



WINDHAM SCHOOL
DISTRICT

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March 31, 2005

WINDHAM BOARD POLICY

SUBJECT: LEAVES AND ABSENCES

AUTHORITY: Texas Education Code (TEC) §§ 19.009 and 22.003; Texas Labor Code § 52.051; 29 Code of Federal Regulations § 1604.10

Reference: TEC § 21.409

APPLICABILITY: Windham School District (WSD)

EMPLOYMENT AT WILL CLAUSE:

These guidelines **do not** constitute an employment contract or a guarantee of continued employment. The WSD reserves the right to change the provisions of these guidelines at any time.

Nothing in these guidelines and procedures limits the superintendent's authority to establish or revise human resources policy. These guidelines and procedures are adopted to guide the internal operations of the WSD and **do not** create any legally enforceable interest or limit the superintendent's authority to terminate a noncontract employee at will.

POLICY:

Employees of the WSD may earn and use accrued leave time subject to the provisions of this policy. These procedures shall be administered in concert with WBP-07.12, "Overtime Policy," related to the *Fair Labor Standards Act*. The management of leaves and absences for employees of the WSD shall be in accordance with the guidelines provided within this directive without regard to race, color, religion, sex (gender), national origin, age, disability, genetic information, or uniformed services status.

DEFINITIONS:

"Consecutive Days" shall be working days one following the other, whether during the week or before and after a weekend or holiday (Thursday, Friday, and Monday are considered consecutive days).

“Family and Medical Leave (FML)” is leave granted in accordance with the *Family and Medical Leave Act* and WBP-07.48, “Family and Medical Leave.”

“Family Emergency” shall be limited to natural disasters and life-threatening situations involving the covered employee or a member of the employee’s immediate family.

"Health Care Provider" is defined as any of the following:

1. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices.
2. Podiatrists, dentists, clinical psychologists, optometrists, licensed acupuncturists, and chiropractors authorized to practice in the state and performing within the scope of their practice as defined by state law.
3. Nurse practitioners and nurse midwives authorized to practice under state law and performing within the scope of their practice as defined by state law.
4. Christian Science practitioners who are listed with the First Church of Christ, Scientist in Boston, Massachusetts.
5. Any health care provider from whom an employer or the employer's group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

"Immediate Family," for the purpose of this policy, includes the following (does not apply to FML or other policies with different definitions):

1. Spouse;
2. Son, stepson, or son-in-law;
3. Daughter, stepdaughter, or daughter-in-law;
4. Parents, stepparents, or parents-in-law;
5. Siblings, stepsiblings, or siblings-in-law;
6. Grandparents;
7. Grandchildren; or
8. Any relative residing in the covered employee's household at the time of illness or death.

“Marriage” includes ceremonial marriage and informal marriage, which are the two types of marriage recognized by the State of Texas and are defined as follows:

“Ceremonial marriage” is a marriage documented by: (1) a marriage license recorded with a county clerk; and (2) a marriage certificate issued by the county clerk.

“Informal marriage” (previously known as common law) is a marriage that is not necessarily documented through a county clerk, but is valid when a man and woman either sign and register a declaration of their marriage, or perform all of the following: (1) agree to be married; (2) after the agreement, live together in the State of Texas as husband and wife; and (3) represent to others that they are married.

“Medical Fact” is a description of a condition that identifies the cause or nature of the illness or injury (such as viral illness, internal bleeding, back pain, or upper respiratory infection). A procedure that identifies the body part (such as hysterectomy, appendectomy, or tonsillectomy) is sufficient information to serve as a medical fact. Terms such as “under my care,” “surgery,” or “stress” are not acceptable as a medical fact. A medical fact does not require a diagnosis.

“Pregnancy Related Disabilities” are disabilities caused or contributed to by pregnancy, childbirth, or related medical conditions, and for all job-related purposes, shall be treated the same as disabilities caused or contributed to by other medical conditions under any health or disability insurance or sick leave plan available in connection with employment. 29 Code of Federal Regulations (C.F.R.) 1604.10(b).

“Service Year” is defined as one calendar year from the date of employment. Years increase on subsequent anniversary dates of employment.

“Sibling” is an employee’s biological, adopted, or stepsibling

“Son” or “Daughter” is an employee’s biological, adopted, foster child, stepchild, legal ward, or a child (other than the above) for whom the employee is standing “in loco parentis.”

“Spouse” is an employee’s husband or wife through a marriage.

PROCEDURES:

I. Leave Accumulation

A. State Personal Leave (Effective May 30, 1995)

A state minimum personal leave program consisting of five personal leave days per year shall be provided for WSD employees with no limit on accumulation and no restrictions on transfer among school districts.

1. Personnel employed 100 percent of the day are entitled to a maximum of five days in any one school year. Five days shall be the maximum number

of days earned when all Texas school district state minimum personal leave programs are combined.

2. Personnel employed less than 100 percent of the day, but at least 50 percent of the day, are entitled to a maximum of two and one half days in any one school year.
3. Personnel employed 100 percent of the day for one half workdays each month, as established in the approved school calendar, are entitled to a maximum of two and one half days in any one school year.
4. Personnel employed less than half time, defined as working less than half the school monthly schedule, regardless of the number of hours worked each day, are not eligible for state personal leave accrual.

B. State Sick Leave (Earned prior to May 30, 1995)

WSD employees may have accrued sick leave accumulated as state sick leave, under former Section 13.904(a) of the Education Code, which continues to govern the use of this sick leave. This state sick leave may not be used for personal business nor for any reasons other than those allowed by this statute. Also known as Foundation School Program (FSP) leave, FSP leave or state sick leave is transferable among districts who participate in the state personal leave program. Unused state sick leave does not convert into state personal leave and cannot be used to bond with a child following birth, adoption, or placement for foster care.

C. Local Sick Leave (Effective September 1, 1995)

WSD employees earn up to seven days local sick leave which may only be used for sick leave purposes as defined in this policy. Local sick leave shall not be used for personal leave purposes. There is no limit on the accumulation of local sick leave. Local sick leave is not transferable among school districts and holds no value past separation from WSD employment.

1. Personnel employed 100 percent of the day shall earn local sick leave at the rate of one half day each 15 days of employment for up to a total of seven days.
2. Personnel employed less than 100 percent of the day, but at least 50 percent of the day, shall earn local sick leave at the rate of one half day for each 36 days of employment, not to exceed three and one half days in any one school year.
3. Personnel employed for 100 percent of the day, but up to one half workdays of the established school calendar, shall earn local sick leave at the rate of one day for every 15 days of employment, not to exceed three and one half days in any one school year.

4. Personnel employed less than half time defined as working less than half the school monthly schedule, regardless of the number of hours worked each day, are not eligible for local sick leave accrual.
5. An employee on leave without pay may not accrue sick leave at the rate of an employee not on leave without pay.

II. Availability

The daily rate value of the unearned leave days shall be deducted from the employee's final paycheck when an employee, who has used more leave days than earned, ceases to be employed by the WSD.

Example: Employee A is absent due to illness for five days in November. Employee A has a balance of two local sick days and a zero balance of state personal leave. The employee in this scenario must be docked for three days. The employee's daily rate will be used to calculate the dollar amount of the dock. If Employee A remains employed with the WSD, the monthly salary will be adjusted. If Employee A separates from the WSD in November, the final paycheck will be adjusted to reflect total docks for the year.

A. State Personal Leave

State personal leave shall be made available for use at the beginning of the school year. Individuals who are employed by the WSD for the entire year are entitled to the full five days of state personal leave. Leave accrued under the state personal leave program shall be taken at the individual employee's discretion in compliance with this policy.

1. Employees must have prior supervisor's approval before taking state personal leave.
2. Supervisors shall not restrict the purposes for which state personal leave is used.
3. Supervisors shall consider the effect of the employee's absence on the educational program or WSD operations as well as the availability of substitutes. State personal leave may not be allowed in the following circumstances unless deemed appropriate by the supervisor:
 - a. The day before a school holiday;
 - b. The day after a school holiday;
 - c. Staff development days; or
 - d. Testing days.

4. State personal leave days shall be requested in writing at least three days in advance except in case of emergency.
5. An employee may take consecutive days of state personal leave. The maximum number of consecutive state personal leave days taken shall be in accordance with the number of WSD Service Years as shown in the following chart:

Employment Assignment	0-4 Years	5-9 Years	10-14 Years	15+ Years
Teacher	3	5	7	10
Other	3	5	10	10

The maximum number of consecutive days in the chart may only be utilized once per school year. When requesting more than three consecutive days, an employee shall not take more than one third of their total state personal leave balance.

B. State Sick Leave

Leave accrued under the state sick leave program shall only be used for the following:

1. Employee illness or illness of a member of the employee's immediate family;
2. Family emergency;
3. Death in an employee's immediate family; or
4. Active military duty.

C. Local Sick Leave

Leave accrued under the local sick leave program shall be used for the following:

1. Employee illness or illness of a member of the employee's immediate family;
2. Family emergency;
3. Death in an employee's immediate family; or
4. Leave that qualifies under WBP-07.48, "Family and Medical Leave."

III. Administrative Procedures

- A. All days earned and used shall be properly documented, recorded, and filed in accordance with the Texas Education Agency and WSD policies. Supervisors do not have the authority to allow employees to work less time than stipulated by policy without recording the absence.
- B. When an employee takes leave that qualifies for sick leave, the employee may elect the order of use of accrued local sick leave or state sick leave. Accrued state personal leave shall be used if no accrued sick leave is available.
- C. Employees shall use leave they have accumulated in prior years plus those that are earned through the date of absence. If leave is taken over the amount earned, the employee's paycheck shall be docked or cancelled.
- D. The record of state sick leave and state personal leave accumulated in prior years, current days earned, days used while employed by the WSD, and unused balances shall be part of each employee's service record, recorded in half days and whole days.
- E. Recording of Use
 - 1. Teachers: Supervisors shall ensure that all absences are recorded as leave used. Accrued local sick leave or state sick leave or state personal leave shall be recorded in 15-minute increments up to one hour.
 - 2. Other Staff: Supervisors shall approve the use of accrued local sick leave or state sick leave or state personal leave in 15-minute increments.
 - 3. An employee who is absent at the beginning of the work schedule without prior notification may be considered tardy and subject to discipline according to WBP-07.44, "Professional Standards of Conduct and Disciplinary Guidelines."
- F. Responsibilities of Supervisors

Supervisors shall establish local procedures that are consistent with this policy and include the following:

- 1. Procedures for employees to notify their supervisor of scheduled and emergency absences. An employee who is unable to report to work as scheduled should notify the employee's supervisor as soon as the employee becomes aware of the impending absence to allow the supervisor time to arrange for adequate staffing. As a general rule, employees should notify their supervisor of scheduled medical appointments at least three days in advance. In the event of the onset of illness overnight, an employee shall give at least two hours notice to their supervisor prior to the beginning of

the work schedule.

2. Procedures for documenting the absence reason including the signatures of the employee and supervisor. An employee who plans an absence from work shall complete, sign, and submit documentation developed at the local level such as an Absence From Duty Report. Such documentation shall serve to identify the type of leave used. When an absence is unforeseeable, the employee shall complete, sign, and submit documentation on the date of return. A supervisor's signature is unnecessary for unforeseeable leave unless the employee has a zero balance of available, appropriate leave.
3. Procedures for an employee to notify the employee's supervisor before leaving the school or department when the employee is required to leave work due to illness or family emergency.
4. Procedures should allow a family member or other responsible party to provide such notification for an employee who is unable to do so as a result of a medical emergency.
5. Procedures shall include a statement that an employee's failure to provide notification to the employee's supervisor may be reason for discipline and/or loss of pay for the duration of the absence.

G. Certification of Illness

1. If an employee takes three or less consecutive workdays of leave due to an injury or illness, the employee is not required to provide a health care provider's statement except in accordance with Misuse of Sick Leave, as described in this policy. However, an employee may choose to provide a health care provider's statement to support the absence.
2. If four or more consecutive workdays are taken because of employee illness or illness of the employee's immediate family member, a health care provider's statement of such must be secured from the attending health care provider. The health care provider's statement must state the medical facts supporting the period of absence from work. The same or additional health care provider's statement must release the employee for duty for the employee's illness.
3. If the employee is provisionally eligible for FML, the human resources representative shall contact the employee and implement procedures set forth in WBP-07.48, "Family and Medical Leave."
4. If the employee is not provisionally eligible for FML, the human resources representative shall contact the employee and implement procedures in this policy for a leave of absence for a temporary disability.

5. If the employee's health care provider's statement indicates that the employee's medical condition is permanent or may last six months or longer, the human resources representative shall inform the employee of the procedures established in WBP-07.01, "Employment of Personnel."

H. Misuse of Sick Leave

If it is suspected that an employee is violating the WSD procedures set forth in this policy for any given absence, it shall become the prerogative of the appropriate administrators to ask for a health care provider's statement as described in this policy.

1. If an employee is absent based on a claim of illness or injury on a day or days the employee previously requested state personal leave or compensatory time and such leave was denied, the supervisor may interpret this as evidence of misuse of sick leave. Likewise, a pattern of absence such as absences on staff development days or planning days may also be interpreted as evidence of misuse of sick leave. At the time the employee notifies the supervisor of the employee's absence, the supervisor may verbally request the employee to furnish a health care provider's statement within two workdays after the employee returns to work.
2. If the employee was absent for three consecutive workdays or less, this verbal request must be put in writing and provided to the employee on the day the employee returns to work. If the employee refuses to provide the health care provider's statement within the specified time, the supervisor may initiate appropriate disciplinary action.
3. If the employee was absent for more than three consecutive work days, the employee shall provide the health care provider's statement in accordance with this policy or WBP-07.48, "Family and Medical Leave."

I. Death in Family

When an employee is absent due to a death in the family, the employee must identify the specific relationship to the deceased on the appropriate leave report. State and local sick leave for a death in the family is limited to immediate family only.

J. Recordkeeping

The responsible staff member, assigned by the supervisor, shall enter the absence into the leave database within 48 hours of the absence. If absence documentation as submitted by the employee fails to document the type of absence requested or the employee fails to submit documentation, the absence shall be recorded as state personal leave or docked. The employee is responsible for requesting a correction within ten working days.

K. Separation From Employment

1. Upon separation, an employee may choose to donate the balance of accrued local sick leave to the sick pool.
2. The balance of accrued state personal and state sick leave shall remain on record and shall be reinstated upon re-employment based on the most recent service record.
3. Local sick leave shall be reinstated upon re-employment if not donated to the sick pool.

L. Retirement

Retirement means the withdrawal from service with a retirement benefit granted under the Teacher Retirement System (TRS) of Texas.

1. Retirement from the WSD shall be evidenced by submission of the TRS Notice of Final Deposit Form to the WSD Division of Human Resources prior to the retirement date.
2. Beginning September 1, 2003, WSD shall no longer pay retiring employees for the balances of state sick leave days, state personal leave days, or local sick leave days.
3. The TRS may allow members to purchase one year of service credit with a set number of accumulated state personal leave or state sick leave. Contact TRS for further information.

M. Court Appearances - Subpoena

An employee shall not be discharged, disciplined, or otherwise penalized because the employee complies with a valid subpoena to appear in a civil, criminal, legislative, or administrative proceeding.

1. An employee shall notify the employee's supervisor within three workdays after having been served a subpoena. Notification shall include a copy of the subpoena with the dates of absence and other documentation as required by local procedures. Failure to notify the employee's supervisor may result in disciplinary action.
2. Absences for court appearances related to an employee's personal business shall be deducted from the employee's state personal leave, compensatory time, or shall be taken by the employee as leave without pay.
3. The employee shall be allowed adequate time to appear in court as required.

N. Assault Leave

In addition to all state and local days of sick leave provided, an employee who is physically assaulted during the performance of regular duties is entitled to the number of days of leave necessary to recuperate from all physical injuries sustained as a result of the assault, but not to extend more than two years beyond the date of the assault.

1. At an employee's request, WSD shall assign the employee to assault leave; however, on investigation of the claim, WSD may change the assault leave status and charge the leave against the employee's accrued personal leave or against the employee's pay if insufficient accrued personal leave is available.
2. Days of leave taken for assault leave under this provision shall be reported by submitting the proper documentation and reimbursed in accordance with recording provisions in this policy. These days shall not be deducted from accrued personal leave.
3. As provided by Texas Education Code Section 22.003(b), assault leave benefits will be coordinated with workers' compensation wage benefits so that the combined payment to an employee who has been assaulted during performance of regular duties will equal 100 percent of the employee's weekly compensation prior to the assault.

O. Leave of Absence for Temporary Disability For Full-Time Employees

A full time employee of the WSD shall be given a Leave of Absence for a Temporary Disability (LOAFTD) when the employee's condition interferes with the performance of regular duties. The maximum LOAFTD for a single event or combined events for different conditions will be 180 calendar days. The 180 day period is measured backwards from the date an employee uses any LOAFTD. LOAFTD shall not be administered on an intermittent basis for a single event. LOAFTD does not apply to the condition of others who are not employees.

1. The WSD Board of Trustees delegates to the superintendent the authority to place an employee on a leave of absence for temporary disability, if, in the superintendent's judgment after consultation with a physician who has performed a thorough medical examination of the employee, the employee's condition interferes with the performance of regular duties. The employee who disagrees with being placed on leave of absence for temporary disability status by the superintendent shall have the right to object by presentation of a letter with supporting documents to the superintendent.

2. It is the employee's responsibility to make a written request for leave of absence for a temporary disability whenever the employee's condition interferes with the performance of their regular duties.
 - a. The request for leave of absence for a temporary disability that is initiated by the employee shall be made to the superintendent.
 - b. The request shall include the date on which the leave of absence for temporary disability shall begin and the probable date of return as certified by the physician. The physician's statement must:
 - (1) Clearly identify the medical infirmities involved that are directly related to the employee's alleged inability to work and
 - (2) Clearly confirm a medical condition that is temporary and disabling of the employee's ability to perform regularly assigned duties.
3. In accordance with WBP-07.48, "Family and Medical Leave," family medical leave runs concurrently with the leave for a temporary disability.
4. Employees on a leave without pay for a temporary disability must submit a recertification from the doctor diagnosing the disability each month. The unit or department shall be responsible for submitting the appropriate absence report.
5. The employee is required to notify the superintendent, when possible, 30 days prior to the expected date of return. If the elimination of the temporary disability condition cannot be forecast, then the employee shall notify the superintendent as soon as possible after the disabling condition has ended. Notice by the employee to the superintendent shall be accompanied by a physician's statement that clearly indicates the employee's physical fitness to resume the full range of regular duties.
6. An employee who has returned to active duty after a leave of absence for a temporary disability is entitled to an assignment at the unit or department where the employee was formerly assigned, subject to availability of an appropriate position. If an appropriate position at the original unit or department is not available, the employee may be assigned to another unit or department, subject to the approval of the superintendent or designee. If a position is not available at another unit or department before the end of the school year, the employee must be reinstated to a position at the original unit or department at the beginning of the next school year.

7. An employee's entitlement to sick leave is unaffected by any concurrent eligibility for a leave of absence for temporary disability. The two types of leave are different, and each must be granted by its own terms.

Signature on file
Oliver J. Bell, Chairman
Windham School District Board of Trustees