



WINDHAM SCHOOL
DISTRICT

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August 25, 2023

WINDHAM BOARD POLICY

SUBJECT: LEAVES AND ABSENCES

AUTHORITY: *Family and Medical Leave Act of 1993 (FMLA)*, 29 U.S.C. §§ 2601–2654; 29 C.F.R. §§ 825.100–.127; Tex. Educ. Code §§ 19.009, 22.003; Tex. Fam. Code §§ 2.001–.501; Tex. Lab. Code § 52.051

Reference: Tex. Educ. Code § 21.409

APPLICABILITY: Windham School District

EMPLOYMENT AT WILL CLAUSE:

This policy does not constitute an employment contract or guarantee of continued employment and does not create a legally enforceable interest or limit the superintendent’s authority to implement personnel policies. Windham School District (WSD) reserves the right to revise this policy at any time.

POLICY:

Windham School District grants leave in accordance with applicable federal and state laws and this policy without regard to race, color, religion, sex (gender), national origin, age, disability, genetic information, or unformed services status.

DEFINITIONS:

These definitions are meant only for this directive and may not apply in other contexts.

“Consecutive Days” are sequential workdays, including workdays that fall before and after a weekend or holiday (e.g. Thursday, Friday, and Monday are considered consecutive days).

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

“Family Emergency” is a natural disaster or life-threatening situation involving the covered employee or a member of the employee’s immediate family.

"Health Care Provider" is 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; and
6. A health care provider listed above who practices in a country other than the United States, who is authorized to practice in accordance with the law of that country, and who is performing within the scope of his or her practice as defined under such law.

"Immediate Family" includes only the following:

1. Spouse – a person to whom a person is legally married;
2. Child – an employee's biological, adopted, foster child, stepchild, son- or daughter-in-law, or a child (other than the above) for whom the employee is legal guardian or standing "in loco parentis;"
3. Parent – an employee's biological, adopted, stepparent, parent-in-law, or stepparent-in-law;
4. Any relative residing in the covered employee's household at the time of family emergency, 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,” also known as “common law marriage,” is valid when a couple agrees to be married and after that agreement live together in Texas as a married couple and represent to others that they are married.

“Medical Fact” is a description of a condition that identifies the cause, symptoms, or nature of an injury or illness. A procedure that identifies the body part (hysterectomy, appendectomy, tonsillectomy, etc.) 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.

PROCEDURES:

- I. WSD employees, excluding substitute teachers or temporary employees, are entitled to leave days earned pro rata consistent with their work assignment.

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

WSD employees accrue up to five personal leave days per school year, through a state minimum personal leave program, with no limit on accumulation and no restrictions on transfer among school districts.

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

WSD employees who retain sick leave accumulated as state minimum sick leave under former Subsection (a), Section 13.904, Education Code, as that subsection existed on January 1, 1995, may use the state sick leave as governed by former Subsection (c), Section 13.904, Education Code, as that subsection existed on January 1, 1995.

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

WSD employees accrue up to seven days local sick leave per school year which may only be used for sick leave purposes as defined in this policy. 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, except as a donation to the sick leave pool.

- II. Availability

- A. State Personal Leave

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

1. Employees must receive written supervisor approval before taking state personal leave.
 2. Supervisors may not restrict the purposes for which state personal leave is used.
 3. Supervisors may consider the effect of the employee's absence on the educational program or WSD operations. State personal leave is not allowed in the following circumstances unless approved by the supervisor:
 - a. The day before or after a state or district holiday;
 - b. Professional development days;
 - c. Assessment days; or
 - d. If the absence would substantially affect WSD operations.
 4. State personal leave days must be requested in writing.
- B. State Sick Leave Qualifiers (Accrued prior to May 30, 1995)
1. An illness or injury of the employee;
 2. An illness or injury of a member of the employee's immediate family;
 3. A family emergency;
 4. A death in an employee's immediate family; or
 5. Active military duty.
- C. Local Sick Leave Qualifiers
1. An illness or injury of the employee;
 2. An illness or injury of a member of the employee's immediate family;
 3. A family emergency;
 4. A death in an employee's immediate family; or
 5. Circumstances that meet Family and Medical Leave eligibility criteria.

III. Administrative Procedures

- A. Supervisors may not allow or approve employees to work less time than stipulated by policy without recording the difference as time taken.
- B. Employees may designate the order of use of local sick leave or state sick leave.
- C. If leave is taken over the available amount, the employee's paycheck is docked or canceled.
- D. The daily rate value of the unaccrued leave days is deducted from the employee's final paycheck when an employee, who has taken more leave days than accrued, ceases WSD employment.
- E. The record of state sick leave and personal leave accumulated in prior years, current days accrued, days used while employed by WSD, and unused balances becomes part of each employee's service record.
- F. Responsibilities of Supervisors

Supervisors must establish local procedures consistent with this policy.

G. Employee Responsibilities

- 1. An employee who is unable to report to work as scheduled must notify their supervisor as soon as they become aware of the impending absence.
- 2. An employee should notify their supervisor of scheduled medical appointments at least three days in advance.
- 3. In the event of the onset of illness or family emergency overnight, an employee must notify their supervisor two hours prior to the beginning of the work schedule, if possible.
- 4. An employee who is absent at the beginning of the work schedule without prior notification may be considered tardy and subject to corrective or disciplinary action according to WBP-07.44, "Professional Standards of Conduct and Disciplinary Guidelines."
- 5. If more than three consecutive workdays are taken because of employee injury or illness or injury or illness of an immediate family member, the employee must complete the online HR Service form to notify Human Resources of their need for job-protected leave under the FMLA.
- 6. Employees must record absences in the WSD timekeeping system in 15-minute increments.

7. Employees who have exhausted all accrued leave and are unable to report to work due to illness must provide medical documentation after each absence.

H. Certification of Illness

1. Employees taking three or fewer consecutive workdays of leave due to an injury or illness, are not required to provide a health care provider's statement, except in accordance with Misuse of Sick Leave or Leave of Absence for a Temporary Disability (LOAFTD) procedures, as described in this policy. However, an employee may choose to provide a health care provider's statement to support the absence.
2. If more than three consecutive workdays are taken because of employee illness or illness of the employee's immediate family member, a health care provider's statement from the attending health care provider must be submitted to Human Resources along with the HR Services online form. An employee may choose to also provide their supervisor documentation of return-to-work status provided the documentation does not include medical facts.
 - a. If the employee is provisionally eligible for FML, a human resources representative will implement procedures set forth in WBP-07.48, "Family and Medical Leave."
 - b. If the employee is not provisionally eligible for FML, a human resources representative will implement procedures in this policy for LOAFTD.

I. Misuse of Sick Leave

If an employee is suspected of violating the procedures for sick leave in this policy, the appropriate supervisor may require a health care provider's statement be provided within two workdays after the employee returns to work.

1. If an employee is absent based on a claim of injury or illness on a day or days the employee previously requested and was denied personal leave or compensatory time, the supervisor may consider this evidence of misuse of sick leave. If an employee has a pattern of absences, including absences on staff development days or planning days, this pattern may also be interpreted as evidence of misuse of sick leave.
2. Failure to provide a health care provider's statement within the specified time may result in corrective or disciplinary action.

J. Death in Immediate Family

State and local sick leave for a death in the family is limited to immediate family as defined by this policy. When an employee is absent due to a death in the immediate family, the employee must identify the specific relationship to the deceased on the appropriate leave report. The employee or supervisor must complete an HR Services form to receive approval for bereavement leave.

K. Separation From Employment

1. Upon separation, employees are encouraged to donate the balance of accrued local sick leave to the sick leave pool.
2. State personal and state sick leave balances will remain on record and available for reinstatement upon re-employment based on the most recent service record.
3. Local sick leave will be reinstated upon re-employment.

L. Court Appearances – Subpoena

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

1. Employees must notify their supervisor within three workdays after having been served a subpoena. Notification must include a copy of the subpoena with the dates of absence. The employee is allowed adequate time to appear in court as required. Failure to timely notify the employee's supervisor may result in disciplinary action.
2. Personal leave or compensatory time, if available, must be used for absences for court appearances unrelated to work. If personal leave or compensatory time balances are insufficient, the employee will be placed in a leave without pay status.

IV. Paid Parental Leave

- A. An employee who takes FMLA leave for the employee's birth of a child is entitled to 40 days of paid leave during the FMLA leave.
- B. An employee who takes FMLA leave for the birth of a child by the employee's spouse, birth of a child by a gestational surrogate, or adoption of a child is eligible for 20 days of paid leave during the FMLA leave.
- C. Paid parental leave may be used during the 12-month period beginning on the date of the child's birth or placement.

- D. An employee is not required to use any other available paid leave before taking paid parental leave.
- E. Paid parental leave must be taken in consecutive full workdays.
- F. Paid parental leave does not entitle an employee to paid parental leave in addition to leave taken under the FMLA.

V. Assault Leave

- A. An employee who is physically assaulted during the performance of regular duties is entitled to the leave necessary to recuperate.
 - 1. Assault leave is restricted to time required to recover from physical injuries sustained as a result of a physical assault occurring during the performance of regular duties.
 - 2. Assault leave will not be extended more than two years beyond the date of the assault.
- B. An investigation will be conducted into all allegations of physical assault. If an investigation concludes that the employee is not entitled to assault leave, the employee will be required to use accrued leave for leave time taken. If accrued leave is unavailable, the employee may be placed on leave without pay status.
- C. As provided by section 22.003(b), Education Code, assault leave benefits will be coordinated with workers' compensation wage benefits so that the combined payment to an employee assaulted during performance of regular duties will equal 100 percent of the employee's weekly compensation prior to the assault.
 - 1. Absences due to assault leave must be reported by submitting the appropriate documentation according to timelines specified by workers' compensation guidelines.
 - 2. An employee on a leave of absence due to assault leave must contact Human Resources with a status update every 30 days.

VI. Leave of Absence for Temporary Disability for Full-Time Employees

- A. Full-time employees may be eligible for LOAFTD when the employee's serious health condition interferes with the performance of regular job duties.
 - 1. The maximum LOAFTD for a single event or combined events for different conditions is 180 calendar days. The 180-day period is measured backward from the date an employee uses any LOAFTD.

2. LOAFTD runs concurrently with protected leave administered under the FMLA.
 3. LOAFTD is not available to use for the serious health condition of immediate family members.
- B. The WSD Board of Trustees delegates to the superintendent the authority to place an employee on LOAFTD.
1. The superintendent will evaluate the medical facts presented in the health care provider statement(s) to determine if the employee's condition interferes with the performance of regular duties.
 2. If an employee disagrees with being placed on LOAFTD by the superintendent, they may submit their objection to the superintendent in writing, accompanied by supporting documentation.
- C. It is the employee's responsibility to request LOAFTD by completing and submitting the online HR Services form whenever the employee's medical condition interferes with the performance of regular duties. The request must include the beginning date of LOAFTD and the estimated return to work date as certified in a health care provider's statement.
1. The health care provider's statement must clearly identify the medical infirmities involved that are directly related to the employee's inability to work.
 2. The health care provider's statement must identify a medical condition that is temporary and disabling and that inhibits the employee's ability to perform regularly assigned duties.
- D. Employees on LOAFTD must submit to Human Resources at least every 30 days a recertification from the health care provider diagnosing the disability.
- E. The employee must notify Human Resources, when possible, 30 days prior to the expected date of return.
1. If the end of the temporary disability condition cannot be determined, then the employee must notify Human Resources as soon as possible after the disabling condition has ended.
 2. Notice by the employee to Human Resources must be accompanied by a health care provider's statement that clearly indicates the employee's physical fitness to return to work with or without restrictions.

3. Human Resources will notify the superintendent of the employee's expected return to work date.
 4. Human Resources will address restrictions and workplace accommodations with the superintendent.
 5. The superintendent will determine whether an employee's physical restrictions can be accommodated.
- E. An employee returning to work after LOAFTD is entitled to an assignment at the campus or department where the employee was formerly assigned, subject to availability of an appropriate position.
- F. An employee's entitlement to sick leave is unaffected by any concurrent eligibility for LOAFTD.



Eric J.R. Nichols, Chairman
Windham School District Board of Trustees