

Policy ~~3431~~ 560 – Personal Leave

Revised policy and repeal of Policy 3430 (Leaves of Absence), Policy 3235 (Jury Duty), Policy 3236 (Court Appearance), Policy 3243 (Professional Meetings), Policy 3430.01 (FMLA Leave), Policy 3430.02 (Leave Time for Organ Donation), Policy 3430.03 (Parental Leave Act), Policy 3430.04 (Extended Leave), Policy 3431.01 (Dock Days), Policy 3432.02 (Personal Leave Donation Program), Policy 3433 (Vacation), Policy 3437 (Military Leave), Policy 4431 (Personal Leave), Policy 4235 (Jury Duty), Policy 4236 (Court Appearance), Policy 4430 (Leaves of Absence), Policy 4430.01 (FMLA Leave), Policy 4430.02 (Leave Time for Organ Donation), Policy 4430.03 (Parental Leave Act), Policy 4430.04 (Extended Leave), Policy 4432.02 (Personal Leave Donation Program), Policy 4433 (Vacation), and Policy 4437 (Military Leave) effective July 1, 2019

1st reading

May 23, 2019

2nd reading

3rd reading / Adoption

Statutory authority West Virginia Code 18A-4-10

Administrative Guidelines

(none)

Personal Leave

At the beginning of the employment term, any full-time employee of the Board of Education shall be entitled annually to at least one and one-half days (1 1/2) personal leave for each employment month or major fraction thereof in the employee's employment term. Unused leave shall be accumulative without limitation and shall be within the State. A change in job assignment during the school year shall in no way affect the employee's rights or benefits.

Definitions:

- A. Employment month: twenty (20) employment days.
- B. Full-Time Employee: Any person employed by the Board who has a regular position or job throughout his/her employment term, also known as a Regular Full-Time Employee, working more than three and one-half (3 1/2) hours per day.
- C. Immediate Family:
 - 1. spouse
 - 2. sibling
 - 3. children
 - 4. parent
 - 5. grandchild
 - 6. grandparent
 - 7. son-in-law
 - 8. daughter-in-law
 - 9. brother-in-law
 - 10. sister in-law
 - 11. legal guardian
 - 12. persons listed above of the same relationship to spouse
- D. Life Threatening Illness: A physical or mental illness, injury or impairment which involves inpatient care in a hospital, hospice or residential health care facility.

- E. Personal Leave with Cause: An absence due to an accident, sickness, death in the immediate family, or life threatening illness of the employee's spouse, parents, or child, or other cause authorized or approved by the Board.
- F. Personal Leave without Cause: An absence taken without regard to the reason.

Personal Use Utilization:

An employee shall qualify to use personal leave and be paid the full salary from his/her regular budgeted salary appropriation during the period which the employee is absent, as follows:

A. Personal Leave with Cause:

1. Personal injury due to an accident.
2. Personal sickness.
3. Death in the immediate family, limited to a period of three (3) working days or five (5) work days if the funeral is held a significant distance from employee's residence.
4. Life threatening illness of the employee's spouse, parents, or child.

B. Personal Leave without Cause:

All regular full-time employees shall be permitted to take up to three (3) days of their personal leave days annually, without regard to the cause for the absence, except that personal leave without cause may not be taken on consecutive work days unless authorized or approved by the employee's principal or immediate supervisor. Notice of such leave day shall be given to the employee's principal or immediate supervisor at least twenty-four (24) hours in advance, except that in the case of sudden and unexpected circumstances, such notice shall be given as soon as reasonably practicable. The use of such day may be denied if, at the time notice is given, either fifteen percent (15%) of the employees or three (3) employees, whichever is greater, under the supervision of the principal or immediate supervisor have previously notified the principal or immediate supervisor of their intention to use that day for such leave. Personal Leave without cause shall not be used in connection with a concerted work stoppage or strike.

Personal Leave without Cause days may not accumulate.

Any employee taking leave in violation of the above stated reasons for granting personal leave shall be subject to disciplinary action up to and including termination.

Eligibility Requirements/Procedures:

All claims for personal leave must be in writing on the form(s) provided by the employer, signed by the employee, and submitted immediately upon return to work and presented to the employee's immediate supervisor for approval.

- A. When personal leave is a result of pregnancy, the employee shall be required to furnish the Superintendent's Office with a written statement by the employee's attending physician indicating the period during which the employee is unable to perform the duties of employment.
- B. A physician's written verification is required to be supplied by the employee to the employee's immediate supervisor after three (3) consecutive days of absence.
- C. The Board reserves the right at any time to have a physician of its choice to examine a personal leave claimant at the Board's expense.
- D. If an employee should use personal leave which the employee has not yet accumulated on a monthly basis and subsequently leave the employment, the employee shall be required to reimburse the Board for the salary or wages paid to him/her for such unaccumulated leave.
- E. If any error in reporting absences should occur, the Board shall have authority to make necessary salary adjustments in the next pay after the employee has returned to duty or in the final pay if the absence should occur during the last month of the employment term.

If an employee qualifies to use personal leave pursuant to the above provisions, the employee shall accrue seniority

during the period of time that the employee is on a Board-approved leave of absence.

If an employee is awarded workers' compensation benefits, such employee shall receive personal leave compensation only to the extent such compensation is required, when added to the workers' compensation benefit, to equal the amount of compensation regularly paid such employee. If personal leave compensation equal to the employee's regular pay is paid prior to the award of the worker's compensation benefit, such amount which, when added to the benefit, is in excess of the employee's regular pay shall be deducted from the employee's subsequent pay. The employee's accrued personal leave days shall be charged only for such days as equal the amount of personal leave compensation required to compensate the employee at the employee's regular rate of pay.

~~Johnson v. Ritchie County Bd. Of Edu., Docket No. 01-43-509, Jan 15, 2002~~
~~WV Code 18-1-1, 18A-2-2a, 18A-4-7b, 18A-4-10, 18A-7-8~~

Leaves of Absence

~~Professional personnel staff~~ Employees shall not be absent from their assigned duties except as authorized by the Superintendent or designated representative. Any such staff member who is willfully absent from duty without leave is subject to disciplinary action, up to and including termination of their contract of the contract of employment.

The immediate supervisor should be advised by the staff member seeking a leave of absence and the request for leave of absence should be made through the Superintendent. The Superintendent shall present the request for leave to the Board prior to the effective date of the leave.

~~Professional staff members~~ Employees on unpaid leave for reasons other than illness may apply to be substitutes within their classification category.

All ~~professional~~ staff should refer to the specific leave of absence policy for specific leave requirements.

Paid leaves of absence include:

- A. personal leave with cause (~~Policy 3431~~);
- B. family medical leave (~~Policy 3430.01~~);
- C. jury duty (~~Policy 3235~~);
- D. court appearance as a witness but not as a defendant in any criminal proceeding (~~Policy 3236~~);
- E. worker's compensation pursuant to WV Code 18-A-4-10 (~~Policy 8442.01~~);
- F. military (~~Policy 3437~~);
- G. personal leave bank days (~~Policy 3432~~);
- H. donated leave days (~~Policy 3432.02~~);
- I. Organ Donation (~~Policy 3430.02~~).

Unpaid leaves of absence include:

- A. personal leave with cause not paid ("dock day");
- B. unpaid FMLA leave (~~Policy 3430.01~~);
- C. parental leave (~~Policy 3430.03~~);
- D. extended leave (~~Policy 3430.04~~);
- E. legislative service (~~Policy 3124.02~~);
- F. military (~~Policy 3437~~).

An employee shall not be required to exhaust his/her accumulated paid leave prior to requesting an unpaid leave of absence. However, under certain circumstances provisions of law that provide for specific leaves of absence may have statutory requirements that must be followed by the County.

Any teacher who is returning from an approved leave of absence that extended for a period of one (1) year or less shall be reemployed by the County Board with the right to be restored to the same assignment or position or duties held prior to the approved leave of absence. Such teacher shall retain all seniority, rights and privileges which had accrued at the time of the approved leave of absence, and shall have all rights and privileges generally accorded teachers at the time of the reemployment. An employee who is on an approved leave of absence shall accrue seniority during the period of time that the employee is on the approved leave of absence.

Any employee who is on a medical leave of absence, approved by his/her employer is entitled to continue his/her insurance coverage until s/he returns to his/her employment. The employee and employer shall continue to pay their proportionate share of premium costs for the coverage under the West Virginia Public Employees Insurance Agency program only for a period of one (1) year, if during the period of the leave of absence, the employee shall, at least once each month, submit to the employer the statement of a qualified physician certifying that the employee is unable to return to work. If the medical leave of absence extends beyond one (1) year, the employee may be required to pay the full cost of coverage for PEIA insurance and insurance coverage provided by the County Board. Any employee who is on a medical leave of absence approved by the employer and is receiving temporary total disability benefits from Workers' Compensation is entitled to continue PEIA coverage until s/he returns to work. The employer and employee must continue to pay their respective proportional shares of the premium cost for as long as the employee receives temporary disability benefits. If an employee, who is not eligible to receive temporary total disability benefits under Workers' Compensation, fails to pay his/her premium, the employer may terminate insurance coverage. If an employee who is eligible to receive such benefits under Workers' Compensation fails to pay his/her premium payment, the Board shall notify such employee that the Board shall continue to make its share of the premium payment while such employee continues to be eligible for temporary total disability benefits but, that the insurance provider may terminate the policy coverage for lack of full premium payment.

An employee may continue insurance coverage while on a personal leave of absence approved by the Board. The monthly payments will be paid according to the policy or agreement established by the Board. An employee may continue insurance coverage during an approved family leave. An employee on an approved military leave with pay shall have his/her benefits continued as long as the employee is on the payroll. An employee who is on an approved military leave of absence without pay, due to an active call of duty from the President, is entitled to continue health and life benefit coverage for as long as premium payments are made. The employee is responsible for paying their employee share of the premium costs for each month during the military leave of absence.

~~The Superintendent shall develop procedures to implement leave provisions.~~

~~WV Code 5-16-24, 15-1F-1, 18A-2-2a, 18A-4-7b, 18A-5-3a~~

Jury Duty

~~Professional personnel~~ Employees shall be required to serve on any jury during the period of his/her contract with the Board of Education unless excused by the judge of the court.

The Board shall pay the difference between that allowed for such jury service and the amount of salary due the person for such period of time.

~~WV Code 18A-5-3~~

Court Appearance

~~Any professional personnel~~ employee who is subpoenaed to appear as a witness but not as a defendant in any criminal proceeding in any court of law may make such appearance without any loss of pay. Absent proof that a child custody proceeding is criminal, an employee who is subpoenaed to testify in the proceeding is not entitled to do so without loss

of pay or personal leave. The Board of Education shall pay to such employee the difference between the witness fee, exclusive of travel allowances, payable for such appearance by the court and the amount of salary due to the person for the time such employee is absent from his/her employment by reason of answering such subpoena.

~~Michael v. Upshuk County Board of Education~~
~~WV Code 18A-5-3^a~~

Professional Meetings

The Board of Education encourages opportunities for professional staff members to develop increased competence, beyond that which they may attain through the performance of their assigned duties through attendance at professional meetings.

For purposes of this policy, a professional meeting shall be defined as any meeting that is related to the activities, duties, or responsibilities of professional staff members as determined by the Superintendent and/or a meeting through which direct value can be derived for the person in attendance for later use in the performance of County Board-assigned duties.

Professional educators serving as mentor teachers, serving on State and County professional staff development councils, serving on school curriculum teams, and serving on professional support teams will be granted professional time, if required for performance of their duties during the instructional day, or extra duty compensation, if required at other times. Necessary expenses actually incurred in attending the meetings will be reimbursed by the Board.

Coverage of ~~professional personnel's~~ an employee's regular duties during release time may be provided through the use of ~~para~~professional aides, substitutes, and other methods to avoid the interruption of instruction or school operations.

~~The Superintendent shall prepare administrative guidelines to implement this policy.~~

~~WV Code 18A-5-4~~

FMLA Leave

Qualifying Reasons for FMLA and Military Family Leave

In accordance with the Family and Medical Leave Act of 1993, as amended, ("FMLA"), eligible staff members may take up to twelve (12) work weeks of job-protected, unpaid leave, or substitute appropriate paid leave if the staff member has earned or accrued it, for the following reasons:

- A. the birth and/or care of a newborn child of the staff member, within one (1) year of the child's birth;
- B. the placement with the staff member of a child for adoption or foster care, within one (1) year of the child's placement;
- C. the staff member is needed to provide physical and/or psychological care for a spouse, child or parent with a serious health condition;
- D. the staff member's own serious health condition makes him/her unable to perform the functions of his/her position; or
- E. any qualifying exigency (as defined in applicable Federal regulations) arising out of the fact that the staff member's spouse, son, daughter, or parent is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces ("Qualifying Exigency Leave"). Covered active duty means duty during deployment with the Armed Forces to a foreign country.

In addition, an eligible staff member who is a spouse, son, daughter, parent or next of kin of a covered service member may take up to a total of twenty-six (26) work weeks of job-protected, unpaid leave, or substitute appropriate paid leave

if the staff member has earned or accrued it, during a "single twelve (12) month period" to provide physical and/or psychological care for the covered service member ("Military Caregiver Leave"). A covered service member is defined as (1) a member of the Armed Forces; (including a member of the National Guard or Reserves), who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (2) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. Serious injury or illness for purposes of Military Caregiver Leave is defined as an injury or illness incurred by a covered service member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the covered service member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the service member medically unfit to perform the duties of his/her office, grade, rank, or rating. In the case of a veteran the injury or illness could have manifested itself before or after the member became a veteran. The "single twelve (12) month period" for leave to care for a covered service member with a serious injury or illness begins the first day the staff member takes leave for this reason and ends twelve (12) months later, regardless of the twelve (12) month period established below for general FMLA leave. During the "single twelve (12) month period", an eligible staff member is limited to a combined total of twenty-six (26) work weeks of unpaid leave for any FMLA-qualifying reason. (Only twelve (12) of the twenty-six (26) work weeks total may be for a FMLA-qualifying reason other than to care for a covered service member.)

Eligible Employees

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. An employee returning from Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) covered service (e.g., National Guard or Reserve) shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service in determining the employee's eligibility for FMLA qualifying leave. All full-time instructional employees are deemed to meet the 1,250 hour requirement. While the twelve (12) months of employment need not be consecutive, employment periods prior to a break in service of seven (7) years or more will not be counted unless the employee's break in service is occasioned by the fulfillment of his/her USERRA-covered service obligation, or a written agreement exists concerning the Board's intention to rehire the staff member after the break in service.

Twelve (12) Month Period

Twelve (12) month period is defined as the twelve (12) month period measured forward from the date the staff member's first FMLA leave begins (i.e. the "leave year" is specific to each individual staff member).

Serious Health Condition

Serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. As utilized in this policy, the term "incapacity" means an inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom. The term "treatment" includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave. (Treatment does not include routine physical examinations, eye examinations, or dental examinations.)

- A. Inpatient care means an overnight stay in a hospital, hospice, or residential medical-care facility, including any period of incapacity or subsequent treatment in connection with such inpatient care.
- B. Continuing treatment by a health care provider, includes any one or more of the following: 1) "incapacity and treatment"; 2) any incapacity related to pregnancy, or for prenatal care; 3) chronic conditions; 4) permanent or long-term conditions; and 5) conditions requiring multiple treatments, any period of incapacity due to a "chronic serious health condition";
1. "Incapacity and treatment" involves a period of incapacity 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 a.) treatment two (2) or more times, within thirty (30) days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of healthcare services (e.g. physical therapist) under orders of, or on referral by, a health care provider, or b.) treatment by a health care provider on at least one (1) occasion that results in a regimen of continuing treatment under the supervision of the health care provider.
 - a. Treatment by a health care provider as referenced above involves an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven (7) days of the first day of incapacity. The health care provider is responsible for determining whether additional treatment visits or a regimen of continuing treatment is necessary within the thirty (30) day period.
 - b. Regimen of continuing treatment includes a course of prescription medication (e.g. antibiotics), or therapy requiring special equipment to resolve or alleviate the health condition (e.g. oxygen).
 2. An expectant mother is entitled to FMLA 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 (3) consecutive calendar days. For example, a pregnant employee may be unable to report to work because of severe morning sickness.
 3. A "chronic serious health condition" is one that: a.) requires periodic visits (i.e. at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider; b.) continues over an extended period of time (including recurring episodes of a single underlying condition); and c.) may cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.). A visit to a health care provider is not necessary for each absence, and each absence need not last more than three (3) consecutive, full calendar days.
 4. The term "permanent or long-term conditions," signifies a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
 5. The term "conditions requiring multiple treatments" means any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for: 1) restorative surgery after an accident or other injury; or 2) a condition that would likely result in a period of incapacity of more than three (3) consecutive full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy) or kidney disease (dialysis).
- C. Conditions for which cosmetic treatment are administered (e.g. most treatments for acne or plastic surgery) 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 the definition of a serious health condition and do not qualify for FMLA leave.

Intermittent and Reduced Schedule Leave

The Superintendent may allow a staff member to take FMLA leave intermittently (i.e. leave in separate blocks of time for a single qualifying reason) or on a reduced schedule leave (i.e. reducing the employee's usual weekly or daily work

schedule) for reason (A) or (B) on page one. A staff member is entitled to take FMLA leave on an intermittent or reduced schedule leave when medically necessary as indicated in reasons (C) and (D) on page one. A staff member may also take FMLA leave on an intermittent or reduced schedule leave for Qualifying Exigency Leave (i.e. reason (E) on page one). Finally, Military Caregiver Leave may be taken on an intermittent or reduced schedule leave when medically necessary. Regardless, the taking of FMLA leave intermittently or on a reduced schedule leave results in the total reduction of the twelve (12) or twenty-six (26) weeks only by the amount of leave actually taken. If the intermittent or reduced schedule leave is foreseeable based on planned medical treatment for the employee, a family member or a covered service member, the Superintendent may require the staff member to transfer temporarily, during the period the intermittent or reduced schedule leave is required, to an available alternative position for which the staff member is qualified and which better accommodates recurring periods of leave than the staff member's regular position. The alternative position shall have equivalent pay and benefits but not necessarily equivalent duties. The Superintendent may also transfer the staff member to a part-time job with the same hourly rate of pay and benefits, provided the staff member is not required to take more leave than is medically necessary. Instructional staff members (i.e. individuals whose principal function is to teach and instruct students in a class, a small group, or an individual setting) who request intermittent leave or a reduced schedule leave because of reasons (C) or (D) on page one or pursuant to Military Caregiver Leave and the leave would exceed twenty percent (20%) of the total number of working days over the period of anticipated leave must elect either to:

- A. take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
- B. transfer temporarily to an available alternative position offered by the Superintendent for which the instructional staff member is qualified, and that has equivalent pay and benefits and that better accommodates the recurring periods of leave than the staff member's regular position.

When leave is needed for planned medical treatment, the staff member must make a reasonable effort to schedule the treatment so as not to unduly disrupt the County's operations, subject to the approval of the health care provider.

If the Superintendent agrees to permit FMLA leave intermittently or on a reduced schedule leave for reason (A) or (B) on page one, the Board may also require the staff member to transfer temporarily, during the period the intermittent or reduced schedule leave is required, to an available alternative position for which the staff member is qualified and which better accommodates recurring periods of leave than does the staff member's regular position.

Leave Near the Conclusion of An Academic Term

The Superintendent shall notify staff, employed principally in an instructional capacity, who are eligible for FMLA leave, of the rules that apply with respect to periods of leave near the conclusion of an academic term.

Staff Member Notice Requirements (forms available at the U.S. Department of Labor Website: www.dol.gov)

Staff members seeking to use FMLA leave (including Military Caregiver Leave) are required to provide thirty (30) days advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than thirty (30) days in advance, the staff member must provide notice as soon as practicable - generally, within one (1) or two (2) business days. When the need for leave is not foreseeable, the staff member must provide notice as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, staff members must comply with the Board's usual and customary notice and procedural requirements for requesting leave. Failure to provide timely notice may result in the leave being delayed or denied, and/or possible disciplinary action.

Staff members must provide "sufficient information" for the Superintendent to determine whether the FMLA may apply

to the leave request. Depending on the situation, such information may include that the employee is incapacitated due to pregnancy, has been hospitalized overnight, is unable to perform the functions of the job, that the staff member or his/her qualifying family member is under the continuing care of a health care provider, that the requested leave is for a particular qualifying exigency related to a qualifying family member's covered active duty or call to covered active duty status, or that the leave due to a qualifying family member who is a covered service member with a serious injury or illness. The information may also include the anticipated timing and duration of the leave.

When a staff member seeks leave for a FMLA-qualifying reason for the first time, the staff member need not expressly assert FMLA rights or even mention the FMLA. When an employee seeks leave, however, due to a FMLA-qualifying reason for which the County has previously provided the staff member FMLA-protected leave, the staff member must specifically reference either the qualifying reason for leave or the need for FMLA leave.

Substitution of Paid Leave

The staff member may request to "substitute" (i.e. run concurrently) any of his/her earned or accrued paid leave (e.g. sick leave, personal leave, vacation leave, compensatory time) for unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the County's normal leave policy. A staff member electing to use any type of paid leave concurrently with FMLA leave must follow the same terms and conditions of the Board's policy that apply to other employees for use of such leave. Assuming the staff member satisfies FMLA eligibility requirements and has not exhausted his/her FMLA leave entitlement, the staff member is always entitled to unpaid FMLA leave if s/he does not meet the Board's conditions for taking paid leave. On occasion the Board may waive any procedural requirements for the taking of any type of paid leave.

If a staff member requests and is permitted to use accrued compensatory time to receive pay for time taken off for an FMLA reason, or if the Superintendent requires such use pursuant to the Fair Labor Standards Act, the time taken will be counted against the staff member's FMLA leave entitlement.

If the staff member has not earned or accrued adequate paid leave to encompass the entire twelve (12) work week period of FMLA leave or a twenty-six (26) work week period of Military Caregiver Leave, the additional weeks of leave to obtain the twelve (12) work weeks of FMLA leave, or twenty-six (26) work weeks of Military Caregiver Leave to which the staff member is entitled shall be unpaid. Whenever a staff member uses paid leave in substitution for unpaid FMLA leave/Military Caregiver Leave, such leave will run concurrently with the unpaid FMLA leave and will count towards the twelve (12) work week/twenty-six (26) work week maximum leave allowance provided by this policy and Federal law.

Seniority

An employee, who is granted leave under this policy, shall accrue seniority during the period of time that the employee is on this board-approved leave of absence.

County Notice Requirements (forms available at the U.S. Department of Labor Website: www.dol.gov)

The Superintendent is directed to post the Department of Labor approved Notice explaining employees' rights and responsibilities under the FMLA. Additionally, this general notice shall be included in employee handbooks or other written guidance to staff members concerning benefits or leave rights or, in the alternative, distributed to each new staff member upon hiring.

When a staff member requests FMLA leave or the County acquires knowledge that leave may be for a FMLA purpose, the Superintendent shall notify the staff member of his/her eligibility to take leave, and inform the staff member of his/her rights and responsibilities under the FMLA (including the consequences of failing to meet those obligations).

Along with the Notice of Rights and Responsibilities, the Superintendent will attach any medical certification that may be required, and a copy of the employee's essential job functions. If the Superintendent determines the staff member is not eligible for FMLA leave, the Superintendent must state at least one (1) reason why the staff member is not eligible. Such notice may be given orally or in writing and should be given within five (5) business days of the request for FMLA leave, absent extenuating circumstances. When oral notice is given, it must be followed by written notice within five (5) business days. Staff member eligibility is determined (and notice provided) at the commencement of the first instance of leave for each FMLA-qualifying reason in the applicable twelve (12) month period. All FMLA absences for the same qualifying reason are considered a single leave and staff member eligibility as to that reason for leave does not change during the applicable twelve (12) month period. If at the time a staff member provides notice of a subsequent need for FMLA leave during the applicable twelve (12) month period due to a different FMLA-qualifying reason and the staff member's eligibility status has not changed, no additional eligibility notice is required. If, however, the staff member's eligibility status has changed, the Superintendent must notify the staff member of the change in eligibility status within five (5) business days, absent extenuating circumstances.

If the specific information provided by the Notice of Rights and Responsibilities changes, the Superintendent shall, within five (5) business days of receipt of the staff member's first notice of need for leave subsequent to any changes, provide written notice referencing the prior notice and setting forth any of the information in the Notice of Rights and Responsibilities that has changed.

When the Superintendent has sufficient information to determine that leave is being taken for a FMLA-qualifying reason (e.g. after receiving certification), the Superintendent shall notify the staff member whether the leave will be designated and counted as FMLA leave. Leave that qualifies as both Military Caregiver Leave and leave to care for a qualifying family member with a serious health condition (i.e. reason (C)) must be considered as Military Caregiver Leave in the first instance. This designation must be in writing and must be given within five (5) business days of the determination, absent extenuating circumstances. Additionally, when appropriate, the Superintendent shall notify the staff member of the number of hours, days and weeks that will be counted against the employee's FMLA entitlement, and whether the employee will be required to provide a fitness-for-duty certification to return to work.

Only one Designation Notice is required for each FMLA-qualifying reason per applicable twelve (12) month period, regardless of whether the leave taken due to the qualifying reason will be a continuous block of leave or as intermittent or on a reduced schedule leave. If the Superintendent determines the leave will not be designated as FMLA-qualifying (e.g. if the leave is not for a reason covered by the FMLA or the staff member's FMLA leave entitlement has been exhausted), the Superintendent shall notify the staff member of that determination. If the staff member is required to substitute paid leave for unpaid FMLA leave, or if paid leave taken under an existing leave plan is being counted as FMLA leave, the "Designation Notice" shall include this information. Additionally, the "Designation Notice" shall notify the staff member if s/he is required to present a fitness-for-duty certification to be restored to employment. Further, if the fitness-for-duty certification is required to address the staff member's ability to perform the essential functions of his/her job, that will be indicated on the Designation Notice, and a list of the essential functions of the staff member's position will be included.

If the information provided to the staff member in the Designation Notice changes, the Superintendent shall provide, within five (5) business days of receipt of the staff member's first notice of need for leave subsequent to any change, written notice of the change.

In the case of intermittent or reduced-leave schedule leave, only one such notice is required unless the circumstances regarding the leave have changed.

Limits on FMLA When Both Spouses are Employed by the Board

When eligible spouses are both employed by the Board, they are limited to a combined total of twelve (12) workweeks of FMLA leave during any twelve (12) month period if the leave is taken for reason (A) or (B) on page one, or to care for the staff member's parent who has a serious health condition.

Where eligible spouses both use a portion of the total twelve (12) week FMLA leave entitlement for reason (A) or (B) on page one, or to care for a parent, the spouses are each entitled to the difference between the amount s/he has taken individually and the twelve (12) weeks of FMLA leave for other purposes.

When eligible spouses are both employed by the Board, they are limited to a combined total of twenty-six (26) workweeks of Military Caregiver Leave during the "single twelve (12) month period" if the leave is taken for reason (A) or (B) on page one, or to care for the staff member's parent who has a serious health condition, or to care for a covered service member with a serious injury or illness.

Certification

When FMLA leave is taken for either reason (C) or (D) on page one, the staff member must provide medical certification from the health care provider of the eligible staff member or his/her immediate family member. The staff member may either:

- A. submit the completed medical certification to the Superintendent; or
- B. direct the health care provider to transfer the completed medical certification directly to the Superintendent, which will generally require the staff member to furnish the health care provider with a HIPAA-compliant authorization.

If the staff member fails to provide appropriate medical certification, any leave taken by the employee shall not constitute FMLA leave.

When the need for FMLA 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 FMLA 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 require second or third opinions (at the Board's expense), and periodic recertification of a serious health condition. If a third opinion is sought, that opinion shall be binding and final. The staff member may either:

- A. submit the opinion of the second health care provider, and the opinion of the third health care provider if applicable, to the Superintendent;
- B. direct the second or third health care provider to transfer his/her opinion directly to the Superintendent, which will generally require the staff member to furnish the health care provider with a HIPAA-compliant authorization.

In the event that the staff member fails to provide the medical opinion of the second or third health care provider, if applicable, any leave taken by the staff member shall not constitute FMLA leave.

Recertification

Recertification may be required no more often than every thirty (30) days in connection with an absence by the staff member unless the condition will last for more than thirty (30) days. For conditions that are certified as having a minimum duration of more than thirty (30) days, the County will not request recertification until the specified period has passed, except that in all cases the staff member must submit recertification every six (6) months in connection with an absence by the employee. Additionally, the Superintendent may require a staff member to provide recertification in less than thirty (30) days if the staff member requests an extension of leave, the circumstances described in the previous certification have changed significantly, or if the County receives information that casts doubt upon the staff member's stated reason for the absence or the continuing validity of the certification. Finally, staff members must provide a new medical certification each leave year for medical conditions that last longer than one (1) year.

Staff members requesting Qualifying Exigency Leave are required to submit to the Superintendent a copy of the covered military member's active duty orders and certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought, including contact information if the leave involves meeting with a third party.

Staff members requesting Military Caregiver Leave are required to submit to the Superintendent certification completed by an authorized health care provider or a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member's family.

The Board authorizes its health care provider and/or human resource professional to authenticate or clarify a medical certification of a serious health condition, or an ITO or ITA (i.e. medical certification provided for reasons (C) or (D) on page one or Military Caregiver Leave). Additionally, the Superintendent is authorized to contact the individual or entity named in the Qualified Exigency Leave certification for purposes of verifying the existence and nature of the meeting.

A staff member who takes leave for reason (D) on page one, prior to returning to work, must provide the Superintendent with a fitness-for-duty certification that specifically addresses the staff member's ability to perform the essential functions of his/her job. The fitness-for-duty certification shall only apply to the particular health condition that caused the staff member's need for FMLA leave. If reasonable safety concerns exist, the Superintendent may, under certain circumstances, require a staff member to submit a fitness-for-duty certification before s/he returns to work from intermittent FMLA leave. The cost of the certification shall be borne by the staff member.

Job Restoration & Maintenance of Health Benefits

Upon return from FMLA leave, the Board shall restore the staff member to his/her former position, or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment, but no greater right to restoration or to other benefits and conditions of employment than if the employee had been continuously employed. 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.

Any leave or return from leave during the last five (5) weeks of an academic term shall be reviewed individually by the Superintendent to minimize disruption to the students' program.

The staff member shall not accrue any sick leave, vacation, or other benefits during a period of unpaid FMLA leave.

The use of FMLA leave shall not result in the loss of any employment benefit that the staff member earned or was entitled to before using FMLA leave. If a bonus or other payment, however, is based on the achievement of a specified

goal such as hours worked or perfect attendance, and the employee does not meet the goal due to FMLA leave, payment shall be denied unless it is paid to an employee on equivalent leave status for a reason that does not qualify as FMLA leave.

A staff member shall have no greater right to restoration or to other benefits and conditions of employment than if the employee had been continuously employed.

If the staff member fails to return to work at the end of the leave for reasons other than the continuation, recurrence, or onset of a serious health condition that entitles the staff member to leave pursuant to reasons (C) or (D) on page one or Military Caregiver Leave, or for circumstances beyond the control of the staff member, the staff member shall reimburse the Board for the health insurance premiums paid by the Board during the unpaid FMLA leave period.

Generally, a staff member may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave.

A staff member who fraudulently obtains FMLA leave is not protected by this policy's job restoration or maintenance of health benefits provisions.

~~The Superintendent shall prepare any guidelines that are appropriate for this policy and verify that the policy is posted properly.~~

~~Copies of this policy shall be available to staff members upon request.~~

~~29 U.S.C. 2601 et seq. (as amended)~~

~~29 C.F.R. Part 825~~

~~45 C.F.R. Part 160, 164~~

Leave Time for Organ Donation

A full-time employee shall receive up to 120 hours of leave with pay during each calendar year to use during those hours when the employee is absent from work because of the employee's donation of any portion of an adult liver or because of the employee's donation of an adult kidney.

A full-time employee shall receive up to fifty-six (56) hours of leave with pay during each calendar year to use during those hours when the employee is absent from work because of the employee's donation of adult bone marrow.

A full-time employee who uses leave granted under this policy shall be compensated at the employee's regular rate of pay for those regular work hours during which the employee is absent from work. Further, an employee, who is granted leave under this policy, shall accrue seniority during the period of time that the employee is on this board-approved leave of absence.

~~The Director of Personnel shall provide information about this policy to full-time employees.~~

~~WV Code 29-6-28~~

Parental Leave Act

The Parental Leave Act (West Virginia Code 21-5D-1, et seq.) requires that the Board allow at least up to twelve (12) weeks of unpaid leave in any twelve (12) month period, following the exhaustion of all annual and personal leave, for eligible employees who must miss work because of one of the following circumstances:

- A. because of the birth of a son or daughter of the employee
- B. because of the placement of a son or daughter with the employee for adoption
- C. in order to care for the employee's son or daughter, spouse, parent or dependent who has a serious health condition

The Board shall consider employees to be entitled to parental leave in accordance with the definitions, criteria and notice procedure set forth in the Parental Leave Act. No policy, procedure or action by the Board shall constitute a waiver of the requirements of the Parental Leave Act. The following explanation of the Parental Leave Act is provided for general information only. Any specific questions or requests for parental leave should be directed to the Director of Personnel.

Employee Eligibility

The Board shall consider employees to be eligible for Parental Leave in accordance with the criteria set forth in the Parental Leave Act. The eligibility criteria are generally described as follows: A full-time employee who has worked at least twelve (12) consecutive weeks for the Board. The Superintendent shall not be considered an employee for the purpose of this policy.

Serious Health Condition

The Parental Leave Act defines a serious health condition as a physical or mental illness, injury or impairment that involves one of the following situations:

- A. inpatient care in a hospital, hospice or residential health care facility, or
- B. continuing treatment, health care or continuing supervision by a health care provider

Leave Request Process

A. Employee Designated Leave:

If a leave because of birth or adoption is foreseeable, the employee shall provide two weeks' written notice of such expected birth or adoption. If a leave under this section is foreseeable because of planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the Board, subject to the approval of the health care provider of the employee's son, daughter, parent or dependent; and the employee must provide his/her supervisor with written notice two weeks prior to the expected birth or adoption; or for the medical treatment; or for the supervision of a dependent. Failure to submit a timely written request may be cause for denial.

B. Leave Period:

The Board shall use the twelve (12) month period measured forward from the date the staff member's first FMLA leave begins (i.e. the "leave year" is specific to each individual staff member) to calculate how much Parental Leave Act leave is available or remaining.

C. Part-time Leave:

An employee may take family leave on a part-time basis and on a part-time leave schedule, but the period during which the number of work weeks of leave may be taken may not exceed twelve (12) consecutive months, and such leave shall be scheduled so as not to disrupt unduly the operations of the Board.

Seniority

An employee, who is granted leave under this policy, shall accrue seniority during the period of time that the employee is on this board-approved leave of absence.

Physician Certification

If an employee requests family leave to care for a family member with a serious health condition, the Board may require the employee to provide certification by a health care provider of the health condition. The certification shall be sufficient if it contains the following:

- A. that the child, dependent, parent or employee has a serious health condition
- B. the date the serious health condition commenced and its probable duration, and
- C. the medical facts regarding the serious health condition

Health Insurance

During any family leave by an employee, the Board shall continue group health insurance coverage for such employee: provided, that the employee shall pay the employer the premium costs of such group health insurance coverage.

Employee's Right to Restoration of Position Held

An employee, who timely returns from an approved leave under this policy, shall be assigned to the same position or duties and benefits held prior to the approved leave.

Confidentiality of Medical Information

As with all other medical information, parental leave information will be maintained in a confidential medical file.

Failure to Return to Work at Completion of Leave

Under certain circumstances, if an employee fails, without good reason, to return to work at the conclusion of the leave granted under the Parental Leave Act, the Board may be entitled to recover its cost of the health care premium directly from the employee. In addition, an employee who fails to return to work at the conclusion of leave taken under the Parental Leave Act may be subject to disciplinary action, up to and including termination of employment.

Disciplinary Action

The Parental Leave Act was enacted to allow employees the ability to balance work and family life without losing their jobs. The Board strongly supports the purpose of this law. It is important; however, that employees do not take leave for purposes other than that which the Parental Leave Act designates. An employee providing false or misleading information in his/her request for leave under the Parental Leave Act will be subject to disciplinary action, up to and including termination.

~~W.V. Code 18A-2-2a, 18A-4-7b, 21-5D-1, et seq.~~

Extended Leave

West Virginia Code 18A-2-2a provides for extended leave without pay for pregnancy, childbirth or adoptive or infant bonding. Such leave may be requested for periods up to one (1) year. An employee shall not be required, but may use accumulated paid leave, prior to taking an extended leave. The Board shall consider employees to be entitled to extended leave in accordance with the definitions, criteria and notice procedure set forth in WV Code 18A-2-2a. An employee whose leave of absence has been approved by the Board shall continue to accrue seniority during the period of time that the employee is on the approved leave of absence. No policy, procedure or action by the Board shall constitute a waiver of the requirements of WV Code 18A-2-2a. The explanation of extended leave is provided for general information only. Any specific questions or requests for parental leave should be directed to the ~~Director of Personnel~~ Superintendent.

Dock Days

A "dock day" is a work day on which an employee does not report to work and for which the employee: a) has no remaining paid leave to cover, or b) has requested that he/she not be paid and his/her accrued paid leave not be debited for that missed day.

Employees shall not be absent from their assigned duties beyond their accrued paid leave days except as specifically authorized by the Superintendent or his/her designated representative.

No employee shall be permitted to exercise a dock day unless he/she has first submitted a prior written request to exercise a dock day. Such prior written requests shall be addressed to the Superintendent.

The Superintendent may approve up to a maximum of five dock days total per employee per school year for vacation purposes, educational trips or any other reasonable cause approved by the Superintendent which is not otherwise covered by this policy.

In the event that an employee with no paid leave days remaining must report off using a dock day due to an emergency and pre-approval is not possible, the employee may report off and then follow-up with the Superintendent as soon as possible but in any case no later than 48 hours after returning to work.

"Follow-up", for the purposes of this paragraph, shall mean presenting to the Superintendent the facts and circumstances of the emergency and the reasons the employee was unable to secure pre-approval. An employee's failure to follow-up within 48 hours of the employee's return to work shall be treated as insubordination under W. Va. Code §18A-2-8. "Emergency", for the purposes of this paragraph, shall mean a situation that poses an immediate risk to health, life, property or environment. Most emergencies require urgent intervention to prevent worsening of the situation.

Violations of this policy shall constitute insubordination within the meaning of W. Va. Code §18A-2-8. Employees violating this policy are subject to disciplinary action up to and including unpaid suspension and/or termination of employment.

Personal Leave Donation Program

Employees (donor employees) are authorized to transfer accrued personal leave days to designated employees (recipient employees) under the following conditions:

- A. A donor employee may transfer an unlimited number of accrued personal leave days to a spouse.
- B. A donor employee may transfer up to one (1) day of accumulated personal leave days per year to a recipient employee who is not the spouse of the donor employee.
- C. All decisions to transfer accrued personal leave must be voluntary.
- D. A donor employee must designate the recipient employee.
- E. The recipient employee must be currently experiencing a "catastrophic medical emergency" (medical condition that incapacitates an employee or a member of the employee's immediate family for whom the employee will provide care, which medical condition is likely to require the prolonged absence of the employee from duty, and which will result in a substantial loss of income to the employee because the employee has exhausted all accrued personnel leave, including leave awarded by a leave bank, or who has exhausted all accrued personal leave and who is ineligible for an award of additional leave from a leave bank). The Superintendent, or the Superintendent's designee, shall be the sole judge upon the question of whether an employee is experiencing a "catastrophic medical emergency."

- F. The recipient employee must require additional personal leave as a result of a catastrophic medical emergency.
- G. Donated leave may not be used to qualify for or add to service for any retirement system administered by the State or to extend health insurance coverage provided by PEIA.
- H. Donated leave shall be deducted from a donor employee's accrued personal leave, but shall not be deducted from personal leave available for use without cause if sufficient general personal leave days are available for donation.
- I. Donated leave transferred to a recipient employee shall be credited on a day for day basis without regard to the hourly wage value of the leave.
- J. Donated leave transferred to a recipient employee that is unused following the end of a catastrophic medical emergency (the end of a catastrophic medical emergency may be occasioned by the death of a recipient employee) shall be returned to the donor employee. The Superintendent, or the Superintendent's designee, shall be the sole judge upon the question of whether a catastrophic medical emergency has ended. In the event the donor employee is no longer employed upon a determination that a catastrophic medical emergency has ended, any unused donated leave shall be deducted from the recipient employee's accumulated personal leave.
- K. An employee may not be coerced or compelled to contribute accumulated personal leave under the terms of this program.
- L. A recipient employee is not eligible to receive donations of personal leave from other donor employee until the exhaustion of all donated personal leave.
- M. A request to donate leave under this program must be submitted by completion of a form published for this purpose.

~~WV Code 18A-4-10f~~

Vacation

All full time, 261 day employees shall be eligible for vacation.

Vacation shall accrue at the following rates:

LENGTH OF SERVICE IN ROANE CO	VACATION ACCRUAL	ANNUAL
0 through 2 years	1.25 (1¼ days vacation per month of service)	15.0 days
3 through 5 years	1.5 (1½ days vacation per month of service)	18.0 days
6 years and over	1.75 (1¾ days vacation per month of service)	21.0 days

Vacation may be taken in no less than one-half (½) day segments.

An employee may accumulate unused vacation but may not carry more than seventy-nine (79) days over to each new fiscal year.

The schedule for all vacation must be approved in advance by the employee's immediate supervisor. It shall be the responsibility of the supervisor to maintain an adequate workforce.

Upon termination of employment, accumulated vacation may be used to receive a lump sum payment based upon the employee's daily rate of pay for, up to a maximum of seventy-nine (79) days.

Military Leave

An ~~professional personnel~~ employee who is a member of the national guard or armed forces reserves, shall be entitled to a military leave of absence from the Board without loss of pay, status or efficiency rating, on the days during which they are ordered, by properly designated authority, to be engaged in drills, inactive duty training, parades, funeral details, service schools or other duty, field training or duty pursuant to Federal law, or active service of the State for a maximum period of thirty (30) working days, not to exceed 240 hours in any one calendar year.

An ~~professional personnel~~ employee ordered or called to active duty for a mobilization or deployment pursuant to Federal law or in support of a contingency operation, as defined by Federal law, shall be entitled to military leave of absence from the Board without loss of pay, status or efficiency rating for a maximum period of thirty (30) working days, not to exceed 240 hours for a single call to active duty. If the employee called to active duty has not used all or some portion of the thirty (30) working days of military leave of absence granted by the first paragraph of this policy, the employee shall be entitled to add the number of unused days from that calendar year to the thirty (30) working days, not to exceed 240 hours granted by this paragraph, up to a maximum of sixty (60) days for a single call to active duty. However, none of the unused days of military leave of absence granted by the first paragraph may be carried over and used in the next calendar year.

The term "without loss of pay" means that the employee shall continue to receive his/her normal salary or compensation, notwithstanding the fact that the employee may have received other compensation from Federal or State sources during the same period.

An employee who has been granted a military leave of absence shall accrue seniority during the period of time that the employee is on the approved leave of absence.

~~WV Code 15-1F-1, 18A-4-7b~~

Personal Leave

~~At the beginning of the employment term, any full-time employee of the Board of Education shall be entitled annually to at least one and one-half days (1 1/2) personal leave for each employment month or major fraction thereof in the employee's employment term. Unused leave shall be accumulative without limitation and shall be within the State. A change in job assignment during the school year shall in no way affect the employee's rights or benefits.~~

Definitions:

~~G. Employment month: twenty (20) employment days.~~

~~H. Full-Time Employee: Any person employed by the Board who has a regular position or job throughout his/her employment term, also known as a Regular Full Time Employee, working more than three and one-half (3 1/2) hours per day.~~

~~I. Immediate Family:~~

~~13. spouse~~

~~14. sibling~~

~~15. children~~

~~16. parent~~

~~17. grandchild~~

~~18. grandparent~~

~~19. son-in-law~~

~~20. daughter-in-law~~

~~21. brother-in-law~~

~~22. sister-in-law~~

~~23. legal guardian~~

~~24. persons listed above of the same relationship to spouse~~

~~J. Life Threatening Illness: A physical or mental illness, injury or impairment which involves inpatient care in a hospital, hospice or residential health care facility.~~

~~K. Personal Leave with Cause: An absence due to an accident, sickness, death in the immediate family, or life threatening illness of the employee's spouse, parents, or child, or other cause authorized or approved by the Board.~~

~~L. Personal Leave without Cause: An absence taken without regard to the reason.~~

~~Personal Use Utilization:~~

~~An employee shall qualify to use personal leave and be paid the full salary from his/her regular budgeted salary appropriation during the period which the employee is absent, as follows:~~

~~C. Personal Leave with Cause:~~

- ~~5. Personal injury due to an accident.~~
- ~~6. Personal sickness.~~
- ~~7. Death in the immediate family, limited to a period of three (3) working days or five (5) work days if the funeral is held a significant distance from employee's residence.~~
- ~~8. Life threatening illness of the employee's spouse, parents, or child.~~

~~D. Personal Leave without Cause:~~

~~All regular full time employees shall be permitted to take up to three (3) days of their personal leave days annually, without regard to the cause for the absence, except that personal leave without cause may not be taken on consecutive work days unless authorized or approved by the employee's principal or immediate supervisor. Notice of such leave day shall be given to the employee's principal or immediate supervisor at least twenty-four (24) hours in advance, except that in the case of sudden and unexpected circumstances, such notice shall be given as soon as reasonably practicable. The use of such day may be denied if, at the time notice is given, either fifteen percent (15%) of the employees or three (3) employees, whichever is greater, under the supervision of the principal or immediate supervisor have previously notified the principal or immediate supervisor of their intention to use that day for such leave. Personal Leave without cause shall not be used in connection with a concerted work stoppage or strike.~~

~~Personal Leave without Cause days may not accumulate.~~

~~Any employee taking leave in violation of the above stated reasons for granting personal leave shall be subject to disciplinary action up to and including termination.~~

~~Eligibility Requirements/Procedures:~~

~~All claims for personal leave must be in writing on the form(s) provided by the employer, signed by the employee, and submitted immediately upon return to work and presented to the employee's immediate supervisor for approval.~~

- ~~F. When personal leave is a result of pregnancy, the employee shall be required to furnish the Superintendent's Office with a written statement by the employee's attending physician indicating the period during which the employee is unable to perform the duties of employment.~~
- ~~G. A physician's written verification is required to be supplied by the employee to the employee's immediate supervisor after three (3) consecutive days of absence.~~
- ~~H. The Board reserves the right at any time to have a physician of its choice to examine a personal leave claimant at the Board's expense.~~
- ~~I. If an employee should use personal leave which the employee has not yet accumulated on a monthly basis and subsequently leave the employment, the employee shall be required to reimburse the Board for the salary or wages paid to him/her for such unaccumulated leave.~~
- ~~J. If any error in reporting absences should occur, the Board shall have authority to make necessary salary adjustments in the next pay after the employee has returned to duty or in the final pay if the absence should occur during the last month of the employment term.~~

~~If an employee qualifies to use personal leave pursuant to the above provisions, the employee shall accrue seniority during the period of time that the employee is on a Board approved leave of absence.~~

~~If an employee is awarded workers' compensation benefits, such employee shall receive personal leave compensation only to the extent such compensation is required, when added to the workers' compensation benefit, to equal the~~

amount of compensation regularly paid such employee. If personal leave compensation equal to the employee's regular pay is paid prior to the award of the worker's compensation benefit, such amount which, when added to the benefit, is in excess of the employee's regular pay shall be deducted from the employee's subsequent pay. The employee's accrued personal leave days shall be charged only for such days as equal the amount of personal leave compensation required to compensate the employee at the employee's regular rate of pay.

Johnson v. Ritchie County Bd. Of Edu., Docket No. 01-43-509, Jan 15, 2002

WV Code 18-1-1, 18A-2-2a, 18A-4-7b, 18A-4-10, 18A-7-8

Jury Duty

Service personnel employees shall be required to serve on any jury during the period of his/her contract with the Board of Education unless excused by the judge of the court.

The Board shall pay the difference between that allowed for such jury service and the amount of salary due the person for such period of time.

WV Code 18A-5-3

Court Appearance

Any service personnel employee who is subpoenaed to appear as a witness but not as a defendant in any criminal proceeding in any court of law may make such appearance without any loss of pay. Absent proof that a child custody proceeding is criminal, an employee who is subpoenaed to testify in the proceeding is not entitled to do so without loss of pay or personal leave. The Board of Education shall pay to such employee the difference between the witness fee, exclusive of travel allowances, payable for such appearance by the court and the amount of salary due to the person for the time such employee is absent from his/her employment by reason of answering such subpoena.

Michael v. Upshuk County Board of Education

WV Code 18A-5-3^a

Leaves of Absence

Service personnel staff shall not be absent from their assigned duties except as authorized by the Superintendent or designated representative. Any such staff member who is willfully absent from duty without leave is subject to disciplinary action, up to and including termination of their contract of the contract of employment.

The immediate supervisor should be advised by the staff member seeking a leave of absence and the request for leave of absence should be made through the Superintendent. The Superintendent shall present the request for leave to the Board prior to the effective date of the leave.

Service staff members on unpaid leave for reasons other than illness may apply to be substitutes within their classification category.

All service personnel staff should refer to the specific leave of absence policy for specific leave requirements.

Paid leaves of absence include:

- J. personal leave with cause (Policy 3431);
- K. family medical leave (Policy 3430.01);
- L. jury duty (Policy 3235);
- M. court appearance as a witness but not as a defendant in any criminal proceeding (Policy 3236)
- N. worker's compensation pursuant to WV Code 18-A-4-10 (Policy 8442.01);
- O. military (Policy 3437);

- P. ~~personal leave bank days (Policy 3432);~~
- Q. ~~donated leave days (Policy 3432.02);~~
- R. ~~Organ Donation (Policy 3430.02).~~

Unpaid leaves of absence include:

- G. ~~personal leave with cause not paid (“dock day”);~~
- H. ~~unpaid FMLA leave (Policy 3430.01);~~
- I. ~~parental leave (Policy 3430.03);~~
- J. ~~extended leave (Policy 3430.04);~~
- K. ~~legislative service (Policy 3124.02);~~
- L. ~~military (Policy 3437).~~

~~An employee shall not be required to exhaust his/her accumulated paid leave prior to requesting an unpaid leave of absence. However, under certain circumstances provisions of law that provide for specific leaves of absence may have statutory requirements that must be followed by the County.~~

~~Any teacher who is returning from an approved leave of absence that extended for a period of one (1) year or less shall be reemployed by the County Board with the right to be restored to the same assignment or position or duties held prior to the approved leave of absence. Such teacher shall retain all seniority, rights and privileges which had accrued at the time of the approved leave of absence, and shall have all rights and privileges generally accorded teachers at the time of the reemployment. An employee who is on an approved leave of absence shall accrue seniority during the period of time that the employee is on the approved leave of absence.~~

~~Any employee who is on a medical leave of absence, approved by his/her employer is entitled to continue his/her insurance coverage until s/he returns to his/her employment. The employee and employer shall continue to pay their proportionate share of premium costs for the coverage under the West Virginia Public Employees Insurance Agency program only for a period of one (1) year, if during the period of the leave of absence, the employee shall, at least once each month, submit to the employer the statement of a qualified physician certifying that the employee is unable to return to work. If the medical leave of absence extends beyond one (1) year, the employee may be required to pay the full cost of coverage for PEIA insurance and insurance coverage provided by the County Board. Any employee who is on a medical leave of absence approved by the employer and is receiving temporary total disability benefits from Workers’ Compensation is entitled to continue PEIA coverage until s/he returns to work. The employer and employee must continue to pay their respective proportional shares of the premium cost for as long as the employee receives temporary disability benefits. If an employee, who is not eligible to receive temporary total disability benefits under Workers’ Compensation, fails to pay his/her premium, the employer may terminate insurance coverage. If an employee who is eligible to receive such benefits under Workers’ Compensation fails to pay his/her premium payment, the Board shall notify such employee that the Board shall continue to make its share of the premium payment while such employee continues to be eligible for temporary total disability benefits but, that the insurance provider may terminate the policy coverage for lack of full premium payment.~~

~~An employee may continue insurance coverage while on a personal leave of absence approved by the Board. The monthly payments will be paid according to the policy or agreement established by the Board. An employee may continue insurance coverage during an approved family leave. An employee on an approved military leave with pay shall have his/her benefits continued as long as the employee is on the payroll. An employee who is on an approved military leave of absence without pay, due to an active call of duty from the President, is entitled to continue health and life benefit coverage for as long as premium payments are made. The employee is responsible for paying their employee share of the premium costs for each month during the military leave of absence.~~

~~The Superintendent shall develop procedures to implement leave provisions.~~

~~WV Code 5-16-24, 15-1F-1, 18A-2-2a, 18A-4-7b, 18A-5-3a~~

Jury Duty

~~Service personnel employees shall be required to serve on any jury during the period of his/her contract with the Board of Education unless excused by the judge of the court.~~

~~The Board shall pay the difference between that allowed for such jury service and the amount of salary due the person for such period of time.~~

~~WV Code 18A-5-3~~

Court Appearance

~~Any service personnel employee who is subpoenaed to appear as a witness but not as a defendant in any criminal proceeding in any court of law may make such appearance without any loss of pay. Absent proof that a child custody proceeding is criminal, an employee who is subpoenaed to testify in the proceeding is not entitled to do so without loss of pay or personal leave. The Board of Education shall pay to such employee the difference between the witness fee, exclusive of travel allowances, payable for such appearance by the court and the amount of salary due to the person for the time such employee is absent from his/her employment by reason of answering such subpoena.~~

~~Michael v. Upshuk County Board of Education~~

~~WV Code 18A-5-3^a~~

FMLA Leave

Qualifying Reasons for FMLA and Military Family Leave

~~In accordance with the Family and Medical Leave Act of 1993, as amended, ("FMLA"), eligible staff members may take up to twelve (12) work weeks of job-protected, unpaid leave, or substitute appropriate paid leave if the staff member has earned or accrued it, for the following reasons:~~

- ~~F. the birth and/or care of a newborn child of the staff member, within one (1) year of the child's birth;~~
- ~~G. the placement with the staff member of a child for adoption or foster care, within one (1) year of the child's placement;~~
- ~~H. the staff member is needed to provide physical and/or psychological care for a spouse, child or parent with a serious health condition;~~
- ~~I. the staff member's own serious health condition makes him/her unable to perform the functions of his/her position; or~~
- ~~J. any qualifying exigency (as defined in applicable Federal regulations) arising out of the fact that the staff member's spouse, son, daughter, or parent is on covered active duty (or has been notified of an impending call or order to covered active duty) in the Armed Forces ("Qualifying Exigency Leave"). Covered active duty means duty during deployment with the Armed Forces to a foreign country.~~

~~In addition, an eligible staff member who is a spouse, son, daughter, parent or next of kin of a covered service member may take up to a total of twenty-six (26) work weeks of job-protected, unpaid leave, or substitute appropriate paid leave if the staff member has earned or accrued it, during a "single twelve (12) month period" to provide physical and/or psychological care for the covered service member ("Military Caregiver Leave"). A covered service member is defined as (1) a member of the Armed Forces; (including a member of the National Guard or Reserves), who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (2) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or~~

Reserves) at any time during the period of five (5) years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy. Serious injury or illness for purposes of Military Caregiver Leave is defined as an injury or illness incurred by a covered service member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the covered service member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the service member medically unfit to perform the duties of his/her office, grade, rank, or rating. In the case of a veteran the injury or illness could have manifested itself before or after the member became a veteran. The "single twelve (12) month period" for leave to care for a covered service member with a serious injury or illness begins the first day the staff member takes leave for this reason and ends twelve (12) months later, regardless of the twelve (12) month period established below for general FMLA leave. During the "single twelve (12) month period", an eligible staff member is limited to a combined total of twenty-six (26) work weeks of unpaid leave for any FMLA-qualifying reason. (Only twelve (12) of the twenty-six (26) work weeks total may be for a FMLA-qualifying reason other than to care for a covered service member.)

Eligible Employees

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. An employee returning from Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) covered service (e.g., National Guard or Reserve) shall be credited with the hours of service that would have been performed but for the period of absence from work due to or necessitated by USERRA-covered service in determining the employee's eligibility for FMLA-qualifying leave. All full-time instructional employees are deemed to meet the 1,250-hour requirement. While the twelve (12) months of employment need not be consecutive, employment periods prior to a break in service of seven (7) years or more will not be counted unless the employee's break in service is occasioned by the fulfillment of his/her USERRA-covered service obligation, or a written agreement exists concerning the Board's intention to rehire the staff member after the break in service.

Twelve (12) Month Period

Twelve (12) month period is defined as the twelve (12) month period measured forward from the date the staff member's first FMLA leave begins (i.e. the "leave year" is specific to each individual staff member).

Serious Health Condition

Serious health condition is defined as an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider. As utilized in this policy, the term "incapacity" means an inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefore, or recovery therefrom. The term "treatment" includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave. (Treatment does not include routine physical examinations, eye examinations, or dental examinations.)

D.—Inpatient care means an overnight stay in a hospital, hospice, or residential medical care facility, including any period of incapacity or subsequent treatment in connection with such inpatient care.

E.—Continuing treatment by a health care provider, includes any one or more of the following: 1) "incapacity and treatment"; 2) any incapacity related to pregnancy, or for prenatal care; 3) chronic conditions; 4) permanent or long-term conditions; and 5) conditions requiring multiple treatments, any period of incapacity due to a "chronic serious health condition";

6. "Incapacity and treatment" involves a period of incapacity 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 a.) treatment two (2) or more times, within thirty (30) days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of healthcare services (e.g. physical therapist) under orders of, or on referral by, a health care provider, or b.) treatment by a health care provider on at least one (1) occasion that results in a regimen of continuing treatment under the supervision of the health care provider.
 - c. Treatment by a health care provider as referenced above involves an in-person visit to a health care provider. The first (or only) in-person treatment visit must take place within seven (7) days of the first day of incapacity. The health care provider is responsible for determining whether additional treatment visits or a regimen of continuing treatment is necessary within the thirty (30) day period.
 - d. Regimen of continuing treatment includes a course of prescription medication (e.g. antibiotics), or therapy requiring special equipment to resolve or alleviate the health condition (e.g. oxygen).
 7. An expectant mother is entitled to FMLA 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 (3) consecutive calendar days. For example, a pregnant employee may be unable to report to work because of severe morning sickness.
 8. A "chronic serious health condition" is one that: a.) requires periodic visits (i.e. at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider; b.) continues over an extended period of time (including recurring episodes of a single underlying condition); and c.) may cause episodic rather than a continuing period of incapacity (e.g. asthma, diabetes, epilepsy, etc.). A visit to a health care provider is not necessary for each absence, and each absence need not last more than three (3) consecutive, full calendar days.
 9. The term "permanent or long-term conditions," signifies a period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
 10. The term "conditions requiring multiple treatments" means any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for: 1) restorative surgery after an accident or other injury; or 2) a condition that would likely result in a period of incapacity of more than three (3) consecutive full calendar days in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, etc.), severe arthritis (physical therapy) or kidney disease (dialysis).
- F. Conditions for which cosmetic treatment are administered (e.g. most treatments for acne or plastic surgery) 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 the definition of a serious health condition and do not qualify for FMLA leave.

Intermittent and Reduced Schedule Leave

The Superintendent may allow a staff member to take FMLA leave intermittently (i.e. leave in separate blocks of time for a single qualifying reason) or on a reduced schedule leave (i.e. reducing the employee's usual weekly or daily work schedule) for reason (A) or (B) on page one. A staff member is entitled to take FMLA leave on an intermittent or reduced schedule leave when medically necessary as indicated in reasons (C) and (D) on page one. A staff member may also take FMLA leave on an intermittent or reduced schedule leave for Qualifying Exigency Leave (i.e. reason (E) on page one). Finally, Military Caregiver Leave may be taken on an intermittent or reduced schedule leave when medically necessary. Regardless, the taking of FMLA leave intermittently or on a reduced schedule leave results in the total reduction of the twelve (12) or twenty-six (26) weeks only by the amount of leave actually taken. If the intermittent or reduced schedule

leave is foreseeable based on planned medical treatment for the employee, a family member or a covered service member, the Superintendent may require the staff member to transfer temporarily, during the period the intermittent or reduced schedule leave is required, to an available alternative position for which the staff member is qualified and which better accommodates recurring periods of leave than the staff member's regular position. The alternative position shall have equivalent pay and benefits but not necessarily equivalent duties. The Superintendent may also transfer the staff member to a part-time job with the same hourly rate of pay and benefits, provided the staff member is not required to take more leave than is medically necessary. Instructional staff members (i.e. individuals whose principal function is to teach and instruct students in a class, a small group, or an individual setting) who request intermittent leave or a reduced schedule leave because of reasons (C) or (D) on page one or pursuant to Military Caregiver Leave and the leave would exceed twenty percent (20%) of the total number of working days over the period of anticipated leave must elect either to:

- C. take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment;
- or
- D. transfer temporarily to an available alternative position offered by the Superintendent for which the instructional staff member is qualified, and that has equivalent pay and benefits and that better accommodates the recurring periods of leave than the staff member's regular position.

When leave is needed for planned medical treatment, the staff member must make a reasonable effort to schedule the treatment so as not to unduly disrupt the County's operations, subject to the approval of the health care provider.

If the Superintendent agrees to permit FMLA leave intermittently or on a reduced schedule leave for reason (A) or (B) on page one, the Board may also require the staff member to transfer temporarily, during the period the intermittent or reduced schedule leave is required, to an available alternative position for which the staff member is qualified and which better accommodates recurring periods of leave than does the staff member's regular position.

Leave Near the Conclusion of An Academic Term

The Superintendent shall notify staff, employed principally in an instructional capacity, who are eligible for FMLA leave, of the rules that apply with respect to periods of leave near the conclusion of an academic term.

Staff Member Notice Requirements (forms available at the U.S. Department of Labor Website: www.dol.gov)

Staff members seeking to use FMLA leave (including Military Caregiver Leave) are required to provide thirty (30) days advance notice of the need to take FMLA leave when the need is foreseeable and such notice is practicable. If leave is foreseeable less than thirty (30) days in advance, the staff member must provide notice as soon as practicable—generally, within one (1) or two (2) business days. When the need for leave is not foreseeable, the staff member must provide notice as soon as practicable under the facts and circumstances of the particular case. Absent unusual circumstances, staff members must comply with the Board's usual and customary notice and procedural requirements for requesting leave. Failure to provide timely notice may result in the leave being delayed or denied, and/or possible disciplinary action.

Staff members must provide "sufficient information" for the Superintendent to determine whether the FMLA may apply to the leave request. Depending on the situation, such information may include that the employee is incapacitated due to pregnancy, has been hospitalized overnight, is unable to perform the functions of the job, that the staff member or his/her qualifying family member is under the continuing care of a health care provider, that the requested leave is for a particular qualifying exigency related to a qualifying family member's covered active duty or call to covered active duty status, or that the leave due to a qualifying family member who is a covered service member with a serious injury or illness. The information may also include the anticipated timing and duration of the leave.

When a staff member seeks leave for a FMLA-qualifying reason for the first time, the staff member need not expressly assert FMLA rights or even mention the FMLA. When an employee seeks leave, however, due to a FMLA-qualifying reason for which the County has previously provided the staff member FMLA-protected leave, the staff member must specifically reference either the qualifying reason for leave or the need for FMLA leave.

Substitution of Paid Leave

The staff member may request to "substitute" (i.e. run concurrently) any of his/her earned or accrued paid leave (e.g. sick leave, personal leave, vacation leave, compensatory time) for unpaid FMLA leave. An employee's ability to substitute accrued paid leave is determined by the terms and conditions of the County's normal leave policy. A staff member electing to use any type of paid leave concurrently with FMLA leave must follow the same terms and conditions of the Board's policy that apply to other employees for use of such leave. Assuming the staff member satisfies FMLA eligibility requirements and has not exhausted his/her FMLA leave entitlement, the staff member is always entitled to unpaid FMLA leave if s/he does not meet the Board's conditions for taking paid leave. On occasion the Board may waive any procedural requirements for the taking of any type of paid leave.

If a staff member requests and is permitted to use accrued compensatory time to receive pay for time taken off for an FMLA reason, or if the Superintendent requires such use pursuant to the Fair Labor Standards Act, the time taken will be counted against the staff member's FMLA leave entitlement.

If the staff member has not earned or accrued adequate paid leave to encompass the entire twelve (12) work week period of FMLA leave or a twenty-six (26) work week period of Military Caregiver Leave, the additional weeks of leave to obtain the twelve (12) work weeks of FMLA leave, or twenty-six (26) work weeks of Military Caregiver Leave to which the staff member is entitled shall be unpaid. Whenever a staff member uses paid leave in substitution for unpaid FMLA leave/Military Caregiver Leave, such leave will run concurrently with the unpaid FMLA leave and will count towards the twelve (12) work week/twenty-six (26) work week maximum leave allowance provided by this policy and Federal law.

Seniority

An employee, who is granted leave under this policy, shall accrue seniority during the period of time that the employee is on this board approved leave of absence.

County Notice Requirements (forms available at the U.S. Department of Labor Website: www.dol.gov)

The Superintendent is directed to post the Department of Labor approved Notice explaining employees' rights and responsibilities under the FMLA. Additionally, this general notice shall be included in employee handbooks or other written guidance to staff members concerning benefits or leave rights or, in the alternative, distributed to each new staff member upon hiring.

When a staff member requests FMLA leave or the County acquires knowledge that leave may be for a FMLA purpose, the Superintendent shall notify the staff member of his/her eligibility to take leave, and inform the staff member of his/her rights and responsibilities under the FMLA (including the consequences of failing to meet those obligations). Along with the Notice of Rights and Responsibilities, the Superintendent will attach any medical certification that may be required, and a copy of the employee's essential job functions. If the Superintendent determines the staff member is not eligible for FMLA leave, the Superintendent must state at least one (1) reason why the staff member is not eligible. Such notice may be given orally or in writing and should be given within five (5) business days of the request for FMLA leave, absent extenuating circumstances. When oral notice is given, it must be followed by written notice within five (5) business days. Staff member eligibility is determined (and notice provided) at the commencement of the first instance of

leave for each FMLA-qualifying reason in the applicable twelve (12) month period. All FMLA absences for the same qualifying reason are considered a single leave and staff member eligibility as to that reason for leave does not change during the applicable twelve (12) month period. If at the time a staff member provides notice of a subsequent need for FMLA leave during the applicable twelve (12) month period due to a different FMLA-qualifying reason and the staff member's eligibility status has not changed, no additional eligibility notice is required. If, however, the staff member's eligibility status has changed, the Superintendent must notify the staff member of the change in eligibility status within five (5) business days, absent extenuating circumstances.

If the specific information provided by the Notice of Rights and Responsibilities changes, the Superintendent shall, within five (5) business days of receipt of the staff member's first notice of need for leave subsequent to any changes, provide written notice referencing the prior notice and setting forth any of the information in the Notice of Rights and Responsibilities that has changed.

When the Superintendent has sufficient information to determine that leave is being taken for a FMLA-qualifying reason (e.g. after receiving certification), the Superintendent shall notify the staff member whether the leave will be designated and counted as FMLA leave. Leave that qualifies as both Military Caregiver Leave and leave to care for a qualifying family member with a serious health condition (i.e. reason (C)) must be considered as Military Caregiver Leave in the first instance. This designation must be in writing and must be given within five (5) business days of the determination, absent extenuating circumstances. Additionally, when appropriate, the Superintendent shall notify the staff member of the number of hours, days and weeks that will be counted against the employee's FMLA entitlement, and whether the employee will be required to provide a fitness-for-duty certification to return to work.

Only one Designation Notice is required for each FMLA-qualifying reason per applicable twelve (12) month period, regardless of whether the leave taken due to the qualifying reason will be a continuous block of leave or as intermittent or on a reduced schedule leave. If the Superintendent determines the leave will not be designated as FMLA-qualifying (e.g. if the leave is not for a reason covered by the FMLA or the staff member's FMLA leave entitlement has been exhausted), the Superintendent shall notify the staff member of that determination. If the staff member is required to substitute paid leave for unpaid FMLA leave, or if paid leave taken under an existing leave plan is being counted as FMLA leave, the "Designation Notice" shall include this information. Additionally, the "Designation Notice" shall notify the staff member if s/he is required to present a fitness-for-duty certification to be restored to employment. Further, if the fitness-for-duty certification is required to address the staff member's ability to perform the essential functions of his/her job, that will be indicated on the Designation Notice, and a list of the essential functions of the staff member's position will be included.

If the information provided to the staff member in the Designation Notice changes, the Superintendent shall provide, within five (5) business days of receipt of the staff member's first notice of need for leave subsequent to any change, written notice of the change.

In the case of intermittent or reduced-leave schedule leave, only one such notice is required unless the circumstances regarding the leave have changed.

Roane

Limits on FMLA When Both Spouses are Employed by the Board

When eligible spouses are both employed by the Board, they are limited to a combined total of twelve (12) workweeks of FMLA leave during any twelve (12) month period if the leave is taken for reason (A) or (B) on page one, or to care for the staff member's parent who has a serious health condition.

~~Where eligible spouses both use a portion of the total twelve (12) week FMLA leave entitlement for reason (A) or (B) on page one, or to care for a parent, the spouses are each entitled to the difference between the amount s/he has taken individually and the twelve (12) weeks of FMLA leave for other purposes.~~

~~When eligible spouses are both employed by the Board, they are limited to a combined total of twenty-six (26) workweeks of Military Caregiver Leave during the "single twelve (12) month period" if the leave is taken for reason (A) or (B) on page one, or to care for the staff member's parent who has a serious health condition, or to care for a covered service member with a serious injury or illness.~~

Certification

~~When FMLA leave is taken for either reason (C) or (D) on page one, the staff member must provide medical certification from the health care provider of the eligible staff member or his/her immediate family member. The staff member may either:~~

-
- ~~C. submit the completed medical certification to the Superintendent; or~~
 - ~~D. direct the health care provider to transfer the completed medical certification directly to the Superintendent, which will generally require the staff member to furnish the health care provider with a HIPAA compliant authorization.~~

~~If the staff member fails to provide appropriate medical certification, any leave taken by the employee shall not constitute FMLA leave.~~

~~When the need for FMLA 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 FMLA 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 require second or third opinions (at the Board's expense), and periodic recertification of a serious health condition. If a third opinion is sought, that opinion shall be binding and final. The staff member may either:~~

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- ~~C. submit the opinion of the second health care provider, and the opinion of the third health care provider if applicable, to the Superintendent;~~
 - ~~D. direct the second or third health care provider to transfer his/her opinion directly to the Superintendent, which will generally require the staff member to furnish the health care provider with a HIPAA compliant authorization.~~

~~In the event that the staff member fails to provide the medical opinion of the second or third health care provider, if applicable, any leave taken by the staff member shall not constitute FMLA leave.~~

Recertification

~~Recertification may be required no more often than every thirty (30) days in connection with an absence by the staff member unless the condition will last for more than thirty (30) days. For conditions that are certified as having a minimum duration of more than thirty (30) days, the County will not request recertification until the specified period has passed, except that in all cases the staff member must submit recertification every six (6) months in connection with an~~

absence by the employee. Additionally, the Superintendent may require a staff member to provide recertification in less than thirty (30) days if the staff member requests an extension of leave, the circumstances described in the previous certification have changed significantly, or if the County receives information that casts doubt upon the staff member's stated reason for the absence or the continuing validity of the certification. Finally, staff members must provide a new medical certification each leave year for medical conditions that last longer than one (1) year.

Staff members requesting Qualifying Exigency Leave are required to submit to the Superintendent a copy of the covered military member's active duty orders and certification providing the appropriate facts related to the particular qualifying exigency for which leave is sought, including contact information if the leave involves meeting with a third party.

Staff members requesting Military Caregiver Leave are required to submit to the Superintendent certification completed by an authorized health care provider or a copy of an Invitational Travel Order (ITO) or Invitational Travel Authorization (ITA) issued to any member of the covered service member's family.

The Board authorizes its health care provider and/or human resource professional to authenticate or clarify a medical certification of a serious health condition, or an ITO or ITA (i.e. medical certification provided for reasons (C) or (D) on page one or Military Caregiver Leave). Additionally, the Superintendent is authorized to contact the individual or entity named in the Qualified Exigency Leave certification for purposes of verifying the existence and nature of the meeting.

A staff member who takes leave for reason (D) on page one, prior to returning to work, must provide the Superintendent with a fitness for duty certification that specifically addresses the staff member's ability to perform the essential functions of his/her job. The fitness-for-duty certification shall only apply to the particular health condition that caused the staff member's need for FMLA leave. If reasonable safety concerns exist, the Superintendent may, under certain circumstances, require a staff member to submit a fitness-for-duty certification before s/he returns to work from intermittent FMLA leave. The cost of the certification shall be borne by the staff member.

Job Restoration & Maintenance of Health Benefits

Upon return from FMLA leave, the Board shall restore the staff member to his/her former position, or to an equivalent position with equivalent pay, benefits, and other terms and conditions of employment, but no greater right to restoration or to other benefits and conditions of employment than if the employee had been continuously employed. 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.

Any leave or return from leave during the last five (5) weeks of an academic term shall be reviewed individually by the Superintendent to minimize disruption to the students' program.

The staff member shall not accrue any sick leave, vacation, or other benefits during a period of unpaid FMLA leave.

The use of FMLA leave shall not result in the loss of any employment benefit that the staff member earned or was entitled to before using FMLA leave. If a bonus or other payment, however, is based on the achievement of a specified goal such as hours worked or perfect attendance, and the employee does not meet the goal due to FMLA leave, payment shall be denied unless it is paid to an employee on equivalent leave status for a reason that does not qualify as FMLA leave.

A staff member shall have no greater right to restoration or to other benefits and conditions of employment than if the employee had been continuously employed.

If the staff member fails to return to work at the end of the leave for reasons other than the continuation, recurrence, or onset of a serious health condition that entitles the staff member to leave pursuant to reasons (C) or (D) on page one or Military Caregiver Leave, or for circumstances beyond the control of the staff member, the staff member shall reimburse the Board for the health insurance premiums paid by the Board during the unpaid FMLA leave period.

Generally, a staff member may not be required to take more FMLA leave than necessary to resolve the circumstance that precipitated the need for leave.

A staff member who fraudulently obtains FMLA leave is not protected by this policy's job restoration or maintenance of health benefits provisions.

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

Copies of this policy shall be available to staff members upon request.

29 U.S.C. 2601 et seq. (as amended)

29 C.F.R. Part 825

45 C.F.R. Part 160, 164

Leave Time for Organ Donation

A full-time employee shall receive up to 120 hours of leave with pay during each calendar year to use during those hours when the employee is absent from work because of the employee's donation of any portion of an adult liver or because of the employee's donation of an adult kidney.

A full-time employee shall receive up to fifty-six (56) hours of leave with pay during each calendar year to use during those hours when the employee is absent from work because of the employee's donation of adult bone marrow.

A full-time employee who uses leave granted under this policy shall be compensated at the employee's regular rate of pay for those regular work hours during which the employee is absent from work. Further, an employee, who is granted leave under this policy, shall accrue seniority during the period of time that the employee is on this board-approved leave of absence.

The Director of Personnel shall provide information about this policy to full-time employees.

WV Code 29-6-28

Parental Leave Act

The Parental Leave Act (West Virginia Code 21-5D-1, et seq.) requires that the Board allow at least up to twelve (12) weeks of unpaid leave in any twelve (12) month period, following the exhaustion of all annual and personal leave, for eligible employees who must miss work because of one of the following circumstances:

- A. because of the birth of a son or daughter of the employee
- B. because of the placement of a son or daughter with the employee for adoption
- C. in order to care for the employee's son or daughter, spouse, parent or dependent who has a serious health condition

The Board shall consider employees to be entitled to parental leave in accordance with the definitions, criteria and notice procedure set forth in the Parental Leave Act. No policy, procedure or action by the Board shall constitute a

waiver of the requirements of the Parental Leave Act. The following explanation of the Parental Leave Act is provided for general information only. Any specific questions or requests for parental leave should be directed to the Director of Personnel.

Employee Eligibility

The Board shall consider employees to be eligible for Parental Leave in accordance with the criteria set forth in the Parental Leave Act. The eligibility criteria are generally described as follows: A full-time employee who has worked at least twelve (12) consecutive weeks for the Board. The Superintendent shall not be considered an employee for the purpose of this policy.

Serious Health Condition

The Parental Leave Act defines a serious health condition as a physical or mental illness, injury or impairment that involves one of the following situations:

- A. inpatient care in a hospital, hospice or residential health care facility, or
- B. continuing treatment, health care or continuing supervision by a health care provider

Leave Request Process

—A. Employee Designated Leave:

—If a leave because of birth or adoption is foreseeable, the employee shall provide two weeks' written notice of such expected birth or adoption. If a leave under this section is foreseeable because of planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision so as not to disrupt unduly the operations of the Board, subject to the approval of the health care provider of the employee's son, daughter, parent or dependent; and the employee must provide his/her supervisor with written notice two weeks prior to the expected birth or adoption; or for the medical treatment; or for the supervision of a dependent. Failure to submit a timely written request may be cause for denial.

—B. Leave Period:

—The Board shall use the twelve (12) month period measured forward from the date the staff member's first FMLA leave begins (i.e. the "leave year" is specific to each individual staff member) to calculate how much Parental Leave Act leave is available or remaining.

—C. Part-time Leave:

—An employee may take family leave on a part-time basis and on a part-time leave schedule, but the period during which the number of work weeks of leave may be taken may not exceed twelve (12) consecutive months, and such leave shall be scheduled so as not to disrupt unduly the operations of the Board.

Seniority

An employee, who is granted leave under this policy, shall accrue seniority during the period of time that the employee is on this board approved leave of absence.

Physician Certification

If an employee requests family leave to care for a family member with a serious health condition, the Board may require the employee to provide certification by a health care provider of the health condition. The certification shall be sufficient if it contains the following:

- A. that the child, dependent, parent or employee has a serious health condition
- B. the date the serious health condition commenced and its probable duration, and

~~—C. the medical facts regarding the serious health condition~~

Health Insurance

~~During any family leave by an employee, the Board shall continue group health insurance coverage for such employee: provided, that the employee shall pay the employer the premium costs of such group health insurance coverage.~~

Employee's Right to Restoration of Position Held

~~An employee, who timely returns from an approved leave under this policy, shall be assigned to the same position or duties and benefits held prior to the approved leave.~~

Confidentiality of Medical Information

~~As with all other medical information, parental leave information will be maintained in a confidential medical file.~~

Failure to Return to Work at Completion of Leave

~~Under certain circumstances, if an employee fails, without good reason, to return to work at the conclusion of the leave granted under the Parental Leave Act, the Board may be entitled to recover its cost of the health care premium directly from the employee. In addition, an employee who fails to return to work at the conclusion of leave taken under the Parental Leave Act may be subject to disciplinary action, up to and including termination of employment.~~

Disciplinary Action

~~The Parental Leave Act was enacted to allow employees the ability to balance work and family life without losing their jobs. The Board strongly supports the purpose of this law. It is important; however, that employees do not take leave for purposes other than that which the Parental Leave Act designates. An employee providing false or misleading information in his/her request for leave under the Parental Leave Act will be subject to disciplinary action, up to and including termination.~~

~~W.V. Code 18A-2-2a, 18A-4-7b, 21-5D-1, et seq.~~

Extended Leave

~~West Virginia Code 18A-2-2a provides for extended leave without pay for pregnancy, childbirth or adoptive or infant bonding. Such leave may be requested for periods up to one (1) year. An employee shall not be required, but may use accumulated paid leave, prior to taking an extended leave. The Board shall consider employees to be entitled to extended leave in accordance with the definitions, criteria and notice procedure set forth in WV Code 18A-2-2a. An employee whose leave of absence has been approved by the Board shall continue to accrue seniority during the period of time that the employee is on the approved leave of absence. No policy, procedure or action by the Board shall constitute a waiver of the requirements of WV Code 18A-2-2a. The explanation of extended leave is provided for general information only. Any specific questions or requests for parental leave should be directed to the Director of Personnel Superintendent.~~

~~WV Code 18A-2-2a, 18A-4-7b~~

Personal Leave Donation Program

~~Employees (donor employees) are authorized to transfer accrued personal leave days to designated employees (recipient employees) under the following conditions:~~

- A. A donor employee may transfer an unlimited number of accrued personal leave days to a spouse.
- B. A donor employee may transfer up to one (1) day of accumulated personal leave days per year to a recipient employee who is not the spouse of the donor employee.
- C. All decisions to transfer accrued personal leave must be voluntary.
- D. A donor employee must designate the recipient employee.
- E. The recipient employee must be currently experiencing a "catastrophic medical emergency" (medical condition that incapacitates an employee or a member of the employee's immediate family for whom the employee will provide care, which medical condition is likely to require the prolonged absence of the employee from duty, and which will result in a substantial loss of income to the employee because the employee has exhausted all accrued personnel leave, including leave awarded by a leave bank, or who has exhausted all accrued personal leave and who is ineligible for an award of additional leave from a leave bank). The Superintendent, or the Superintendent's designee, shall be the sole judge upon the question of whether an employee is experiencing a "catastrophic medical emergency."
- F. The recipient employee must require additional personal leave as a result of a catastrophic medical emergency.
- G. Donated leave may not be used to qualify for or add to service for any retirement system administered by the State or to extend health insurance coverage provided by PEIA.
- H. Donated leave shall be deducted from a donor employee's accrued personal leave, but shall not be deducted from personal leave available for use without cause if sufficient general personal leave days are available for donation.
- I. Donated leave transferred to a recipient employee shall be credited on a day for day basis without regard to the hourly wage value of the leave.
- J. Donated leave transferred to a recipient employee that is unused following the end of a catastrophic medical emergency (the end of a catastrophic medical emergency may be occasioned by the death of a recipient employee) shall be returned to the donor employee. The Superintendent, or the Superintendent's designee, shall be the sole judge upon the question of whether a catastrophic medical emergency has ended. In the event the donor employee is no longer employed upon a determination that a catastrophic medical emergency has ended, any unused donated leave shall be deducted from the recipient employee's accumulated personal leave.
- K. An employee may not be coerced or compelled to contribute accumulated personal leave under the terms of this program.
- L. A recipient employee is not eligible to receive donations of personal leave from other donor employee until the exhaustion of all donated personal leave.
- M. A request to donate leave under this program must be submitted by completion of a form published for this purpose.

WV Code 18A-4-10f

Vacation

All full time, 261 day employees shall be eligible for vacation.

Vacation shall accrue at the following rates:

LENGTH OF SERVICE IN _____	VACATION ACCRUAL _____	ANNUAL _____
ROANE CO		
0 through 2 years _____	1.25 (1¼ days vacation per month of service) _____	15.0 days
3 through 5 years _____	1.5 (1½ days vacation per month of service) _____	18.0 days
6 years and over _____	1.75 (1¾ days vacation per month of service) _____	21.0 days

Vacation may be taken in no less than one-half (½) day segments.

An employee may accumulate unused vacation but may not carry more than seventy-nine (79) days over to each new fiscal year.

The schedule for all vacation must be approved in advance by the employee's immediate supervisor. It shall be the responsibility of the supervisor to maintain an adequate workforce.

Upon termination of employment, accumulated vacation may be used to receive a lump sum payment based upon the employee's daily rate of pay for, up to a maximum of seventy-nine (79) days.

Military Leave

~~An~~ professional personnel employee who is a member of the national guard or armed forces reserves, shall be entitled to a military leave of absence from the Board without loss of pay, status or efficiency rating, on the days during which they are ordered, by properly designated authority, to be engaged in drills, inactive duty training, parades, funeral details, service schools or other duty, field training or duty pursuant to Federal law, or active service of the State for a maximum period of thirty (30) working days, not to exceed 240 hours in any one calendar year.

~~An~~ professional personnel employee ordered or called to active duty for a mobilization or deployment pursuant to Federal law or in support of a contingency operation, as defined by Federal law, shall be entitled to military leave of absence from the Board without loss of pay, status or efficiency rating for a maximum period of thirty (30) working days, not to exceed 240 hours for a single call to active duty. If the employee called to active duty has not used all or some portion of the thirty (30) working days of military leave of absence granted by the first paragraph of this policy, the employee shall be entitled to add the number of unused days from that calendar year to the thirty (30) working days, not to exceed 240 hours granted by this paragraph, up to a maximum of sixty (60) days for a single call to active duty. However, none of the unused days of military leave of absence granted by the first paragraph may be carried over and used in the next calendar year.

The term "without loss of pay" means that the employee shall continue to receive his/her normal salary or compensation, notwithstanding the fact that the employee may have received other compensation from Federal or State sources during the same period.

An employee who has been granted a military leave of absence shall accrue seniority during the period of time that the employee is on the approved leave of absence.

WV Code 15-1F-1, 18A-4-7b