WINDHAM BOARD POLICY

SUBJECT: **FAMILY AND MEDICAL LEAVE**

AUTHORITY: Texas Family Code §§ 2.001-.501; *Family and Medical Leave Act of 1993* (FMLA), 29 U.S.C. § 2601-2654; 29 Code of Federal Regulations (C.F.R.) Part 825

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 an employee at will.

POLICY:

The WSD shall administer Family and Medical Leave (FML) to eligible employees in accordance with the provisions of this policy. The WSD promotes equal employment opportunity by granting such leave without regard to race, color, religion, sex (gender), national origin, age, disability, genetic information, or uniformed services status. No employee shall be subjected to harassment or retaliation for opposing or reporting an alleged violation of a federal or state law relating to leave entitlements or for opposing or reporting employment discrimination.

DEFINITIONS:

"Authentication" means providing the health care provider with a copy of the certification and requesting verification that the information on the form was completed or authorized by the health care provider who signed the document.

"Clarification" means contacting the health care provider to understand the handwriting on the certification or understand the meaning of the response.

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

“Child” is an employee’s biological, adopted, foster son or daughter, stepchild, legal ward or a child for whom the employee is standing “in loco parentis” (in place of a parent), who is under age 18, or is age 18 or older and incapable of self-care because of a mental or physical disability. This definition does not include son-in-law or daughter-in-law.

“Family and Medical Leave” (FML) is leave granted in accordance with the provisions of the Family and Medical Leave Act (FMLA), which is a federal law entitling an eligible employee to a specific number of workweeks of job-protected leave, with or without pay, during a 12-month period for a qualified reason as set forth in the FMLA. All qualifying reasons, except Military Caregiver Leave, entitle an employee to 12 workweeks of job-protected leave. Military Caregiver Leave entitles an employee with up to 26 workweeks of such leave during a single 12-month period. NOTE: The WSD uses a rolling 12-month period when calculating FML.

“Foreign Health Care Provider” is a health care provider who is authorized to practice in accordance with the law of that country and who is performing within the scope of their practice as defined under such law.

“Health Care Provider” is a doctor of medicine or osteopathy, podiatrist, dentist, clinical psychologist, optometrist, chiropractor, licensed acupuncturist, nurse practitioner, nurse midwife, clinical social worker who is performing within the scope of their practice as defined under state law, any health care provider recognized under the Texas Employees Group Benefits Program, or a Christian Science practitioner listed with the First Church of Christ, Scientist in Boston, Massachusetts.

"Health Care Provider's Statement" is a written statement from an attending health care provider that identifies the following: (1) the medical fact(s) associated with the injury/illness; (2) the expected duration of the injury/illness; and (3) if the statement is for the care of a family member, the type and duration of assistance required from the employee and projected date that the employee's assistance shall no longer be required. NOTE: It is possible for a written statement from the employee's attending health care provider to meet the requirements to be considered both a “health care provider's statement" and a "release to return to work." However, a "health care provider's statement" does not automatically meet the requirements to be a "release to return to work."

“Incapacity” means inability to work, attend school, or perform other regular daily activities due to the serious health condition, treatment therefore or recovery therefrom.

"Instructional Employees" are those employees whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes teachers and special education assistants such as signers for the hearing impaired. It does not include auxiliary personnel such as counselors, testing clerks, librarians, administrative assistants, or library clerks.

"Intermittent Leave" is approved FML taken in separate blocks of time. A health care provider's statement must indicate the medical facts and need for intermittent use of time off from work. Employees may not use intermittent leave for the birth of a child, foster care, or adoption.

"Leave With Pay" is discretionary or non-discretionary leave taken in accordance with the FML leave.

"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 Certification" is written documentation supporting an employee's need for leave. Types of certification include the following: (1) medical certification issued by the health care provider of the employee or the health care provider of a covered family member, documenting a serious health condition or (2) documentation supporting a qualifying exigency.

"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.

"Next of Kin of a Covered Service Member," for the purposes of this directive, is the nearest blood relative other than the covered service member's spouse, parent, or child, in the following order of priority: blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions, brothers and sisters, grandparents, aunts, uncles, and first cousins, unless the covered service member has specifically designated in writing another blood relative as the nearest blood relative for purposes of military caregiver leave under the FMLA.

“Parent” is a biological, adoptive, step or foster father or mother, or any other individual who stood in loco parentis to the employee when the employee was a son or daughter as defined in this section. This term does not include parents "in-law."

“Physically Worked” means the hours an employee reports for duty. The hours an employee is on leave with pay (administrative, compensatory, holiday, overtime, sick, or vacation leave) or leave without pay do not count as hours physically worked.

“Proof of Event” is a document required to show an event took place and the individual(s) involved. For the birth of a child, a birth bracelet, hospital certificate, health care provider’s statement, or birth certificate may be used as proof of event.

“Qualifying Exigency” is a need arising from a spouse, son, daughter, or parent being called to active military service in the Reserves or National Guard or certain retired members of the Armed Forces being called to active duty.

“Reduced Leave Schedule” is a leave schedule that reduces the employee’s usual number of working hours per workweek or per workday for a specific period of time.

“Rolling 12-Month Period,” for the purpose of this policy, is: (1) the 12-month period measured backward from the date an employee uses any FML; or (2) the 12-month period measured backward from the first leave without pay calendar day within the period of leave without pay.

“Serious Health Condition” for the purpose of FML is an illness, injury, impairment, or physical or mental condition that involves: (1) inpatient care (overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or (2) continuing treatment by a health care provider.

A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

a. A period of incapacity of more than three consecutive calendar days and any subsequent treatment or period of incapacity relating to the same condition that also involves treatment two or more times by a health care provider or treatment by a health care provider on at least one occasion that results in a regimen of continuing treatment under the supervision of the health care provider (a course of prescription medication, such as an antibiotic, or therapy requiring special equipment to resolve or alleviate the health condition (such as oxygen).

b. Any period of incapacity due to pregnancy (including morning sickness) or for prenatal care.

c. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one that requires periodic visits for treatment by a health care provider; continues over an extended period of

time (including recurring episodes of a single underlying condition); and may cause episodic rather than a continuing period of incapacity (such as asthma, diabetes, epilepsy, etc.).

d. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.

e. Any period of absence to receive multiple treatments (including any period of recovery) by a health care provider, either for restorative surgery after an accident or other injury or for a condition that would likely result in a period of incapacity of more than three consecutive 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 treatments are administered (such as most treatments for acne or plastic surgery) only when inpatient hospital care is required or complications develop.

g. Treatment by a health provider for substance abuse (does not include absence because of substance use). NOTE: The inclusion of substance abuse as a serious health condition does not prevent WSD from taking action against an employee for the illegal use of a controlled substance, in accordance with WSD policy. Disciplinary Action Guidelines for Employees." Disciplinary action may not be taken solely because the employee is exercising the right to take FML for substance abuse treatment by a health care provider.

"Spouse" is an employee's husband or wife through a marriage.

"State Agency" is a Texas state agency or entity providing benefits under the Texas Employees Group Benefits Program.

"Treatment by a Health Care Provider" includes treatment by a nurse or physician's assistant under direct supervision of a health care provider, treatment by a provider of health care services (such as a physical therapist) under orders of or on referral by a health care provider, and examinations to determine if a serious health condition exists and evaluations of the condition.

"Workweek" is any week an employee is expected to work. If FML is taken, the week is counted as a week of FML, regardless of any holidays that may occur within the week. However, if an employee is using FML leave in increments of less than one week, the holiday will not count against the employee's FML entitlement unless the employee was otherwise scheduled and expected to work during the holiday. Similarly, when WSD business activity has temporarily ceased and the employee is generally not expected to report for work for one or more weeks

(spring, summer, and winter break), the days WSD activities have ceased do not count against the employee's FML leave entitlement.

DISCUSSION:

Procedures set forth in this policy are intended to address the majority of situations that apply to leave approved under the FMLA. In cases where these procedures do not provide clear guidance for the application of the FMLA, the regulations set forth by the Department of Labor, Wage and Hour Division shall prevail.

PROCEDURES:

I. Eligibility

An eligible employee, as defined in 29 C.F.R. §825.110, is an employee who has been employed by the WSD or a state agency for at least 12 months (consecutive or inconsecutive months with a break in service of seven years or less) and has physically worked for WSD or a state agency for at least 1,250 hours of service during the 12 months immediately preceding the commencement of leave. Eligible employees shall be entitled to FML without any loss of employment benefit.

II. FMLA Events

Except in the case of military caregiver leave, eligible employees shall be granted leave for a total of 12 workweeks of job protected leave, with or without pay, during a rolling 12-month period. The 12-month period is measured backwards from the date an employee uses any FML. FML includes any of the following events:

A. The birth of a child including the care of a newborn child. Such leave may only be taken within 12 months from the date of the child's birth and may not be taken intermittently or on a reduced work schedule.

B. The placement of a child for adoption or foster care. Such leave may only be taken within 12 months from the date of adoption or foster care placement to care for such child and may not be taken intermittently or on a reduced work schedule.

C. To care for the employee's spouse, child, or parent with a serious health condition. Such leave may be taken intermittently or on a reduced schedule if medically necessary.

D. An employee unable to perform the essential functions of their position due to a serious health condition. Such leave may be taken intermittently or on a reduced schedule if medically necessary.

E. Because of any qualifying exigency arising out of the fact that the employee or the employee's spouse, child, or parent is a covered military service member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.

An eligible employee may take FML for one or more of the following reasons:

1. Short-notice deployment;

2. Military events and related activities;

3. Childcare and school activities;

4. Financial and legal arrangements;

5. Counseling;

6. Rest and recuperation;

7. Post-deployment activities; or

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

F. To care for a covered military service member with a serious injury or illness if the employee is the spouse, child, parent, or next of kin of the military service member.

This FMLA event qualifies an employee for combined total of all types of leave for up to 26 weeks during a "single 12-month period."

1. For this event only, the "single 12-month period" is measured forward from the date an employee's first FML to care for the covered military service member begins.

2. If an eligible employee does not take all of his or her 26 workweeks of leave entitlement to care for a covered service member during this "single 12-month period," the remaining part of his or her 26 workweeks of leave entitlement to care for the covered service member is forfeited.

3. An eligible employee is entitled to a combined total of 26 workweeks of leave for any FMLA-qualifying reason during the "single 12-month period" described in this section and is entitled to no more than 12 weeks of leave for one or more of the FMLA events listed above (A-E).

III. Both Spouses Employed by WSD

A. A husband and wife who are eligible for FML and are both employed by WSD may be permitted to take only a combined total of 12 weeks of leave during any 12-month period if the leave is taken for the following reason(s):

1. For the birth of a child or to care for the child after birth;

2. For the placement of a child for adoption or foster care, or to care for the child after placement; or

3. To care for a parent (but not a "parent-in-law") with a serious health condition.

B. Where the husband and wife both use a portion of the total 12-week entitlement for one of the purposes noted above, each spouse shall be entitled to the difference between the amount he or she has taken individually and 12 weeks of FML for a purpose other than those listed above.

C. Similarly, a husband and wife who are eligible for FML leave may be limited to a combined total of 26 weeks of FML leave during the "single 12-month period" if leave is taken as military caregiver leave.

IV. Intermittent Leave or Reduced Leave Schedule

A. Under certain circumstances, when an employee requests foreseeable intermittent FML or leave on a reduced work schedule, the WSD may restrict the duration of the leave or temporarily transfer the employee to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than the employee's regular position.

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

C. Special rules apply to certain employees of a school district, specifically instructional employees:

1. If an instructional employee does not give required notice of foreseeable leave to be taken intermittently or on a reduced schedule, the district may require the employee to take leave of a particular duration. Alternatively, the district may require the employee to delay the taking of leave until the notice provision is met.

2. The district may require the employee to take leave for a period not greater than the duration of the planned treatment in the following situation:

   a. If an eligible instructional employee needs intermittent leave or leave on a reduced schedule to care for a family member with a serious health condition, to care for a covered military service member, or for the employee's own serious health condition;

   b. The leave is foreseeable based on planned medical treatment; and

   c. The employee would be on leave for more than 20 percent of the total number of working days over the period of leave.

V. Concurrent Use of Paid Leave

WSD requires the concurrent use of all available leave. WSD shall designate any paid leave to which the employee is entitled as substituting for all or some portion of the employee's FML entitlement.

A. Once WSD has knowledge that the leave is being taken for an FMLA-required reason, the WSD shall notify the employee within five working days (absent extenuating circumstances) that the paid leave is designated and shall count as FML leave.

B. At the outset of FML, the employee shall be required to use all available paid leave, including sick leave pool and compensatory time, in the order determined by WBP 07.11, "Leaves and Absences." All subsequent absences shall be without pay.

   Example: If an employee has 10 days of non-discretionary leave (sick leave) and three days of compensatory leave available at the outset of FML for a serious personal health condition, his or her first 13 days of FML leave shall be with pay; the remaining days of FML leave shall be without pay.

C. As an exception to the requirement to utilize paid sick leave concurrently with FML, an employee receiving group insurance disability benefits payment or worker's compensation shall not be eligible to utilize paid sick leave while on FML.

VI. Benefit Continuation

Employees on approved FML without pay are eligible to continue participation in the group health plan. Coverage under any group health plan shall be maintained for the duration of the leave at the level and under the conditions coverage would have been provided if the employee had continued in active duty with WSD as long as the employee continues payment of their portion of the premium. Failure of employees to pay their portion of the premium shall result in cancellation of optional insurance coverage in

effect at the time payment ceases.

A. The human resources representative shall update the leave status of the employee in the Texas Employees Group Benefits Program (GBP) system. Any billing for continuation in the group insurance program shall be between the employee and GBP.

B. Continuation of coverage, premium payments and WSD contributions for FML leave without pay are as follows:

1. WSD contributes toward the cost of the employee health insurance coverage and, if applicable, an employee's dependent health insurance coverage.

    a. Full-time employees with dependent coverage who fail to pay their portion of their monthly insurance premium shall have coverage reduced to employee only per the procedures set forth in this policy.

    b. If a part-time employee fails to pay the employee's portion of the monthly insurance premium, the insurance coverage shall be canceled due to non-payment of premiums.

2. If the employee fails to return to work immediately upon expiration of the FML without pay, the employee shall reimburse WSD for any WSD-paid contributions toward the cost of employee health insurance coverage and an employee's dependent health insurance coverage.

    a. There may be an exception if an employee fails to return to work as a result of a serious health condition affecting the employee or a family member or as a result of other circumstances beyond their control as set forth in the FMLA regulations.

    b. When an employee fails to return to work, except for the reasons stated above, health premiums paid by WSD during a period of FML may be recovered by WSD through deduction of any sums due the employee or through legal action.

3. Once an employee returns to work, health insurance coverage may resume at the level held prior to the reduction to employee only coverage. When the employee returns to work, a pre-existing conditions clause shall not be applicable to the employee's disability coverage if the pre-existing period had been satisfied prior to the employee going on FML.

VII. Medical Certification

A. In general, a medical certification for FML shall be submitted by the employee within five calendar days of when the leave commences or 15 calendar days from when the employee received the medical certification form from WSD.

B. In general, a medical certification shall be required no more often than every 30 days and only in connection with an absence by the employee. If the medical certification indicates that the minimum duration of the condition is more than 30 days, the WSD shall wait until that minimum duration expires before requesting a recertification. The WSD may request recertification in less than 30 days in the following circumstances:

1. The employee requests an extension of leave;

2. Circumstances described by the previous certification have changed significantly (such as the duration or frequency of the absence, the nature or severity of the illness, or complications), or;

3. The employer receives information that casts doubt upon the employee's stated reason for the absence or the continuing validity of the certification.

C. If the initial medical certification does not cover the entire FML period required, another medical certification must be completed and received by the Human Resources representative no later than 15 calendar days from the date the initial leave period expires.

D. If the employee or a family member is visiting another country, or a family member resides in another country, and a serious health condition develops, WSD shall accept medical certification as well as second and third opinions from a foreign health care provider. If the certification is in a language other than English, the employee shall provide WSD with a written translation of the certification upon request.

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

VIII. Position, Pay, and Benefit Entitlements

At the conclusion of FML, an employee generally has a right to return to the same position or an equivalent position with equivalent pay, benefits, and working conditions. However, the employee has no greater right to reinstatement or to benefits and conditions of employment than what would have otherwise existed if the employee had continued working. (If a position would have been deleted or moved if the employee had continued

working, the position may be deleted or moved even though the employee is on FML.)

IX. Employee Responsibilities

An employee who fails to comply with the following procedures may have FML denied and be subject to disciplinary action or administrative separation:

A. When an employee expects to request leave for a potential FML event, the employee shall provide verbal or written notification to the employee's supervisor.

1. The employee is required to provide notice of the need for leave one time only; however, the employee shall advise the employee's supervisor as soon as practicable if the dates of the scheduled leave change, are extended, or were initially unknown.

2. When an employee can foresee the intent to take leave (planned surgery, childbirth or placement of an adoptive or foster child, etc.), the employee is required to provide 15 calendar days advance notice before the leave is to begin.

3. When requesting leave, the employee shall complete the medical certification and submit the application to the employee's supervisor within five calendar days of when the leave commences or 15 calendar days from when the employee received the medical certification form from the WSD.

B. When the need for leave is unforeseeable due to a medical emergency, notification of the need for leave shall be given to the employee's supervisor within two calendar days after the employee becomes aware of the need.

1. Such notification may be in person or by telephone, fax, or other electronic means. If, as a result of the medical emergency, the employee is unable to provide notification, a family member or other responsible party may provide such notification.

2. When it is not possible for the employee to provide notice prior to the need for FML, the employee must provide the required medical certification to the human resources representative within five calendar days of the date the employee is approved for FML leave.

C. Failure of an employee to provide medical certification as required by the WSD may result in disciplinary action.

D. An employee who is on FML may be required to turn in the employee's identification card, keys, and any other state issued items or equipment as determined by the employee's supervisor.

E. An employee on FML shall report periodically on the employee's status and intent to return to work. WSD shall take into account all of the relevant facts and circumstances related to the individual employee's leave situation.

F. An employee's responsibilities upon return to work are outlined in Section XII of this policy.

X. Supervisor Responsibilities

Supervisors shall coordinate with the human resources representative to ensure employee leaves are managed in accordance with the applicable WSD policies and FML absences are appropriately designated.

A. Within one workday of the notification by an employee (or responsible party) of the need for leave, the supervisor shall notify the human resources representative. The supervisor shall obtain as many facts as possible from the employee to enable the Human Resources representative to correctly determine the proper WSD leave policies to utilize, including FML.

B. Any documents (such as medical certifications or health care provider statements) submitted to the supervisor shall immediately be given to the human resources representative for processing and recordkeeping.

C. The supervisor or designee shall enter FML time usage into the appropriate database, if approved by the human resources representative.

XI. WSD Responsibilities

A. Once the human resource representative receives notification of the employee's absence from the supervisor or employee, the human resources representative shall determine FML eligibility and whether the leave is due to an FMLA event.

B. The human resources representative shall instruct the employee to submit a medical certification and identify the timelines for submitting all paperwork.

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

D. If the certification or proof of event is not received within 15 calendar days of the commencement of leave, FML may be denied and the human resources representative shall begin disciplinary action in accordance with WSD policy.

E. If an employee submits a complete and sufficient certification signed by the health care provider, the WSD may not request additional information from the health care provider. However, the WSD may contact the health care provider for purposes of clarification and authentication of the certification after the WSD has given the employee an opportunity to resolve any deficiencies, as set forth above. Only the human resources representative shall make such contact. Under no circumstances shall the employee's direct supervisor contact the employee's health care provider.

F. The WSD shall not ask the health care provider for additional information beyond that required by the certification form. The requirements of the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule must be satisfied when individually identifiable health information of an employee is shared with WSD by a HIPAA-covered health care provider.

G. If the WSD has reason to doubt the validity of a medical certification, the WSD may require the employee to obtain a second opinion at the WSD's expense. If the opinions of the employee's and the WSD's designated health care providers differ, WSD may require the employee to obtain certification from a third health care provider, again at the WSD's expense.

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

I. As part of the recertification for leave taken because of a serious health condition, the WSD may provide the health care provider with a record of the employee's absence pattern and ask the health care provider if the serious health condition and need for leave is consistent with such a pattern.

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

K. When an employee takes military caregiver leave, the WSD may seek authentication or clarification of the certification through the procedures described below:

1. Require the employee to obtain a medical certification form by an authorized health care provider of the covered service member;

2. Request that the employee or covered service member address in the certification the information at 29 C.F.R. §825.310 (c); or

3. Require the employee to provide confirmation of a covered family relationship to the seriously injured or ill service member.

L. The WSD shall communicate directly with the health care provider if an employee chooses to comply with the certification requirement by providing WSD with an authorization, release, or waiver allowing such communication.

M. If the employee is FML eligible and the need for leave is due to an FMLA event, the employee shall be placed on FML even if the employee has not requested FML leave. A determination for full-time leave or intermittent leave shall also be made.

N. The human resources representative shall provide the eligibility notice to the employee within five workdays, absent extenuating circumstances. Notification of eligibility may be oral or in writing. Each time the WSD provides eligibility notice to an employee, the human resources representative shall provide a written rights and responsibilities notice sent by mail.

O. WSD may retroactively designate leave as FML, with appropriate notice to the employee, if the WSD's failure to timely designate leave does not cause harm or injury to the employee. In addition, the WSD and the employee may agree that leave will be retroactively designated as FML.

P. If an employee does not have accrued time and is eligible for FML leave, the leave status shall be leave without pay. The human resources representative shall indicate such status in the appropriate database and coordinate the change with the group insurance program.

Q. If an employee is not eligible for FML, the human resources representative shall determine if other types of leave are applicable. The human resources representative shall provide the employee written notice with at least one reason he or she is ineligible for FML and, if applicable, inform the employee of other leave available within five workdays, absent extenuating circumstances.

XII. Return to Work

A. An employee on FML is required to report periodically while on leave and is specifically required to contact their direct supervisor and the human resources representative at least three workdays prior to the employee's intent to return to work.

B. Prior to (if possible) or upon the employee's return to work, the employee shall submit a health care provider's statement releasing the employee to duty. Such documentation shall be submitted to the human resources representative for approval.

1. If the health care provider's statement does not list any restrictions or limitations, the release shall be considered an unconditional release and the human resources representative shall make an entry to the appropriate database indicating the return to work.

2. If the health care provider's statement identifies the physical or mental disability as permanent or if the employee states the restriction(s) are permanent, the human resources representative shall provide information to the employee regarding the request of workplace accommodations under the Americans with Disabilities Act as Amended.

3. If the health care provider's statement identifies restrictions required by the employee's condition which are not permanent, the human resources representative shall determine if the restriction prevents the employee from performing the essential job functions of the position before the employee is allowed to return.

C. If the employee did not provide notice prior to the need for FML and the WSD has provisionally designated the leave period as FML, the employee has 15 calendar days from the date the FML leave notification is received to submit a health care provider's statement to the human resources representative. This statement and any necessary additional statements must provide the medical facts to support the duration of the requested time off work.

1. If the employee returns to work before the 15 calendar days expire and the employee has not provided the health care provider's statement, the employee shall be allowed the balance of the 15 calendar days to submit the health care provider's statement.

2. If the employee returns to work after the 15 calendar days expire and the employee has not provided the health care provider's statement, the employee shall submit the health care provider's statement to the human resources representative within two workdays of the employee returning to work.

D. A health care provider's release may also include the medical facts. However, if the health care provider's statement only releases the employee for duty and does not include the medical facts, the employee shall submit a second statement from the health care provider (with the medical facts that support the period of absence from work) within two workdays after the release for duty was submitted.

E. If it has been determined the employee is not eligible after provisional FML has been designated, the employee shall be placed in another appropriate leave status. The human resource representative shall make the necessary time adjustments to correct the unauthorized use of sick time. The employee shall also be informed of requirements necessary to comply with the use of any other WSD leave policy for which the employee may be eligible.

F. An employee who returns to work and does not provide the required documentation within the required time period may be subject to disciplinary action. However, lack of documentation does not make an employee ineligible for FML if the facts are sufficient to determine eligibility.

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