hours worked, products sold, or perfect attendance, and the employee has not met the goal due to FMLA leave, then the payment may be denied, unless otherwise paid to employees on an equivalent leave status for a reason that does not qualify as FMLA leave. For example, if an employee who used paid vacation leave for a non-FMLA purpose would receive the payment, then an employee who used paid vacation leave for an FMLA-protected purpose also must receive the payment.

29 C.F.R. 825.215(c)

KEY EMPLOYEES

The School may deny job restoration to a key employee if such denial is necessary to prevent substantial and grievous economic injury to the operations of the School. *29 U.S.C. 2614(b); 29 C.F.R. 825.217–.219*

A “key employee,” under C.F.R. 825.207, is defined as someone who is “among the highest paid 10 percent” of all employees who are employed within 75 miles of the worksite.

At the time of an FMLA leave request, the School must provide the employee with written notice that the employee meets the qualification of “key employee” and inform the employee of the potential consequences regarding reinstatement and maintenance of benefits. The notice must also inform the employee that they are still entitled to take the leave and may still request to be reinstated. If the reinstatement request is made, the School must make another assessment of whether substantial and grievous

economic injury will occur to the operations if the employee is reinstated and notify the employee of the results.

SECTION III: NOTICES AND MEDICAL CERTIFICATION

EMPLOYER NOTICES

GENERAL NOTICE

Every covered employer must post on its premises a notice explaining the FMLA's provisions and providing information concerning the procedures for filing complaints with the Department of Labor's Wage and Hour Division. The notice must be posted prominently where it can be readily seen by employees and applicants for employment. Covered employers must post this general notice even if no employees are eligible for FMLA leave.

If the School has any eligible employees, it shall also:

- Include the notice in employee handbooks or other written guidance to employees concerning employee benefits or leave rights, if such written materials exist; or
- Distribute a copy of the general notice to each new employee upon hiring.

Electronic posting is sufficient if it meets the other requirements of this section.

If the School's workforce is comprised of a significant portion of workers who are not literate in English, the School shall provide the general notice in a language in which the employees are literate.

The School may use Department of Labor (DOL) form WHD 1420 or may use another format so long as the information provided includes, at a minimum, all of the information contained in that notice.

29 C.F.R. 825.300(a)

ELIGIBILITY NOTICE

When an employee requests FMLA leave, or when the School acquires knowledge that an employee's leave may be for an FMLA-qualifying reason, the School must notify the employee of the employee's eligibility to take FMLA leave. If the employee is not eligible for FMLA leave, the notice must state at least one reason why the employee is not eligible.

The School must provide the eligibility notice within five business days, absent extenuating circumstances. Notification of eligibility may be oral or in writing. The School may use DOL form WH-381 to provide such notification to employees. The School shall translate the notice in any situation in which it is required to translate the general notice.

29 C.F.R. 825.300(b)

RIGHTS AND RESPONSIBILITIES NOTICE

Each time the School provides an eligibility notice to an employee, the School shall also provide a written rights and responsibilities notice. The rights and responsibilities notice must include the information required by the FMLA regulations at 29 C.F.R. 825.300(c)(1).

The School may use DOL form WH-381 to provide such notification to employees. The School may adapt the prototype notice as appropriate to meet these notice requirements. The notice may be distributed electronically if it meets the other requirements of this section. The School shall translate the notice in any situation in which it is required to translate the general notice.

29 C.F.R. 825.300(c)

DESIGNATION NOTICE

When the School has enough information to determine whether leave is being taken for an FMLA-qualifying reason, the School must notify the employee whether the leave will be designated as FMLA leave. If the School determines that the leave will not be designated as FMLA-qualifying, the School must notify the employee of that determination. Absent extenuating circumstances, the School must provide the designation notice within five business days.

The School may use DOL form WH-382 to provide such notification to employees. If the leave is not designated as FMLA leave because it does not meet the requirements of the Act, the notice to the employee that the leave is not designated as FMLA leave may be in the form of a simple written statement.

The designation notice must include the information required by the FMLA regulations at 29 C.F.R. 825.300(d)(1) (substitution of paid leave), (d)(3) (fitness for duty certification), and (d)(6) (amount of leave charged against FMLA entitlement). For further provisions on designation of leave, see 29 C.F.R. 825.301.

29 C.F.R. 825.300(d)

RETROACTIVE DESIGNATION

The School may retroactively designate leave as FMLA leave, with appropriate notice to the employee, if the School's failure to timely designate leave does not cause harm or injury to the employee. In addition, the School and an employee may agree that leave will be retroactively designated as FMLA leave. *29 C.F.R. 825.301(d)*

EMPLOYEE NOTICE

An employee giving notice of the need for FMLA leave must state a qualifying reason for the leave and otherwise satisfy the requirements for notice of foreseeable and unforeseeable leave,

below. The employee does not need to expressly assert rights under the Act or even mention the FMLA. *29 C.F.R. 825.301*

FORESEEABLE LEAVE

An employee must provide at least 30 days' advance notice before FMLA leave is to begin if the need for leave is foreseeable based upon an expected birth, placement for adoption or foster care, or planned medical treatment of the employee, a family member, or a covered servicemember. If 30 days' notice is not practicable, the employee must give notice as soon as practicable. For leave due to a qualifying exigency, the employee must provide notice as soon as practicable regardless of how far in advance the leave is foreseeable.

When planning medical treatment, the employee must consult with the School and make a reasonable effort to schedule the treatment so as not to unduly disrupt the School's operations, subject to the approval of the health-care provider.

29 C.F.R. 825.302

UNFORESEEABLE LEAVE

When the approximate timing of leave is not foreseeable, an employee must provide notice to the School as soon as practicable under the facts and circumstances of the particular case. It generally should be practicable for the employee to provide notice of leave that is unforeseeable within the time prescribed by the School's usual and customary notice requirements applicable to such leave. *29 C.F.R. 825.303*

COMPLIANCE WITH SCHOOL REQUIREMENTS

The School may require an employee to comply with its usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances. If an employee does not comply with the usual notice and procedural requirements, and no unusual circumstances justify the failure to comply, FMLA leave may be delayed or denied. *29 C.F.R. 825.302(d)–.303(c)*

CERTIFICATION OF LEAVE

The School requires that an employee's FMLA leave be supported by certification. A notice shall be sent to each employee of the requirement for certification and recertification each time it is required, including a notice advising the employee of the consequences of failure to provide adequate certification. *29 C.F.R. 825.305(a)*

TIMING

In most cases, the School will request certification at the time the employee gives notice of the need for leave or within five business days thereafter or, in the case of unforeseen leave, within five business days after the leave commences. The School may request re-certification at a later date if the School has reason to question the appropriateness of the leave or its duration. The employee must provide the requested certification to the School

within 15 calendar days after the School's request, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts. *29 C.F.R. 825.305(b)*

INCOMPLETE OR INSUFFICIENT CERTIFICATION

The School shall advise an employee if it finds a certification incomplete or insufficient and shall state in writing what additional information is necessary to make the certification complete and sufficient. The School must provide the employee with seven calendar days (unless not practicable under the particular circumstances despite the employee's diligent, good faith efforts) to cure any such deficiency.

A certification is “incomplete” if one or more of the applicable entries have not been completed. A certification is “insufficient” if it is complete, but the information provided is vague, ambiguous, or non-responsive. A certification that is not returned to the School is not considered incomplete or insufficient, but constitutes a failure to provide certification.

29 C.F.R. 825.305(c)

MEDICAL CERTIFICATION OF SERIOUS HEALTH CONDITION

When leave is taken because of an employee's own serious health condition, or the serious health condition of a family member, the School requires the employee to obtain medical certification from a health-care provider. The School may use DOL optional form WH-380-E when the employee needs leave due to the employee's own serious health condition and optional form WH-380-F when the employee needs leave to care for a family member with a serious health condition. The School may not require information beyond that specified in the FMLA regulations.

An employee may choose to comply with the certification requirement by providing the School with an authorization, release, or waiver allowing the School to communicate directly with the health-care provider.

For the definition of “health-care provider,” see 29 C.F.R. 825.125.

29 C.F.R. 825.306

GENETIC INFORMATION

The School is subject to the Genetic Information Nondiscrimination Act (GINA) and shall comply with the GINA rules with respect to a request for medical information. *29 C.F.R. 1635.8(b)(1)(i)(A)* [See DAB]

AUTHENTICATION AND CLARIFICATION

If an employee submits a complete and sufficient certification signed by the health-care provider, the School may not request additional information from the health-care provider. However, the School may contact the health-care provider for purposes of clarification and authentication of the certification after the School

has given the employee an opportunity to cure any deficiencies, as set forth above. To make such contact, the School must use a health-care provider, a human resources professional, a leave administrator, or a management official. Under no circumstances may the employee's direct supervisor contact the employee's health-care provider.

"Authentication" means providing the health-care provider with a copy of the certification and requesting verification that the information on the form was completed and/or authorized by the health-care provider who signed the document; no additional medical information may be requested.

"Clarification" means contacting the health-care provider to understand the handwriting on the certification or to understand the meaning of a response. The School may not ask the health-care provider for additional information beyond that required by the certification form. The requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule must be satisfied when individually identifiable health information of an employee is shared with the School by a HIPAA-covered health-care provider.

29 C.F.R. 825.307(a)

SECOND AND THIRD OPINIONS

If the School has reason to doubt the validity of a medical certification, the School may require the employee to obtain a second opinion at the School's expense. If the opinions of the employee's and the School's designated health-care providers differ, the School may require the employee to obtain certification from a third health-care provider, again at the School's expense. *29 C.F.R. 825.307(b), (c)*

FOREIGN MEDICAL CERTIFICATION

If the employee or a family member is visiting another country, or a family member resides in another country, and a serious health condition develops, the School shall accept medical certification as well as second and third opinions from a health-care provider who practices in that country. If the certification is in a language other than English, the employee must provide the School with a written translation of the certification upon request. *29 C.F.R. 825.307(f)*

RECERTIFICATION

The School may request recertification no more often than every 30 days and only in connection with an absence by the employee, except as set forth in the FMLA regulations. The School must allow at least 15 calendar days for the employee to provide recertification.

As part of the recertification for leave taken because of a serious health condition, the School may provide the health-care provider

with a record of the employee's absence pattern and ask the health-care provider if the serious health condition and need for leave is consistent with such a pattern.

29 C.F.R. 825.308

CERTIFICATION—QUALIFYING EXIGENCY LEAVE

The first time an employee requests leave because of a qualifying exigency, the School may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status, and the dates of the covered military member's covered active duty service.

The School may also require that the leave be supported by a certification that addresses the information at 29 C.F.R. 825.309(b). The School may use DOL optional form WH-384, or another form containing the same basic information, for this certification. The School may not require information beyond that specified in the regulations.

29 C.F.R. 825.309

CERTIFICATION—MILITARY CAREGIVER LEAVE

When an employee takes military caregiver leave, the School may require the employee to obtain a certification completed by an authorized health-care provider of the covered servicemember. In addition, the School may request that the employee and/or covered servicemember address in the certification the information at 29 C.F.R. 825.310(c). The School may also require the employee to provide confirmation of a covered family relationship to the seriously injured or ill servicemember.

The School may use DOL optional form WH-385, or another form containing the same basic information, for this certification. The School may not require information beyond that specified in the regulations. The School must accept as sufficient certification "invitational travel orders" ("ITOs") or "invitational travel authorizations" ("ITAs") issued to any family member to join an injured or ill servicemember at his or her bedside.

The School may seek authentication and/or clarification of the certification under the procedures described above. Second and third opinions, and recertifications, are not permitted for leave to care for a covered servicemember.

29 C.F.R. 825.310

INTENT TO RETURN TO WORK

The School may require an employee on FMLA leave to report periodically on the employee's status and intent to return to work. The School's policy regarding such reports may not be

discriminatory and must take into account all of the relevant facts and circumstances related to the individual employee's leave situation. *29 C.F.R. 825.311*

RETURN TO WORK STATUS CERTIFICATION

As a condition of restoring an employee who took FMLA leave due to the employee's own serious health condition, the School requires the employee to obtain and present certification from the employee's health-care provider that the employee is able to resume work. The School may require that the certification specifically address the employee's ability to perform the essential functions of the employee's job. *29 C.F.R. 825.312*

FAILURE TO PROVIDE CERTIFICATION

If the employee fails to provide the School with a complete and sufficient certification, despite the opportunity to cure, or fails to provide any certification, the School may deny the taking of FMLA leave. This provision applies in any case where the School requests a certification, including any clarifications necessary to determine if certifications are authentic and sufficient. *29 C.F.R. 825.305*

For failure to provide timely certification of foreseeable leave, see 29 C.F.R. 825.313(a). For failure to provide timely certification of unforeseeable leave, see 29 C.F.R. 825.313(b). For failure to provide timely recertification, see 29 C.F.R. 825.313(c). For failure to provide timely fitness-for-duty certification, see 29 C.F.R. 825.313(d).

SECTION IV: MISCELLANEOUS PROVISIONS

RECORDS

The School shall make, keep, and preserve records pertaining to its obligations under the FMLA in accordance with the recordkeeping requirements of the Fair Labor Standards Act (FLSA) and the FMLA regulations. The School shall keep these records for no less than three years and make them available for inspection, copying, and transcription by representatives of the DOL upon request.

Records and documents relating to certifications, recertifications, or medical histories of employees or employees' family members, created for purposes of FMLA, shall be maintained as confidential medical records in separate files/records from the usual personnel files.

If the Genetic Information Nondiscrimination Act (GINA) is applicable, records and documents created for purposes of FMLA leave that contain family medical history or genetic information shall be maintained in accordance with the confidentiality requirements of GINA (see 29 C.F.R. 1635.9), which permit such

information to be disclosed consistent with the requirements of the FMLA. [For information regarding GINA, see DAB(LEGAL).]

If the Americans with Disabilities Act (ADA) is also applicable, such records shall be maintained in conformance with ADA confidentiality requirements [see 29 C.F.R. 1630.14(c)(1)], except as set forth in this section of the regulations.

29 C.F.R. 825.500

PROHIBITION AGAINST DISCRIMINATION AND RETALIATION

The FMLA prohibits interference with an employee's rights under the law, and with legal proceedings or inquiries relating to an employee's rights. *29 U.S.C. 2615; 29 C.F.R. 825.220*

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