**WORKDAY AND OVERTIME** *Policy Code:* **7500**

**A. WORK SCHEDULES**

The length of the school day for licensed and professional staff will be a minimum of seven hours and thirty minutes and will continue until professional responsibilities to the student and school are completed. Administrative meetings, curriculum development, pupil supervision, assigned duties, parent conferences, group or individual planning, and extracurricular activities may require hours beyond the stated minimum. Work schedules for other employees will be defined by the superintendent or designee, consistent with the Fair Labor Standards Act and the provisions of this policy.

**B. WORKWEEK DEFINED**

Working hours for all employees not exempted under the Fair Labor Standards Act (FLSA), including secretarial, cafeteria, janitorial and maintenance personnel, will conform to federal and state regulations. The superintendent shall ensure that job positions are classified as exempt or non-exempt and that employees are made aware of such classifications.

Supervisors shall make every effort to avoid circumstances that require non-exempt employees to work more than 40 hours each week. For purposes of FLSA Compliance, the workweek for school system employees will be 12:00 a.m. Saturday until 11:59 p.m. Friday. A copy of the FLSA and any administrative procedures established by the superintendent will be available to employees in the human resources office.

**C. OVERTIME AND COMPENSATORY TIME**

The board of education discourages overtime work by non-exempt employees. A nonexempt employee may not work overtime without the express approval of his or her supervisor. All overtime work must be approved by the superintendent or designee. All supervisory personnel shall monitor overtime use on a weekly basis and report such use to the superintendent or designee. Principals and supervisors shall monitor employees’ work, shall ensure that overtime provisions of this policy and the FLSA are followed, and shall ensure that all employees are compensated for any overtime worked. Principals or supervisors may need to adjust daily schedules to prevent non-exempt employees from working more than 40 hours in a workweek. Accurate and complete timesheets of actual hours worked during the workweek must be signed by each employee and submitted to the finance officer. The finance officer shall review work records of employees on a regular basis to make an assessment of overtime use.

In lieu of overtime compensation, non-exempt employees may receive compensatory time off at a rate of not less than one and one-half hours for each one hour of overtime worked, if such compensatory time (1) is agreed to by the employee before the overtime work is performed and (2) is authorized by the immediate supervisor. Employees must be allowed to use compensatory time within a reasonable period after requesting such use (see policy 7510, Leave). Employees may accrue a maximum of 240 compensatory time hours before they must be provided overtime pay at the appropriate rate. In addition, upon leaving the school system, an employee must be paid for any unused compensatory time at the rate of not less than the higher of (1) the average regular rate received by the employee during his or her last three years of employment or (2) the final regular rate received by the employee.

Non-exempt employees whose workweek is less than 40 hours will be paid at the regular rate of pay for time worked up to 40 hours. Such employees will be provided overtime pay or compensatory time as provided above for working more than 40 hours in a workweek.

Employees will be provided a copy of this policy and will be required to sign this policy to acknowledge their understanding of overtime and compensatory time provisions. Such signed policy will constitute the written agreement required in this section.

**D. ATTENDANCE EXPECTATIONS**

All employees are expected to be present during all working hours. Absence without prior approval, chronic absences, habitual tardiness or abuses of designated working hours are all considered neglect of duty and will result in disciplinary action up to and including dismissal.

Legal References: The Fair Labor Standards Act of 1938, as amended, 29 U.S.C. 201, *et seq.*; G.S. 115C-47(18), -288, -307; *North Carolina Public School Personnel Employee Salary and Benefits Manual* (most current version), North Carolina Department of Public Instruction, Division of School Business

Cross References: Leave (policy 7510)

Adopted: 12 February 2013

**COMPLIANCE WITH STATE BOARD OF EDUCATION EMPLOYMENT POLICIES** *Policy Code:* **7505**

It is the policy of the board to comply with the benefits and employment policies promulgated by the State Board of Education or the Department of Public Instruction in the most current edition of the *North Carolina Public Schools Benefits and Employment Policy Manual*, as supplemented by any applicable local board policy.

In the event that changes to State or federal law or regulation conflict with current State Board or local board policies, the board intends that its benefits and employment policies be modified to the extent necessary to comply with current law until such time as conforming changes to State Board and/or local board polices are made.

Legal References:

Cross References: Specific Employment Relationships Policies (all policies in the 7400 series),

Workday and Absences Policies (all policies in the 7500 series)

Adopted: 14 April 2011

**LEAVE** *Policy Code:* **7510**

The board of education believes that it is important for employees to have leave available to attend to personal, civic, and professional matters as well as to meet family commitments. This need for leave is to be balanced with the need to provide an effective instructional program for students. No employee may be discharged, demoted, or otherwise subjected to adverse employment action for taking leave in accordance with board policies and administrative procedures. All requests for leave, with or without pay, must be addressed in accordance with state and federal law, as well as policies promulgated by the State Board of Education, including those specified in the most current edition of the *North Carolina Public Schools Benefits and Employment Policy Manual*, available at http://www.ncpublicschools.org/districthumanresources/

key-information*.*

In addition to applicable laws and regulations, the following board policies apply to leave requests. The superintendent is directed to develop administrative procedures and make them available to any employee upon request.

**A. MINIMUM LEAVE TIME**

An employee may take any type of leave in increments of hours unless otherwise specified in this policy.

**B. CONTINUOUS LEAVE OF MORE THAN 10 DAYS**

An employee must comply with the notice and verification requirements provided in policy 7520, Family and Medical Leave, for continuous leave of more than 10 days if:

1. the leave also is eligible for leave under the Family and Medical Leave Act (FMLA), defined in policy 7520, and
2. the leave is designated as FMLA-eligible at the time it is taken or as soon as is feasible thereafter.

**C. SICK LEAVE**

The superintendent or designee may require a statement from a medical doctor or other acceptable proof that the employee was unable to work due to illness. Employees who anticipate using sick leave for more than a single day must inform the principal or immediate supervisor in advance so that arrangements may be made to reassign the employee’s duties during the period of absence.

**D. PERSONAL LEAVE**

Teachers earn personal leave at a rate of .20 days for each full month of employment, not to exceed two days per year. Unused personal leave may be carried forward from one year to another and may be accumulated without limitation until June 30 of each year. On June 30, personal leave in excess of five days shall be converted to sick leave so that a maximum of five days of personal leave is carried forward to July 1. At the time of his or her retirement, a teacher may also convert accumulated personal leave to sick leave for creditable service towards retirement.

Personal leave must be used in half or whole day units. Personal leave may be requested by application in accordance with the policies of the State Board of Education and may be used only upon the authorization of the teacher’s immediate supervisor. A teacher shall not take personal leave on the first day he or she is required to report for the school year, on a required teacher workday, on days scheduled for state testing, or on the day before or the day after a holiday or scheduled vacation day, unless the request is approved by the principal. On all other days, if the request is made at least five days in advance, the request will be automatically granted subject to the availability of a substitute teacher. The teacher cannot be required to provide a reason for the request.

**E. VACATION LEAVE**

The superintendent or designee has the authority to approve the vacation schedules of all personnel. To promote the efficient operation of the schools, the superintendent may designate certain periods during the nonacademic year as preferred vacation periods for 12-month employees. Vacation earned by 12-month teachers during the two months of “extended employment” may be taken only upon the authorization of the employee’s immediate supervisor and in accordance with procedures established by the superintendent. Vacation earned by teachers and other 10-month employees during the

10-month school-year employment may be taken as outlined in the school-year calendar. If a teacher schedules vacation leave in accordance with the school calendar, the board and/or principal must give the teacher at least 14 calendar days’ notice before requiring the teacher to work on the scheduled day(s), unless the teacher waives the notice requirement. Annual vacation leave may be accumulated without any applicable maximum until June 30 of each calendar year. On June 30, accumulated annual vacation leave in excess of 30 days will be converted to sick leave so that only 30 workdays of annual vacation leave are carried forward.

An employee who has unused vacation time from another school system in North

Carolina may have the vacation time transferred to this school system.

Instructional personnel who must be replaced by a substitute may not take earned vacation on days when school is in session for students unless the employee’s absence is due to the employee’s own catastrophic illness and the employee has exhausted all of his or her sick leave or unless the employee qualifies as a new parent. In such instances, the employee will not be required to pay the substitute.

Within any given year, instructional personnel who do not require a substitute may be granted a maximum of five vacation days when students are in attendance. Such days may not be consecutive. Leave will not be granted for days immediately before or immediately following days when students are out of school. Leave will not be granted on mandatory staff development days. An exception to these restrictions may be made when an employee is absent due to a catastrophic illness and the employee has exhausted all of his or her sick leave.

The superintendent shall establish procedures for reviewing requests for the use of vacation leave for catastrophic illness by instructional personnel.

**F. CHILD-SCHOOL INVOLVEMENT LEAVE**

All employees may take up to four hours of unpaid leave per year to attend or otherwise be involved in the school of a child for whom the employee is a parent, guardian, or person standing in loco parentis.

**G. COMPENSATORY LEAVE**

Because professional employees are expected to fulfill all job duties, compensatory leave should apply only in extraordinary circumstances. Employees who are not exempt from the provisions of the Fair Labor Standards Act may accrue compensatory time (comp time) at a rate of one and one-half hours for every one hour worked in lieu of receiving overtime pay for each hour worked beyond 40 in a given workweek. For the purpose of compliance with the Fair Labor Standards Act, the workweek for school system employees will be from 12:00 a.m. Saturday until 11:59 p.m. Friday. Supervisors shall arrange for employees to take comp time within one pay period following the time it is earned, if possible. The superintendent or designee may exempt certain employees or categories of employees from this comp time provision when deemed necessary for the proper administration of the school system.

An employee must obtain approval from his or her immediate supervisor before taking

compensatory leave.

**H. MILITARY LEAVE**

Employees may take up to 15 workdays of paid military leave during the federal fiscal year, which runs from October 1 through September 30. Paid military leave may be used for: (1) active duty training in the Reserve Components of the U.S. Armed Forces, including the National Guard, the Army Reserve, the Naval Reserve, the Marine Corps

Reserve, the Air Force Reserve, and the Coast Guard Reserve; (2) required physical examinations relating to membership in a reserve component; and (3) regularly scheduled unit assemblies, also referred to as drills. For infrequent special activities in the interest of the state when authorized by the Governor or designee, members of the National Guard may be paid for up to 30 days in addition to the 15 days allowed for training.

**I. LEAVE OF ABSENCE WITHOUT PAY**

An employee may be granted a leave of absence without pay for the following reasons and for a period of time of up to one calendar year, renewable at the discretion of the superintendent with approval from the board:

1. Military leave (see also policies 7520, Family and Medical Leave, and 7530,

Military Leave);

2. Personal illness in excess of sick leave;

3. Family leave (see also policy 7520);

4. Professional leave; and

5. Other reasons at the discretion of the superintendent with the approval of the board.

An employee seeking leave is responsible for making necessary arrangements as provided in the administrative procedures. Except in the case of an emergency, an employee who desires a leave of absence without pay shall provide at least 60 days’ notice and shall submit a request in writing to the board stating the beginning and ending dates of the desired leave of absence. The employee is expected to consult with the principal or his or her immediate supervisor. The superintendent may request documentation from the employee in support of his or her request. In determining the length of absence without pay that will be approved, with the exception of military and family leave, due and proper consideration must be given to the welfare of the students as well as the employee. The superintendent may require the employee to give notice of his or her intent to return to work at reasonable time intervals during the leave.

Once a leave of absence without pay has been requested by an employee and approved by the board, the dates are binding unless both parties agree to a change.

Legal References: G.S. 95-28.3; 115C-12, -36, -47, -84.2, -285, -302.1, -316, -336, -336.1; 16

N.C.A.C. 6C .0405; State Board of Education Policy TCP-D-003, *North Carolina Public Schools*

*Benefits and Employment Policy Manual* (N.C. Dept. of Public Instruction, current version),

available at http://www.ncpublicschools.org/district-humanresources/key-informtion

Cross References: Family and Medical Leave (policy 7520), Military Leave (policy 7530),

Voluntary Shared Leave (policy 7540), Absences Due to Inclement Weather (policy 7550)

Adopted: February 9, 2015

**FAMILY AND MEDICAL LEAVE** *Policy Code:* **7520**

All eligible employees will be provided leave as required by the federal Family and Medical Leave Act of 1993 (FMLA), as amended, and applicable state laws and State Board of Education policies. The FMLA allows eligible employees to take job-protected, unpaid leave, or to substitute appropriate paid leave if the employee has earned or accrued it, for up to a total of 12 workweeks (or 26 workweeks in certain cases) in any 12-month period for certain qualifying conditions or events. The employee may continue to participate in the school system’s group insurance plan while on FMLA leave.

This policy is intended for guidance only and is not intended to alter or expand the school system’s responsibilities beyond the requirements of law. If any provision of this policy is inconsistent with federal law or regulation, the federal rule must take precedence. The superintendent is authorized to develop additional regulations for FMLA leave consistent with the requirements of the law and this policy.

The board strictly prohibits interfering with, restraining or denying the ability of any employee to exercise any right provided by the FMLA. The board also strictly prohibits any type of discrimination against or discharge of an employee who has filed a complaint in regard to the FMLA. A copy of this policy will be provided to each employee upon hiring.

**A. DEFINITIONS**

Serious Health Condition

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

Continuing Treatment (Subject to certain conditions) the continuing treatment requirement in the above definition of “serious health condition” may be met by a period of incapacity of more than three consecutive calendar days combined with at least two visits to a health care provider or one visit and a regimen of continuing treatment or incapacity due to pregnancy or a chronic condition. Other conditions may meet the definition of continuing treatment.

**B. ELIGIBILITY**

Employees are eligible for unpaid FMLA leave if they have been employed by the school system for at least 12 months (not necessarily consecutively); and worked at least 1,250 hours during the previous 12 months.

**C. QUALIFYING CONDITIONS**

Except in cases of leave to care for a covered service member with a serious illness or injury, an eligible employee is entitled to a total of 12 workweeks of FMLA leave during any 12-month period for any one or more of the following reasons:

1. The birth and first-year care of the employee’s child;

2. Adoption or foster placement of a child with the employee;

3. A serious health condition of the employee or the employee’s spouse, child or parent;

4. A qualifying exigency (see Section F) arising out of the fact that the spouse or a son, daughter or parent of the employee has been deployed, or is on notice of an impending deployment to a foreign country as a member of the regular Armed Forces on active duty or as a member of the National Guard or Reserves under a federal call or order to active duty; or

5. To care for a covered service member (as defined by federal law and/or regulation) who has incurred a serious injury or illness, or aggravated an existing illness or injury, in the line of duty while on active duty in the Armed Forces, which may render the family member medically unfit to perform his or her office, grade, rank or rating. An employee who is a spouse, son, daughter, parent or next of kin of the service member may take leave for a period of up to 26 work weeks under this provision.

**D. DETERMINING THE 12-MONTH LEAVE PERIOD**

The 12-month period during which an employee is eligible for FMLA leave will be from

July 1 to June 30. Exception: The period for leave to care for a covered service member with a serious injury or illness begins on the first day the employee takes leave for this reason and ends 12 months later.

**E. ENTITLEMENT TO LEAVE**

Eligible employees may take leave as follows:

1. **Medical leave for serious health conditions**: A combined total of 12 work weeks during a 12-month period. The leave may be taken intermittently or on a reduced leave schedule as is medically necessary.

2. **Family leave for pregnancy, birth of a child or placement of a child for foster care or adoption**: A combined total of 12 consecutive workweeks during a 12-month period. Eligibility for FMLA leave expires 12 months from the birth, foster care placement or adoption of the child. Leave must be used in a single block of time unless the board agrees to another arrangement.

3. **Military service exigency**: A combined total of 12 workweeks during a 12-month period. The leave may be taken intermittently or on a reduced leave schedule.

4. **Leave to care for injured service member**: A combined total of no more than 26 work weeks during a single 12-month period. The leave may be taken intermittently or on a reduced leave schedule. If combined with other types of FMLA leave, the total leave taken in a single 12-month period still may not exceed 26 weeks.

5. **Spouses employed by the school system**: Spouses who are both employed by the school system and eligible for FMLA leave are limited in the amount of family leave they may take for the birth and care of a newborn child, for the placement of a child for adoption or foster care or to care for a parent who has a serious health condition to a combined total of 12 workweeks (or 26 weeks if leave to care for a covered service member with a serious injury or illness is also used).

**F. QUALIFIED MILITARY SERVICE EXIGENCIES**

A military service exigency that qualifies for FMLA leave must be defined in accordance with federal regulations. Qualified exigencies may include:

1. short-notice deployment;

2. military events and related activities;

3. school and childcare activities;

4. financial and legal arrangements;

5. counseling;

6. rest and recuperation leave;

7. post-deployment activities; and

8. additional activities agreed upon by the board and employee.

**G. INTERMITTENT OR REDUCED WORK SCHEDULE**

An employee may take FMLA leave on an intermittent or reduced leave scheduleas required for the health of the employee or family member, due to a qualifying exigency, or as otherwise approved by the superintendent. The employee must make a reasonable effort to schedule treatment so as not to disrupt unduly the operations of the school. Whenever possible, the employee should discuss scheduling with his or her immediate supervisor prior to scheduling any medical treatment in order to accommodate the work schedule. An employee who requests intermittent or reduced leave time for medical treatment of a serious health condition may be required to give the reasons for the intermittent or reduced leave schedule and the schedule for treatment.

To better accommodate an employee’s need for intermittent or reduced leave for a serious health condition, the school system may require an employee to take an alternative position during the period of leave. The alternative position must have equal pay and benefits, but it does not have to have equivalent duties.

Employees may take intermittent leave in increments of one hour. Instructional personnel are subject to special rules for taking intermittent or reduced leave. (See Section H.)

**H. INSTRUCTIONAL PERSONNEL**

The following special rules apply to instructional personnel only. For the purposes of this policy, instructional personnel are teachers, athletic coaches, driving instructors, special education assistants and any other employees whose principal function is to teach and instruct students.

1. Use of Intermittent or Reduced Schedule Leave

a. Instructional employees may use intermittent or reduced schedule leave only when the employee and the school system have reached an agreement on how the leave will be used.

b. If an instructional employee requests intermittent or reduced schedule leave for more than 20 percent of the workdays of the duration of a leave due to medical treatment, the school system may require the employee to take continuous leave for up to the entire duration of the scheduled leave or to transfer to an alternative position with equivalent pay and benefits for the period of leave.

c. Instructional employees who take intermittent or reduced schedule leave that constitutes 20 percent or less of the workdays during the leave period are not subject to transfer to an alternative position.

2. Extension of FMLA Leave at School System Discretion

The school system may require instructional personnel to continue leave through the end of the school semester if any of the following conditions exist:

a. the leave will begin more than five weeks before the end of the term; the leave will last at least three weeks; and the employee would return to work in the last three weeks of the academic term.

b. the leave is for a purpose other than the employee’s own serious health condition or for a military exigency; the leave will begin in the last five weeks of the term; the leave will last more than two weeks; and the employee would return to work during the last two weeks of the academic term

c. the leave is for a purpose other than the employee’s own serious health condition or for a military exigency; the leave will begin in the last three weeks of the term; and the leave will last at least five days.

If the school system requires an instructional employee to take leave until the end

of the academic term, only the period of leave until the employee is ready and

able to return to work will be charged against the employee’s FMLA entitlement.

**I. EMPLOYEE’S RESPONSIBILITY WHEN REQUESTING LEAVE**

To ensure that employees receive proper notification of their rights and responsibilities and that leave is properly designated, all employees requesting any type of leave must make the request to the director of human resources or designee.

1. Employee’s Responsibilities When Leave is Foreseeable

a. The employee must provide 30 days’ advance notice of the need to take FMLA leave when the need is foreseeable. If this amount of notice is not possible, then notice must be given as soon as practicable, taking into account all of the facts and circumstances.

b. The employee must provide sufficient information for the school system reasonably to determine (1) whether the FMLA may apply to the leave request and (2) the anticipated timing and duration of the leave. This information would include, for example, notice that the employee is unable to perform job functions, notice that the family member is unable to perform daily activities, notice of the need for hospitalization or continuing treatment by a health care provider or notice of circumstances supporting the need for military family leave.

c. If the employee does not provide 30 days’ notice and there is no reasonable justification for the delay, the school system may delay the FMLA leave until at least 30 days after the employee provides notice of the need for FMLA leave.

d. If an instructional employee fails to give the required notice of foreseeable leave for an intermittent or reduced leave schedule, the school system may require the employee to take continuous leave for the duration of his or her treatment or may temporarily transfer the employee to an alternative position for which the employee is qualified and that has the same benefits. (See Section H.)

2. Employee’s Responsibilities When Leave is Not Foreseeable

a. When leave is not foreseeable, the employee must comply with the usual school system procedures for notifying his or her supervisor of the absence and requesting leave, including any applicable requirements established by policy 7510, Leave. If the employee fails to do so, the leave may be delayed or denied.

b. When giving notice of an absence, the employee must inform the supervisor if the requested leave is for a reason for which FMLA leave was previously taken or certified.

c. The employee also must notify the director of human resources or designees of the need for FMLA leave as soon as practicable.

d. All employee responsibilities in the FMLA for notice, medical certification, fitness for duty certification and notice of intent to return to work apply as specified in this policy and policy 7510.

**J. SCHOOL SYSTEM’S DESIGNATION AND NOTICE TO EMPLOYEE**

1. Whether or not the employee specifically requests FMLA leave, the director of human resources or designee is responsible for asking any questions of the employee necessary to make a determination of whether the leave is FMLA eligible, unless the employee has already requested and received FMLA leave or certification for the same condition or event. The director may require the employee to provide notice of the need and the reason for leave.
2. The director for human resources or designee shall provide all legally-required notices to the employee within five days of receiving this information or otherwise learning that an employee’s leave may be for an FMLA-qualifying reason, unless there is a justifiable delay, such as a delay for documentation. The required notices must indicate whether the employee is eligible under the FMLA. If the employee is eligible, the notice must specify any additional information required from the employee and must explain as well as the employee’s rights and responsibilities under the FMLA. If the employee is not eligible, the notice must provide a reason for the ineligibility. The required notices also must state whether the leave will be designated as FMLA-protected and, if so, the amount of leave that will be counted against the employee’s leave entitlement.
3. Leave may be designated as both FMLA-eligible and as leave under the school system’s paid leave policy if paid leave has been substituted. Such leave would be counted toward the employee’s 12-week FMLA entitlement. In addition, the director of human resources may designate an absence (taken as paid or unpaid leave) that meets the criteria for an FMLA-qualifying absence as part of the employee’s total FMLA entitlement, whether or not the employee has requested FMLA leave. (See Section M.)
4. Leave that has been taken for an FMLA-qualifying reason may be retroactively designated as FMLA leave with appropriate notice to the employee, provided that such designation does not cause harm or injury to the employee.

**K. CERTIFICATION**

The school system reserves the right to require employees to provide certification of any

FMLA-qualifying event or condition of the employee or the employee’s spouse, child, parent or next of kin, including certification for military exigency leave. The school system will not request more medical certification information than that allowed by the FMLA and the Americans with Disabilities Act. The director may request a second or third verification at the school system’s expense if reason to doubt the validity of a medical certification exists. The school system may require periodic recertification to support the leave, as permitted by law.

**L. RETURN TO WORK**

The school system may require an employee to periodically report on his or her status and intent to return to work. Any employee who is taking leave through the end of an academic semester must report on his or her intent to return to work no later than four weeks before the end of the academic semester. In addition, the school system may require the employee to report on his or her intent to return to work on a regular basis while on FMLA leave.

Before an employee returns to work from FMLA leave taken for the employee’s own serious health condition, the employee must present a “fitness-for-duty” certification that states that the employee is able to return to work. This requirement does not apply to an employee taking intermittent leave unless the employee’s condition presents a reasonable safety concern.

**M. SUBSTITUTION OF PAID LEAVE**

1. The school system will substitute appropriate paid leave, including sick leave, personal leave and vacation time for unpaid, FMLA leave to the extent allowed by law and policy, giving proper notice to the employee that the leave is designated as FMLA. If an employee has exhausted his or her accrued paid leave but an FMLA-qualifying reason for absence continues, the school system will designate resulting absences as protected FMLA leave until the employee has used all allowable FMLA leave. Such absences will be unpaid.

2. When an employee has an absence (taken as paid or unpaid leave) that meets the criteria for an FMLA-qualified absence, the school system may, with proper notice to the employee, designate the absence as part of the employee’s total annual FMLA entitlement. If the absence continues for more than 10 days, all employee responsibilities in the FMLA to provide notice for foreseeable and unforeseeable leave, medical certification, fitness for duty certification and notice of intent to return to work apply as specified in this policy and policy 7510.

3. An employee must not be permitted to exhaust paid leave before beginning

FMLA leave if it has been determined that the employee’s reason for using paid leave meets the FMLA eligibility requirements.

**N. RESTORATION TO EQUIVALENT POSITION**

1. Generally

Employees, except “key” employees, will be restored to the same or an equivalent position upon return from FMLA leave. The equivalent position will have virtually identical pay, benefits and working conditions, including privileges, perquisites and status, as the position the employee held prior to the leave. The position also must involve substantially similar duties and responsibilities, which must entail substantially equivalent skill, effort, responsibility and authority. All positions within the same job classification are considered “equivalent positions” for the purposes of this policy, so long as these conditions are met. For licensed employees, all positions with the same salary and licensure requirements also will be considered equivalent positions, so long as these conditions are met.

2. Key Employees

Key employees do not have the right to be restored to the same or an equivalent position upon their return from FMLA leave. Key employees are salaried FMLA eligible employees who are among the highest paid 10 percent of all employees. If restoring a key employee would result in substantial and grievous economic injury to the school system, then the school system has no obligation to restore the employee to the same or an equivalent position. An employee will be informed at the time leave is taken if he or she is considered a key employee and will be informed once a determination is made that the employee will not be restored to the same or an equivalent position upon return from FMLA leave. A key employee who has been informed that he or she will not be restored still has the right to health benefits for the full period in which he or she is eligible for FMLA leave.

**O. CONTINUATION OF HEALTH BENEFITS**

Health care coverage and benefits will be continued for the duration of an employee’s

FMLA leave on the same conditions as would have been provided if the employee had continued working. Employees do not have the right to the accrual of earned benefits during FMLA leave. If an employee takes intermittent or reduced leave, he or she has the right to maintain the same health care benefits, but earned benefits may be reduced in proportion to hours worked when such a reduction is normally based upon hours worked. The school system may recover from the employee the cost of health insurance premiums paid on behalf of the employee while the employee was on unpaid FMLA leave if the employee does not return to work after the leave, so long as the reason for not returning does not relate to a serious health condition or to circumstances beyond his or her control.

**P. POSTING REQUIREMENT**

The superintendent or designee shall ensure that notices of FMLA provisions and information on procedures for filing complaints are posted in places that are readily accessible to employees and applicants.

**Q. RECORDKEEPING REQUIREMENT**

The director shall maintain records of the following information for at least three years: basic payroll and identifying employee data, the dates (or hours) of FMLA leave taken by each employee, and premium payments of employee benefits. Medical information, such as that relating to medical certifications, also will be maintained in the personnel department in confidential medical records.

The director will maintain for at least three years copies of employee notices, including general and specific notices, any other documents describing employee benefits or policies and records of disputes between the school system and any employee regarding designation of FMLA leave.

**R. ENFORCEMENT**

An employee may file a complaint with the U.S. Department of Labor or bring a private lawsuit against the school system for violations of the FMLA. FMLA does not affect any federal or state law prohibiting discrimination or supersede any state or local law that provides greater family or medical leave rights.

**S. OUTSIDE EMPLOYMENT/FALSIFICATION OF RECORDS**

The school system may deny FMLA benefits to an employee who engages in self-employment or employment for any employer while on continuous leave if the employee fraudulently obtained FMLA leave. Falsification of records and failure to correct records known to be false are violations of this policy and will result in discipline, which may include termination from employment.

Legal References: Americans With Disabilities Act, 42 U.S.C. 12101 *et seq.*; Family and

Medical Leave Act of 1993, as amended, 29 U.S.C. 2601 *et seq.*; 29 C.F.R. pt. 825; National

Defense Authorization Act for 2008, Pub. L. 110-181 sec. 585; *North Carolina Public Schools*

*Benefits and Employment Policy Manual*, N.C. Department of Public Instruction (2008-2009,

revised February 2009)

Cross References: Leave (policy 7510)

Adopted: 14 April 2011