

## PERSONNEL GOALS

The Board of Education recognizes that the school district's central goal – the education of children – is wholly dependent on the dedication and work provided by the school district's employees. The Board seeks to develop and implement personnel policies that will allow and enhance the ability of staff to educate children.

The specific goals that will guide the Board as it develops personnel policies are:

1. To hire and retain the best and most qualified staff available
2. To ensure staff are evaluated in a rigorous and meaningful manner
3. To grant tenure to staff who have performed at the highest level and
4. To provide professional development and training to staff to improve their skills.

Although the Board is the employer of all staff in the district, the Board recognizes that the Taylor Law requires the district to negotiate in good faith with recognized or certified employee organizations over wages, hours, and all other terms and conditions of employment as defined by the Taylor Law or as interpreted by the Public Employment Relations Board. The school district will fully comply with the requirements of the Taylor Law.

All other employees in the district who are not represented by a recognized or certified employee organization will receive fair compensation and benefits for the work they provide.

In return for the compensation and benefits provided to district staff, the Board expects employees to render the quality of service that enables children to learn at the highest level possible and seek continuous improvement in the service they provide.

Cross-ref: 0100, Equal Opportunity

Ref: Education Law §§ 1604(8), 1709(16), 2503(3), 2554(2), 3012(1)(a) (Board's authority to hire employees)  
 Education Law § 3012(2) (Board's authority to grant tenure to teachers)  
 Civil Service Law § 204 ("Taylor Law" requires school district to negotiate with unions)  
 8 NYCRR § 100.2(o)(2) (school district required to evaluate teachers)  
 8 NYCRR § 100.2(dd)(2)(ii)(a) (school district required to provide professional development)

Adoption date: July 7, 2009

## COMPUTER RESOURCES AND DATA MANAGEMENT

The Board of Education recognizes that computers are a powerful and valuable education and research tool and as such are an important part of the instructional program. In addition, the district depends upon computers as an integral part of administering and managing the schools' resources, including the compilation of data and recordkeeping for personnel, students, finances, supplies and materials. This policy outlines the Boards expectations in regard to these different aspects of the district's computer resources.

### General Provisions

The Superintendent shall be responsible for designating a Network Systems Administrator who will oversee the use of district computer resources. The Assistant Superintendent for Curriculum & Instruction will prepare in-service programs for the training and development of district staff in computer skills, appropriate use of computers and for the incorporation of computer use in subject areas.

The Superintendent, working in conjunction with the designated purchasing agent for the district, and the District Technology Team and Technology Committee, will be responsible for the purchase and distribution of computer software and hardware throughout the schools. They shall prepare and submit for the Board's approval a comprehensive multi-year technology plan which shall be revised as necessary to reflect changing technology and/or district needs.

The Superintendent shall establish regulations governing the use and security of the district's computer resources (computer resources include all devices that process data, including but not limited to, laptops, fax machines, copiers and scanners). The security and integrity of the district computer network and data is a serious concern to the Board and the district will make every reasonable effort to maintain the security of the system. All users of the district's computer resources shall comply with this policy and regulation, as well as the district's policy 4526, Computer Use in Instruction. Failure to comply may result in disciplinary action, as well as suspension and/or revocation of computer access privileges.

All users of the district's computer resources must understand that use is a privilege, not a right, and that use entails responsibility. Users of the district's computer network must not expect, nor does the district guarantee, privacy for electronic mail (e-mail) or any use of the district's computer network. The district reserves the right to access and view any material stored on district equipment or any material used in conjunction with the district's computer network.

### Management of Computer Records

The Board recognizes that since district data is managed by computer, it is critical to exercise appropriate control over computer records, including financial, personnel and student information. The Superintendent shall establish procedures governing management of computer records, taking into account whether the records are stored onsite on district servers or on remote servers in the "cloud". The procedures will address:

- passwords,
- system administration,
- separation of duties,
- remote access,
- encryption,
- user access and permissions appropriate to job titles and duties,
- disposal of computer equipment and resources (including deleting district data or destroying the equipment),
- inventory of computer resources (including hardware and software),
- data back-up (including archiving of e-mail),
- record retention, and
- disaster-recovery plans and notification plans.

If the district contracts with a third-party vendor for computing services, the Superintendent, in consultation with Network Systems Administrator and School Business Official, will ensure that all agreements address the procedures listed above, as applicable.

#### Review and Dissemination

Since computer technology is a rapidly changing area, it is important that this policy be reviewed periodically by the Board and the district's internal and external auditors. The regulation governing appropriate computer use will be distributed annually to staff and students and will be included in both employee and student handbooks.

Cross-ref: 1120, School District Records  
 4526, Computer Use for Instruction  
 4526.1, Internet Safety  
 5500, Student Records  
 6600, Fiscal Accounting and Reporting  
 6700, Purchasing  
6900, Disposal of District Property  
 8635, Information Security Breach and Notification

First Reading: June 14, 2016  
 Second Reading: July 5, 2016  
 Adoption date: July 5, 2016

**COMPUTER RESOURCES AND DATA MANAGEMENT REGULATION  
NETWORK – EMPLOYEE ACCEPTABLE USE**

The following rules and regulations govern the use of the district's computer network system, employee access to the Internet, and management of computerized records.

I. Administration

- The Superintendent of Schools shall designate the Network Systems Administrator (NSA) to oversee the district's computer network, who shall:
  - monitor and examine network activities, as appropriate, to ensure proper use of the system. The NSA shall work with the Business Official to maintain an updated inventory of all computer hardware and software resources.
  - develop and implement procedures for data back-up and storage. These procedures will facilitate the disaster recovery plan and will comply with the requirements for records retention in compliance with the district's policy on School District Records (1120). The procedures will take into account the use of onsite storage or storage in the cloud.
  - be responsible for disseminating and interpreting district policy and regulations governing use of the district's network at the building level with all network users.
  - provide employee training for proper use of the network and ensure that staff supervising students using the district's network provide similar training to students.
  - take reasonable steps to protect the network from viruses, other software, and security risks that would compromise the network or district information.
- All student and employee agreements to abide by district policy and regulations and parental consent forms shall be kept on file in the district office.
- Consistent with applicable internal controls, the Superintendent in conjunction with the school business official and the computer network coordinator, will ensure the proper segregation of duties in assigning responsibilities for computer resources and data management.

II. Internet Access

- A. The Hampton Bays School Network (HBSN) is established for a limited educational purpose. "Educational purpose" includes classroom activities, career development, and research.
- B. Student Internet access is addressed in policy and regulation 4526.
- C. District employees and third party users are governed as follows:
  - Employees will be issued an e-mail account through the HBSN.
  - Employees are expected to review their e-mail daily.
  - Communications with parents and/or students should be saved as appropriate and the district will archive the e-mail records according to procedures developed by the computer network coordinator.
  - Employees may access the internet for education- and/or work-related activities.

- Employees shall refrain from using computer resources for anything beyond incidental, personal use.
- Employees are advised that they must not have an expectation of privacy in the use of the district's computers.
- Use of computer resources in ways that violate the acceptable use and conduct regulation, outlined below, will be subject to discipline.

### III. Acceptable Use and Conduct

The following regulations apply to all staff and third party users of the HBSN:

- Access to the HBSN is provided for educational and/or research purposes and management of district operations consistent with the district's mission and goals.
- Use of the district's computer network is a privilege, not a right. Inappropriate use may result in the suspension or revocation of that privilege.
- Each individual in whose name an access account is issued is responsible at all times for its proper use.
- Network users will be issued a login name and password. Passwords must be changed periodically in accordance with district policy.
- Only those network users with permission from the principal or computer network coordinator may access the district's system from off-site.
- Network users are expected to take reasonable precaution to secure district information stored on devices they use, including maintaining responsible custody over computer resources, ensuring no unauthorized use of district devices, and exercising prudent judgment when browsing the internet, opening email, and downloading files.
- Network users are expected to abide by the generally accepted rules of network etiquette, including being polite and using only appropriate language. Abusive language, vulgarities and swear words are all inappropriate.
- Network users identifying a security problem on the district's network must notify the District Help Desk. Any network user identified as a security risk or having a history of violations of district computer use guidelines may be denied access to the district's network.
- Network users will avoid the inadvertent spread of computer viruses by following the district's virus protection procedures if they download files or software.

### III. Unacceptable Uses

The following uses of the HBSN are considered unacceptable:

- Commercial purposes, defined as offering or providing goods or services or purchasing goods or services for personal use. District acquisition policies will be followed for district purchase of goods or services through the district system. This includes using the system for personal financial gain.
- Political lobbying, as defined by any state statutes covering political lobbying. District employees and students may use the system to communicate with their elected representatives and to express their opinion on political issues.

- Illegal Activities, including gaining unauthorized access to the HBSN or to any other computer system through the district system, or going beyond their authorized access. This includes attempting to log in through another person's account or accessing another person's files. These actions are illegal, even if only for the purposes of "browsing."
- Deliberately attempting to disrupt the HBSN or destroy data by spreading computer viruses or by any other means.
- Any illegal act as codified by local, state, and federal law.
- Inappropriate Language and Conduct
  - Restrictions against inappropriate language apply to public messages, private messages, and material posted on Web pages.
  - Users will not use obscene, profane, lewd, vulgar, rude, inflammatory, threatening, or disrespectful language.
  - Users will not post information that, if acted upon, could cause damage or a danger of disruption.
  - Users will not engage in personal attacks, including prejudicial or discriminatory attacks.
  - Users will not harass another person. Harassment is persistently acting in a manner that distresses or annoys another person. If a user is told by a person to stop sending messages, they must stop.
  - Users will not knowingly or recklessly post false or defamatory information about a person or organization.
- Installing commercial software, shareware, or freeware without permission from Network Administrator, as well as downloading excessively large files.
- The posting of chain letters or engaging in "spamming." Spamming is sending an annoying or unnecessary message to a large number of people.
- Infringing on any copyrights or other intellectual property rights, including copying, installing, receiving, transmitting or making available any copyrighted software on the district computer network.
- Accessing material that is profane or obscene (pornography), that advocates illegal acts, or that advocates violence or discrimination towards other people (e.g. hate literature). District employees may access the above material only in the context of legitimate research.
  - If a user inadvertently accesses such information, they should immediately disclose the inadvertent access to the Network Administrator. This will protect users against an allegation that they intentionally violated the Acceptable Use Policy.
- Engaging in vandalism. Vandalism is defined as any malicious attempt to harm or destroy district equipment or materials, data of another user of the district's network or of any of the entities or other networks that are connected to the Internet. This includes, but is not limited to, creating and/or placing a computer virus, malware on the network, and not reporting security risks as appropriate.
- Using the network to send anonymous messages or files.
- Wastefully using finite district resources.
- Changing or exceeding resource quotas as set by the district without the permission of the appropriate district official or employee.

- Using the network while your access privileges are suspended or revoked.
- Exhibiting careless behavior with regard to information security (e.g., sharing or displaying passwords, leaving equipment unsecured or unattended, etc.).

### III. User Rights

#### A. Academic Freedom, Selection of Material, Student Rights to Free Speech

1. When using the Internet for class activities, teachers will select material that is appropriate for the age of the students and relevant to the course objectives. Teachers will preview the materials and sites they require or recommend students access to determine the appropriateness of the material contained on or accessed through the site. Teachers will provide guidelines and lists of resources to assist their students in channeling their research activities effectively and properly. Teachers will assist their students in developing the skills to ascertain the truthfulness of information, distinguish fact from opinion, and engage in discussions about controversial issues while demonstrating tolerance and respect for those who hold divergent views.

#### B. Due Process

1. Routine maintenance and monitoring of the system may lead to discovery that the user has or is violating the Acceptable Use Policy or the law. Employee violations of the district Acceptable Use Policy will be handled in accord with district policy and/or the relevant collective bargaining agreement.
2. District employees should be aware that their personal files may be discoverable under state public records laws.
3. The district will cooperate fully with local, state, or federal officials in any investigations concerning to or relating to any illegal activities conducted through the district system.

#### C. Sanctions

1. Users of the HBSN are required to comply with the district's policy and regulations governing the district's computer network. Failure to comply with the policy or regulation may result in disciplinary action as well as suspension and/or revocation of computer access privileges.
2. Information pertaining to or implicating illegal activity will be reported to the proper authorities. Transmission of any material in violation of any federal, state and/or local law or regulation is prohibited.

### IV. District Limitation of Liability

- A. The district makes no guarantee that the functions or services provided by or through the HBSN will be error-free or without defect. The district will not be responsible for any damages users may suffer, including but not limited to, loss of data or interruptions of service. The district is not responsible for accuracy or quality of the information obtained through or stored on the system. The district will not be responsible for financial obligations arising through unauthorized use of the system.

Each user is responsible for verifying the integrity and authenticity of the information.

- B. The district will take reasonable steps to protect the information on the network and provide a secure network for data storage and use, including ensuring that contracts with vendors address data security issues and that district officials provide appropriate oversight. Disposal of district computer resources shall ensure the complete removal of district information, or the secure destruction of the resource. Even though the district may use technical and/or manual means to regulate access and information, these methods do not provide a foolproof means of enforcing the provisions of the district policy and regulation.

Cross-ref: 4526, Hampton Bays School Network – Student Acceptable Use  
5300, Code of Conduct  
8630, Hampton Bays School Network

Original Adoption Date: July 7, 2009  
Update 1: July 5, 2016





# HAMPTON BAYS

## Union Free School District

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LARS CLEMENSEN  
SUPERINTENDENT OF SCHOOLS

### Social Media Commenting Guidelines

The Hampton Bays UFSD social media accounts celebrate and support our schools, students and teachers, as well as communicate important news and event information. We encourage you to share your support, connect with other supporters, and visit frequently for news and updates.

While everyone is welcome and encouraged to comment, our first priority is to protect students, staff, and community members. Comments and/or posts that do not follow this Commenting Guideline may be removed.

We have a zero-tolerance policy for cyberbullying and/or posts or comments that are discriminatory, political, racist, sexist, abusive, profane, violent, obscene, spam, contain falsehoods or are wildly off-topic, or that libel, incite, threaten or make ad hominem attacks on students, employees, guests or other individuals.

We do not permit messages selling products or promoting commercial or other ventures. You participate at your own risk, taking personal responsibility for your comments, your username, and any information provided.

We reserve the right to delete comments or topics and even ban users, if needed. Please be aware that all content and posts are bound by the terms of use of the applicable social media platform.

The Hampton Bays UFSD encourages user interaction on its social pages, but is not responsible for comments or wall postings made by visitors to the page. Additionally, the appearance of external links, as posted by fans or followers of a social media account does not constitute endorsement on behalf of the Hampton Bays UFSD.

You should not provide private or personal information (phone, email, addresses etc.) regarding yourself or others on our social media platforms. Any posts or comments containing personal information of this nature will be deleted.

If you have questions, please contact the Office of the Superintendent at [arojas@hbschools.us](mailto:arojas@hbschools.us).

Approved: January 9, 2018

## STAFF COMPLAINTS AND GRIEVANCES

Grievance procedures are designed to resolve conflicts that may arise among various members of the staff. These procedures are defined in collective bargaining agreements. Staff members have the right to present complaints and grievances in accordance with the established procedures free from coercion, interference, restraint, discrimination or reprisal.

The district shall implement a multi-stage grievance procedure and an appellate stage for the settlement of grievances pursuant to the General Municipal Law. In addition, the district shall implement procedures and regulations and designate an employee to carry out the responsibilities under Title IX and Section 504 of the Rehabilitation Act or the Americans with Disabilities Act (ADA).

This policy and accompanying regulation (9140.1-R) provide grievance procedures for those employees not covered by collective bargaining agreements or whose negotiated agreements do not include grievance procedures. Staff complaints that are not covered under the General Municipal Law, or cannot be resolved under procedures of Title IX and Section 504 or the ADA shall be subject to the discretion of the Board of Education as to the method by which the complaint may be brought.

### Annual Notification

At the beginning of each school year, the district shall publish a notice of the established grievance procedures for resolving complaints of discrimination due to sex and/or disability to parents/guardians, employees, eligible students and the community. The public notice shall:

1. inform parents, employees, students and the community that vocational education programs are offered without regard to sex, race, color, national origin or disability;
2. provide the name, address and telephone number of the person designated to coordinate activities concerning discrimination due to sex and/or disability; and
3. be included in announcements, bulletins, catalogues, and applications made available by the district.

Cross-ref: 0100, Equal Opportunity

Ref: Americans with Disabilities Act, 42 USC §12111-12117; 12210  
General Municipal Law, Article 15-c  
Title IX, Education Amendments of 1972, 20 USC Chapter 38; 45 CFR Part 86  
Rehabilitation Act of 1973, §504; 29 USC §794  
Civil Service Law, Article 14  
*Matter of Gatje*, 24 EDR 191 (1984)

Adoption date: July 7, 2009

## STAFF COMPLAINTS AND GRIEVANCES REGULATION

### Definitions

1. Grievant shall mean an employee who alleges that there has been a violation of Title IX, Section 504 or the Americans with Disabilities Act (ADA) statute or regulations which affect him/her.
2. Grievance shall mean any alleged violation of Title IX, Section 504 or ADA statute or regulations.
3. Compliance Officer shall mean the employee designated by the Board of Education to coordinate efforts to comply with and carry out responsibilities under Title IX, Section 504 and the ADA.

This regulation and accompanying policy (9140.1) provide grievance procedures for those employees not covered by collective bargaining agreements or whose negotiated agreements do not include grievance procedures. The resolution of staff complaints alleging any action prohibited by Title IX, Section 504 of the Rehabilitation Act or the ADA shall be dealt with in the following manner:

### Stages

#### A. Stage I--Compliance Officer

1. Within 30 days after the events giving rise to the grievance, the grievant shall file a grievance in writing with the Compliance Officer. The Compliance Officer may informally discuss the grievance with the grievant. He/She shall promptly investigate the complaint. All employees of the school district shall cooperate with the Compliance Officer in such investigation.
2. Within 15 days of the receipt of the grievance, the Compliance Officer shall make a finding in writing that there has or has not been a violation of Title IX, Section 504 of the Rehabilitation Act or the ADA. In the event the Compliance Officer finds that there has been a violation, he/she shall propose a resolution of the complaint.
3. If the grievant is not satisfied with the finding of the Compliance Officer, or with the proposed resolution of the grievance, the grievant may, within 15 days after he/she has received the report of the Compliance Officer, file a written request for review by the Superintendent of Schools.

#### B. Stage II--Superintendent of Schools

1. The Superintendent may request that the grievant, the Compliance Officer, or any member of the school district staff present a written statement to him/her setting forth any information that such person has relative to the grievance and the facts surrounding it.
2. The Superintendent shall notify all parties concerned as to the time and place when an informal hearing will be held where such parties may appear and present oral and written

statements supplementing their position in the case. Such hearing shall be held within 15 school days of the receipt of the appeal by the Superintendent.

3. Within 15 days of the hearing, the Superintendent shall render his/her determination in writing. Such determination shall include a finding that there has or has not been a violation of Title IX, Section 504 of the Rehabilitation Act or the ADA, a proposal for equitably resolving the complaint.
4. If the grievant is not satisfied with the determination of the Superintendent, the grievant may, within 15 days after its receipt, file with the Clerk of the Board of Education, a written request for review by the Board.

C. Stage III--Board of Education

1. When a request for review by the Board has been made, the Superintendent shall submit all written statements and other materials concerning the case to the President of the Board.
2. The Board shall notify all parties concerned of the time and place when a hearing will be held. Such hearing will be held within 15 school days of the receipt of the request of the grievant. All parties concerned shall have the right to present further statements and testimony at such hearing.
3. The Board shall render a decision in writing within 15 days after the hearing has been concluded.

Adoption date: July 7, 2009

## RECRUITING AND HIRING

The Board of Education believes that the quality of the district's employees in large part determines the quality of the education offered to the district's students. As the employer for the school district, the Board will provide and maintain qualified and certified instructional and support personnel to carry out the educational programs of the district.

The Superintendent of Schools shall implement and maintain a high-quality recruiting and hiring program to attract, secure and retain the best-qualified staff to meet the needs of students and the district.

### New or Revised Positions

The Superintendent of Schools will develop recommended qualifications for all new positions in the district and review the qualifications for all existing positions as necessary. The Board must approve the qualifications for all new positions in the district and revisions of the qualifications for existing positions.

The Superintendent of Schools shall refer all proposals for the creation or reclassification of all unclassified (non-instructional) positions and a statement of the duties for these positions to the local civil service authority for classification.

The Superintendent of Schools shall develop job descriptions that incorporate the qualifications and job duties for all positions in the school district.

### Recruiting

The district will seek the most qualified candidates for vacant positions by recruiting from a variety of sources, including present staff. District employees may apply for all positions for which they meet the certification and other stated qualifications.

The Board and its employees will adhere to the practice of recruiting and hiring personnel without regard to age, color, creed, disability, marital status, national origin, race, religion, sex or any other status protected by federal or state law.

### Hiring

Through standard recruiting and hiring procedures, the Superintendent of Schools will ensure that candidates for district employment meet all the qualifications set for the position sought. The district will comply with all the requirements of the Education and Civil Service laws, including any fingerprinting requirements.

The Superintendent will recommend individuals for employment in the school district. The Board must approve of all individuals who are employed by the school district.

Ref: Age Discrimination in Employment Act (ADEA), 29 USC §§ 621 *et seq.* (prohibiting discrimination on the basis of age)  
Americans with Disabilities Act (ADA), 42 USC §§ 12101 *et seq.* (prohibiting discrimination on the basis of disability)  
Civil Rights Act of 1964 (Title VII), 42 USC §§ 2000e *et seq.* (prohibiting discrimination on the basis of color, national origin, race, religion and sex)  
Rehabilitation Act of 1973 (Section 504), 29 USC § 794 (prohibiting discrimination on the basis of disability)  
Title IX, 20 USC §§ 1681 *et seq.* (prohibiting discrimination on the basis of sex)  
New York State Constitution, article V, § 6 (requiring public employees be appointed on the basis of merit and fitness)  
Civil Service Law §§ 22, 40-44, 61(1) (rules on classified positions)  
Education Law §§ 1604(8), 1709(16), 2503(3), 2554(2), 3012(1)(a) (board's authority to hire employees)  
Education Law §§ 1604(39), 1709(39), 1804(9), 1950(4), 2503(18), 2554(25) (fingerprinting requirements)  
Executive Law §§ 290 *et seq.* (prohibiting discrimination on the basis of age, color, creed, disability, marital status, national origin, race or sex)

Adoption date: July 7, 2009

## **CONDITIONAL APPOINTMENT & EMERGENCY CONDITIONAL APPOINTMENT - STUDENT SAFETY**

The Board of Education recognizes that there may be instances in which it is necessary, upon recommendation of the Superintendent of Schools, for the Board to make a conditional appointment or an emergency conditional appointment of a prospective employee. To provide for the safety of students who have contact with an employee holding a conditional appointment or an emergency conditional appointment, the Board adopts the following policy.

No district employee who holds a conditional or emergency conditional appointment shall be in contact with students other than to provide the specific instruction or other services for which the employee was hired, except as deemed appropriate by the Building Principal.

No district employee who holds a conditional or emergency conditional appointment shall teach a class or provide services to students with his/her classroom or office door closed unless the Building Principal has provided express prior permission to do otherwise. Such permission may be appropriate, for example, during music class, band practice or testing procedures.

In no event shall such employee be left alone with an individual student.

The Building Principal or his/her designee shall provide heightened administrative supervision of such employees while on school district property during the period of their conditional or emergency conditional appointment including, for example, unannounced visits to classrooms, walking the hallways, and/or any other activities the Principal determines to be appropriate.

In addition, the district will ensure that all conditional and emergency conditional appointed employees become aware of and receive training regarding the prohibition against child abuse in an educational setting and of their responsibility for reporting any such abuse at the commencement of their conditional or emergency conditional appointment.

Failure to comply with this policy will result in appropriate disciplinary action.

For purposes of this policy, the terms “conditional appointment” and “emergency conditional appointment” shall refer to any employee holding conditional or emergency conditional appointment, as defined in Section 1709 of the Education Law.

Cross-ref: 9620, Child Abuse in an Educational Setting

Ref: Education Law §§1125-1133; 1604; 1709; 1804; 2503; 2554; 3035  
8 NYCRR §§100.2 (hh); Part 87

Adoption date: July 7, 2009

## DRUG-FREE WORKPLACE

The Board of Education recognizes that the use and misuse of drugs and alcohol is a serious problem with legal, physical, and social implications for the entire community. It is the policy of the Hampton Bays UFSD to maintain an alcohol and drug-free workplace to ensure a safe working environment for all employees, a safe learning environment for all students, and the effective and efficient delivery of services to School District residents. The Hampton Bays UFSD is committed to making a good faith effort to maintain an alcohol and drug-free workplace.

The Board of Education prohibits the illegal, improper, or unauthorized manufacture, distribution, dispensing, possession or use of any controlled substances in the workplace. “Workplace” shall mean any site on school grounds, at school-sponsored activities, or any place in which an employee is working within the scope of his/her employment or duties. “Controlled substance” shall include all drugs which are banned or controlled under federal, state, or local law, including those for which a physician’s prescription is required, as well as any other chemical substance which is deliberately ingested to produce psychological or physiological effects, other than accepted foods or beverages.

The Superintendent of Schools or his/her designee shall develop regulations which implement this policy according to the requirements of the federal Drug-Free Workplace Act of 1988.

Ref: Drug-Free Workplace Act (DFWA), 41 U.S.C. §§702-707  
 Controlled Substances Act, 21 U.S.C. §812  
 21 CFR §§1300.11-1300.15  
 34 CFR Part 85 (U.S. Department of Education Regulations under DFWA)  
 Civil Service Law §75  
 Education Law §3020-a  
*Patchogue-Medford Congress of Teachers v. Board of Education*, 70 NY2d 57 (1987)

Introduced on First Reading:	February 11, 2014
Second Reading:	March 11, 2014
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**DRUG-FREE WORKPLACE REGULATION**

1. The Superintendent of Schools shall certify to any governmental agency making a direct grant to the district that the district will provide a drug-free workplace, in accordance with the Drug-Free Workplace Act of 1988.
2. The Superintendent or his/her designee shall provide access to an Employee Assistance Program and annual distribution of this policy to employees to (a) obtain resources about a drug-free awareness program about the dangers of drug abuse in the workplace; (b) inform them of the district's policy of maintaining a drug-free workplace; (c) the legality of possession of a controlled substance with a physician's prescription; and (d) the penalties that may be imposed upon employees for drug abuse violations.
3. The Superintendent or his/her designee shall distribute this policy annually, notifying district employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited in the workplace.
4. Each employee, as a condition of employment on any direct federal grant, shall:
  - a. abide by the terms of the statement; and
  - b. notify his/her immediate supervisor, who shall notify the Superintendent, of any criminal drug statute conviction for a violation occurring in the workplace within three (3) days of such conviction.
5. The Superintendent shall notify the Board of Education of any such conviction(s), and shall notify the granting agency within 10 days after receiving notice of such conviction(s) from any source.
6. Within 30 days of such conviction(s), the district shall initiate appropriate disciplinary action against any employee so convicted in the manner provided for by law, up to and including dismissal, and/or require his/her satisfactory participation in a drug abuse assistance or rehabilitation program approved for such purpose by federal, state, or local health, law enforcement or other appropriate agency.
7. The district shall make a "good faith effort" to continue to maintain a drug-free workplace through implementation of these regulations.

First Reading: February 11, 2014

Second Reading: March 11, 2014

Adoption: March 11, 2014

## STAFF EVALUATION

The Board of Education believes that the regular, rigorous and meaningful evaluation of staff is necessary to improve the achievement of students and the efficiency of district operations. To this end, the Superintendent of Schools shall be responsible for ensuring that all district employees are evaluated annually and receive additional staff training, if necessary, to improve their skills.

### **Administrators**

All administrators in the school district shall be evaluated annually by the Superintendent in accordance with any applicable collective bargaining agreement.

### **Professional Employees**

All professional employees (teachers, attendance teachers, counselors, dental hygiene teachers, nurse-teachers, school psychologists and social workers) shall be evaluated annually in accordance with any applicable collective bargaining agreement and the district's Professional Performance Review Plan. The plan shall include criteria for evaluating teachers and other professional employees, assessment methods, plans to improve unsatisfactory teacher performance, and training for evaluators.

The Superintendent shall collaborate with teachers, pupil personnel professionals, administrators and parents in developing the plan. The Superintendent shall be responsible for selecting those individuals with whom he or she will collaborate in the development of the plan. The Superintendent shall meet with a group of such individuals at least once each year.

The Superintendent shall submit the district's Professional Performance Review Plan, with any recommended changes, to the Board at its reorganizational meeting each July. At that meeting, the Board may request that the Superintendent reconsider or reexamine certain aspects of the plan, in which case, the Superintendent will resubmit the plan at the Board's first regular meeting in August.

The Board will provide members of parent organizations and the president of the teachers' union the opportunity to comment on the plan, prior to its adoption, at any meeting at which the plan is considered. The Board must approve the plan before it becomes effective. The approved plan for each school year will be available in the district offices by September 10 of each year.

Each year, the Superintendent shall provide a report to the State Education Department on information related to the district's efforts to address the performance of teachers rated unsatisfactory.

### **Support Staff**

Support staff (those staff not required to be evaluated under the Professional Performance Review Plan) shall be evaluated annually in accordance with any applicable collective bargaining agreement. The Superintendent shall ensure that all required evaluations take place.

**Training**

The Superintendent shall ensure that all staff that are required to evaluate other staff are provided sufficient training in assessment and evaluation.

Cross-ref: 9700, Staff Development

Ref: 8 NYCRR § 100.2(o)(2) (Professional Performance Review Plans)

Adoption date: July 9, 2009

**STAFF EVALUATION****Sample Notification to Parents – Qualifications of Teacher and APPR Scores**

Dear Parents and Guardians:

In accordance with the federal No Child Left Behind Act of 2001, parents and guardians have the right to request specific information about the professional qualifications of their children's classroom teachers. As a parent/guardian of a student in the Hampton Bays Union Free School District, you have the right to request the following information:

- if the teacher has met New York State qualifications and licensing criteria for the grade levels and subject areas he or she teaches;
- whether the teacher is teaching under emergency or other provisional status through which the state qualification or licensing criteria have been waived;
- the teacher's college major; whether the teacher has any advanced degrees and, if so, the subject of the degrees; and
- if your child is provided services by any instructional aides or similar paraprofessionals provide services to your child and, if they do, their qualifications.

Additionally, under Education Law §3012-c parents or guardians can request the APPR (annual professional performance review) rating of their child's current teacher and or principal. This information is not to be shared with others once received.

Requests for information about the qualifications [and APPR scores] of your child's teacher(s) can be directed to Assistant Superintendent of Curriculum Denise Sullivan at (631) 723-2100, ext. 5104. All requests will be honored in a timely manner. Thank you for your continued support and interest in your child's education.

Sincerely,

Lars Clemensen  
Superintendent of Schools

**STAFF EVALUATION**  
**Sample Notification to Parents – Non-Highly Qualified Teacher**

Dear Parents and Guardians:

The Hampton Bays School District strives to offer students an educational experience that is consistent with the state's high learning standards. The district depends upon each and every teacher to make sure that this is possible on a day-to-day basis. This year, your child has been a student of *[insert teacher name here]*. *[Insert teacher name]* has been with the district for *[number of year(s)]* years coming to us from *[prior work/educational experience]*. As a staff member, *[insert teacher name]* has brought an extensive knowledge of *[insert background]* to the classroom and strives to be a positive role model for not only the children in their class, but also in the school and community.

Pursuant to the No Child Left Behind Act of 2001, the district is required to notify you if your child has been assigned to, or been taught for four or more consecutive weeks, by someone who does not meet the NCLB definition of a highly qualified teacher. For your child's grade level, a highly qualified teacher must *[insert applicable criteria]*.

*[Insert teacher's name]* does not meet this criteria because *[insert reason]*. However, the district is taking the following steps to ensure that *[insert teacher name]* and any other teacher who currently is not becomes highly qualified in accordance with NCLB requirements.

Please contact your child's building principal if you wish to discuss this matter further. Thank you for your continued support and interest in your child's education.

Sincerely,

Lars Clemensen  
Superintendent of Schools

## COMPENSATION AND BENEFITS

The Board of Education believes that the district's employees should receive fair compensation and benefits for the work they provide in serving the children of our community. To this end, the Superintendent of Schools shall be responsible for establishing and administering the compensation and benefits provided to the district's employees.

The Board and the school district will comply with all applicable federal and state laws that require minimum compensation and benefits be provided to employees.

### **Employees Covered by Collective Bargaining Agreements**

The compensation and benefits for employees who are represented by recognized or certified employee organizations are established by collective bargaining agreements negotiated between the employee organizations and the district. The district will negotiate in good faith over these issues, as required by law, and will fully comply with the requirements of the Taylor Law and the collective bargaining agreements it enters into with its employees.

To ensure that the compensation and benefits provided to employees are fair and within the parameters of the district budget, the Board reserves its right to approve all additional funding required by the provisions of a tentative collective bargaining agreement, in addition to any right of ratification that is secured by the district's negotiation representative(s).

### **Employees Not Covered by Collective Bargaining Agreements**

The compensation and benefits for employees who are not represented by recognized or certified employee organizations shall be determined by the Superintendent, with approval by the Board.

### **Family and Medical Leave Act**

The Board shall ensure that family and medical leave, consistent with the Family and Medical Leave Act, is provided to all eligible employees in accordance with the Family and Medical Leave Policy 9520 and Guidance Document 9520.R.

Ref: Consolidated Omnibus Budget and Reconciliation Act of 1985 (COBRA), 42 USC §§ 300bb-1 *et seq.* (federal law that requires the continuation of health insurance benefits under certain circumstances)  
 Fair Labor Standards Act (FLSA), 29 USC §§ 200 *et seq.* (federal law that requires a minimum wage and overtime for non-exempt employees)  
 Family and Medical Leave Act of 1993 (FMLA), 29 USC §§ 2610 *et seq.* (federal law that requires an unpaid leave of absence for certain family and medical situations)  
 Civil Service Law §§ 200 *et seq.* ("Taylor Law," requires school districts to negotiate with unions)  
 Education Law § 3005-b (requires a minimum sick leave allotment and accumulation for teachers)

Adoption date: July 7, 2009  
 Update 1, Adoption Date: November 9, 2010

Update 2, First Reading:	July 8, 2014
Update 2, Second Reading:	August 12, 2014
Update 2, Adoption Date:	August 12, 2014

**DEFERRED SALARY PAYMENTS POLICY**

The District offers an option through collectively negotiated agreements and to employees who are not covered by collectively negotiated agreements through policy, of twenty-two or twenty-six pays for ten-month employees. Those ten-month employees who opt for twenty-six pays are required, in accordance with the Internal Revenue Code, to make an election in writing prior to the beginning of the school year to indicate that they have chosen the deferred compensation of twenty-six pays. The election shall be made by submitting a signed form to the Business Office by no later than June 30<sup>th</sup> of the preceding school year or through an electronic form submission to the Business Office by the same date. The election shall be irrevocable for the school year and will remain in effect until the election is changed, in writing, prior to the start of a subsequent school year.

First Reading:	June 17, 2008
Second Reading:	June 24, 2008
Adoption Date:	June 24, 2008
Effective:	June 24, 2008



## FAMILY AND MEDICAL LEAVE

Consistent with the federal Family and Medical Leave Act (FMLA) of 1993 as amended, the Board of Education recognizes the right of eligible employees to unpaid, job protected family and medical leave for up to twelve (12) workweeks during any twelve (12) month period. The Board shall ensure that all eligible employees who use such leave shall have their health benefits continued and shall be returned to an equivalent position according to established Board practices, policies and collective bargaining agreements.

To be eligible for FMLA an employee must have been employed for at least twelve months and have worked at least 1,250 hours during the prior twelve months.

FMLA leave shall be granted for the following reasons:

1. the birth and care of a newborn child of the employee;
2. the adoption or foster placement of a child;
3. to care for an employee's spouse, parent, or son or daughter with a serious health condition;
4. due to a serious health condition that makes the employee unable to perform the essential functions of the employee's job;
5. for a qualifying exigency as defined in law and regulation, arising out of the fact that the spouse, son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty).

An eligible employee who is the spouse, son, daughter, parent, or next of kin of a covered service member is entitled to a total of 26 workweeks of unpaid, job protected leave in a single 12-month period to care for the service member who is seriously ill or injured in the line of duty.

An employee may elect, or the district may require, an employee to use accrued paid vacation, personal or family leave for purposes of an FMLA leave. An employee may elect, or the district may require, an employee to use accrued vacation, personal, or medical/sick leave for purposes of a medical leave.

The employee shall notify the district of his/her request for leave, if foreseeable, at least 30 days prior to the date when the leave is to begin. If such leave is not foreseeable then the employee shall give such notice as is practical. The district may require a certification from a health care provider if medical leave is requested. When an employee returns following a leave, he/she must be returned to the same or equivalent position of employment. The Superintendent of Schools or designee may reassign a teacher consistent with the teacher's agreement to a different grade level, building or other assignment consistent with the employee's certification and tenure area.

The Board shall ensure that FMLA is provided to all eligible employees, unless they are covered by a collective bargaining agreement which provides greater leave benefits than this Act.

The district shall post a notice prepared or approved by the Secretary of Labor stating the pertinent provisions of the Family and Medical Leave Act, including information concerning enforcement of the law.

Ref: 29 U.S.C. §§ 207, 2601, 2611, 2612, 2613, 2614, 2618, 2619.  
29 CFR §§ 825.110, 825.309, 825.600, 825.603, 825.800.

First Reading: July 8, 2014  
Second Reading: August 12, 2014  
Adoption Date: August 12, 2014

## FAMILY AND MEDICAL LEAVE REGULATION

Consistent with the federal Family and Medical Leave Act of 1993 (FMLA) as amended, the Board of Education shall provide up to twelve (12) workweeks of unpaid, job protected leave in a twelve (12) month period for its eligible employees. In addition, FMLA provides eligible employees with 26 workweeks of leave in a single 12 month period to care for a covered service member with a serious illness or injury incurred in the line of duty.

An eligible employee must have been employed for at least twelve months, have worked at least 1,250 hours during the prior twelve months, and be employed at a worksite where at least 50 employees are employed by that employer within a 75 mile radius of that worksite.

### **Right to Benefits During Leave**

An eligible employee is entitled to a total of twelve workweeks of unpaid, job protected family and medical leave. Any employee who uses the unpaid, job protected leave shall have his/her health benefits continued during the leave, shall not have any previously accrued benefits altered and shall be returned to an equivalent position according to established Board policies and collective bargaining agreements. The employee is not entitled to accrue seniority during the leave.

An employee may elect, or the district may require, an employee to use available paid leave time for purposes of a family or medical leave. However, an employee may only use accrued paid leave in accordance with the applicable collective bargaining agreement.

### **Family and Medical Leave**

Family leave is available when a child is born to the employee, adopted by an employee or one is placed with the employee for foster care. Medical leave is available in order for the employee to take care of a spouse, child, parent who has a serious health condition, when the employee has a serious health condition rendering him/her unable to perform the functions of the employee's job. Military caregiver leave is available to employees who are family members of covered service members with a serious illness or injury incurred in the line of duty on active duty. Additionally, this applies to covered veterans who require care and have been other than dishonorably discharged from service within the last five (5) years.

Military caregiver leave is a special entitlement that allows the employee to extend FMLA leave to 26 workweeks. Qualifying exigency leave is available to employees when a family member is notified of impending call or called to active duty.

A child shall include any individual whether biological, adopted, a foster child, a stepchild, a legal ward, or a child standing in loco parentis who is under eighteen years of age or, if over eighteen, is incapable of self-care due to a mental or physical disability. A parent shall include the biological parent of the employee or an individual who stood in loco parentis to the employee when he/she was a child. Next of kin shall mean the nearest blood relative other than spouse, parent, son, daughter, as defined in federal regulation.

A serious health condition means an illness, injury, impairment, or physical or mental condition that involves inpatient care or continuing treatment by a health care provider.

Family leave must be taken within one year of the birth or placement of the employee's child. If both spouses are employed by the district, the combined amount of leave for family leave or medical leave may be limited to twelve weeks.

### **Notice to Take Leave**

The employee shall notify the district of his/her request for family or medical leave at least 30 days prior to the date when the leave is to begin, when such leave is foreseeable. If such leave is not foreseeable then notice shall be given as early as is practical. If the employee requests medical leave, reasonable attempts shall be made to schedule treatment so as not to disrupt the district's operations.

Employees, absent unusual circumstance, must comply with the district's usual and customary notice and procedural requirements for requesting leave.

### **Intermittent Leave**

An employee, who requests family leave, shall not be provided intermittent leave or a reduced leave schedule unless the employee and district mutually agree. Intermittent leave may be provided for medical leave, however, the district may transfer the employee to a comparable position if it will better accommodate such intermittent periods of leave. For instructional employees who request medical leave and it is foreseeable that the medical treatment shall cause the employee to be on leave for more than 20% of the total number of working days in the period of leave, the district may require the employee to take a block of time or to transfer to an equivalent position for which the employee is qualified, but which better accommodates intermittent periods of leave.

### **Military Leave: Leave Related to Active Duty or a Call to Active Duty**

If the necessity for leave because of a qualifying exigency arising from the fact that a family member is on active duty or has been notified of an impending call to active duty is foreseeable, the employee shall give such notice to the district as soon as is reasonable and practicable.

The School Board may require that a request for leave because of a qualified exigency arising from the fact that the employee's spouse, son, daughter, or parent is on active duty or has been notified of an impending call to active duty be supported by a certification issued in accordance with regulations.

### **Certification**

The district may require the employee requesting medical leave to present a certification from the health care provider of the person for whom the employee is taking the leave. Upon request by the district, the employee must provide the certification within 15 days. The certificate shall include:

1. the date on which the serious health condition commenced;

2. the probable duration of the condition;
3. the appropriate medical facts within the knowledge of the health care provider regarding the condition;
4. a statement that the employee is needed to care for the family member and an estimate of the amount of time that such employee shall be needed or a statement that the employee is unable to perform the functions of the employee's position; and
5. the dates and duration of medical treatment if the request for intermittent leave is for a planned medical treatment.

If the district doubts the validity of the certification, then, at the district's expense, a second opinion may be required from a health care provider selected by the district. The school physician cannot give this opinion. If the two opinions conflict, a third health care provider, at the district's expense, may be chosen by the two parties to render a final opinion.

### **Restoration**

An instructional employee, who begins any type of leave at least five (5) weeks before the end of an academic term, may be required not to return until the new term begins if the leave is at least three (3) weeks long and the employee would return during the last three (3) weeks of the term.

An instructional employee who begins leave, for any purpose other than personal illness, less than three (3) weeks prior to the end of the term and the leave is longer than five (5) working days, may be required not to return until the new term begins.

### **Failure to Return**

The district may recover the health care premiums paid during the leave if the employee fails to return from the leave. However, recovery cannot occur if the employee fails to return because of the continuation, recurrence, or onset of a serious health condition or due to circumstances beyond the control of the employee.

### **Effect on Existing Laws or Agreements**

The Board shall ensure that family and medical leave, consistent with the Family and Medical Leave Act, is provided to all eligible employees, whether or not they are covered by a collective bargaining agreement. Any collective bargaining agreement which contains greater leave benefits than this policy shall remain in force.

### **Notice of Policy**

The district shall post a notice prepared or approved by the Secretary of Labor stating the pertinent provisions of the Family and Medical Leave Act, including information concerning enforcement of the law.

First Reading: July 8, 2014  
Second Reading: August 12, 2014  
Adoption Date: August 12, 2014

**FAMILY AND MEDICAL LEAVE ACT OF 1993  
GUIDANCE DOCUMENT**

**I. ELIGIBLE EMPLOYEES**

- A. To be eligible for FMLA leave, the employee must meet the following criteria:
1. have been employed for at least 12 months (need not be consecutive and may include 52 weeks of partial or whole employment). Military service must be counted in determining whether the employee has been employed for at least 12 months. (Employment prior to a continuous break in service of seven or more years need not be counted unless the break in service is due to the employee's fulfillment of military obligations or is governed by a collective bargaining agreement or other written agreement. 29 CFR §825.110[a][1] and [b]).
  2. have been employed for at least 1,250 hours of service during the 12 calendar months immediately preceding the commencement of the leave. Military service must be credited towards the employee's required 1,250 hours worked. (29 CFR §825.110[a][2])
  3. Qualification for leave is measured twelve (12) months backward from the leave commencement date (29 CFR §825.110[d]). An employee may be on non-FMLA leave at the time s/he meets the eligibility requirements, and in that event, any portion of leave taken for an FMLA qualifying reason would be FMLA leave.
  4. Executive, administrative and professional employees (including teachers) under the FLSA will be presumed to have worked at least 1,250 hours during the previous 12 months (29 CFR §825.110[c]), since records of their hours are not maintained (29 CFR §825.500[d]).
  5. Teacher assistants and aides are treated along with non-instructional employees for the purposes of counting hours of employment. (29 CFR § 825.800).

**II. LEAVE ENTITLEMENTS**

- A. A total of 12 work weeks of leave during any 12 month period for one or more of the following purposes:
1. child care for birth of an employee's son or daughter.
  2. adoption or foster care of a child by an employee.
  3. care for a spouse, child or parent with a serious health condition.
  4. an employee's own serious health condition which renders him/her unable to perform work functions [disability within the meaning of the Americans with Disabilities Act, 42 USC §12101 et. seq.; 29 CFR Part 30] (FMLA §102[a]; 29 CFR §825.112).
  5. because of any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, or parent is a covered military member on active duty (or has been notified of an impending call or order to active duty) in support of a contingency operation.

6. to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent or next of kin of the service member.

B. DEFINITIONS

1. Employer - The Hampton Bays Union Free School District.
2. Spouse - A husband or wife, as defined or recognized under State Law (29 CFR §825.122[a]).
3. Parent - The biological, adoptive, step or foster parent of the employee as well as an individual who stood in loco parentis or his/her legal guardian; does not include an in-law (29 CFR §825.122[b]).
4. Son or Daughter - A biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis of a child under 18, or over 18 and in need of assistance with or supervision over daily living skills due to mental or physical disabilities (29 CFR §825.122[c]).
5. Serious Health Condition
  - a. For purposes of FMLA, “serious health condition” entitling an employee to FMLA leave means an illness, injury, impairment, or physical or mental condition that involves:
    - (1) Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (for purposes of this section, defined to mean inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor or recovery therefrom), 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:
      - (i) A period of incapacity (i.e., inability to work, attend school or perform other regular daily activities due to the serious health condition, treatment therefor or recovery therefrom) of more than three consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
        - a. Treatment two or more times by a health care provider within 30 days (unless there are extenuating circumstances), by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services (e.g., physical therapist) under orders of, or on referral by, a health care provider; or
        - b. Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. Treatment requires an

- in-person visit. The first (or only) in-person treatment visit must take place within 7 days of the incapacity.
- (3) Any period of incapacity due to pregnancy or for prenatal care.
  - (4) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
    - (i) Requires periodic visits for treatment by a health care provider, or by a nurse (at least twice per year) under direct supervision of a health care provider;
    - (ii) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
    - (iii) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.).
  - (5) A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.
  - (6) Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, 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), kidney disease (dialysis).
  - (7) Absences attributable to incapacity under paragraph (a)(2)(ii) or (iii) qualify for FMLA leave even though the employee or the immediate family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness. (29 CFR §825.114).
- b. Treatment for purposes of paragraph (a) of this section includes (but is not limited to) examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under paragraph (a)(2)(i)(B), a regimen of continuing treatment includes, for example, a course of prescription medication (e.g., an antibiotic) or therapy requiring special equipment to resolve or alleviate the health



condition (e.g., oxygen). A regimen of continuing treatment that includes the taking of over-the-counter medications such as aspirin, antihistamines, or salves; or bed-rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of FMLA leave.

- c. Conditions for which cosmetic treatments are administered (such as most treatments for acne or plastic surgery) are not "serious health conditions" unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraine, routine dental or orthodontia problems, periodontal disease, etc., are examples of conditions that do not meet the definition of a serious health condition and do not qualify for FMLA leave. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this regulation are met. Mental illness or allergies may be serious health conditions, but only if all the conditions of this section are met.
- d. Substance abuse may be a serious health condition if the conditions of this section are met. However, FMLA leave may only be taken for treatment for substance abuse by a health care provider or by a provider of health care services on referral by a health care provider. On the other hand, absence because of the employee's use of the substance, rather than for treatment, does not qualify for FMLA leave.

#### 6. Health Care Provider

Health care provider means:

- a. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State in which the doctor practices; or
- b. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by X-ray to exist) authorized to practice in the State and performing within the scope of their practice as defined under State law; and
- c. Nurse practitioners, nurse-midwives and clinical social workers and physician assistants who are authorized to practice under State law and who are performing within the scope of their practice as defined under State law; and
- d. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts.
- e. Any health care provider from whom an employer or a group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

- f. A health care provider as defined above who practices in a country other than the United States, who is licensed to practice in accordance with the laws and regulations of that country. (29 CFR §825.125).

C. THE APPLICABLE 12 MONTH PERIOD

While the employee is entitled to a total of 12 work weeks of leave during a 12 month period, the employer has chosen in determining the 12 month measure, the following:

12 months measured forward from the date any employee's first FMLA leave begins.

D. NATURE OF LEAVES

1. Child Care - General Provisions

- a. leave rights apply equally to fathers and mothers in the case of child care leaves (29 CFR §825.120[a]).
- b. if spouses work for the same employer, only a combined 12 weeks may be taken within the 12 month period for the purposes of child care (29 CFR §825.121[a][3]).
- c. intermittent leave for the purposes of child care, foster care and adoption is subject to the employer's permission and is not a right granted by law (29 CFR §825.121[b]).
- d. if the leave is foreseeable, at least 30 days prior verbal or written notice of the timing and expected duration of the leave is required by the employer. The employee does not have to specifically ask for FMLA leave, but must provide a FMLA qualifying reason for the leave. Where unforeseeable, notice must be given as soon as possible and practical (within one or two working days of the need for leave becoming known to the employee) (see 29 CFR §825.302 and §825.303) or else the employer may deny the leave until there is 30 days actual notice (see 29 CFR §825.304[b]).

2. Child Care for Pregnancy or Birth

- a. child care leave may begin before the birth for prenatal reasons (29 CFR §825.120[a]).

3. Child Care for Adoption or Foster Care

- a. child care leave may begin before actual placement of a child in foster care or adoption of a child (e.g., time for counseling sessions, court appearance, attorney-client and physician meetings or examinations) (see 29 CFR §825.121[a]).
- b. there is no age maximum on the adoption of a child or a child received into foster care placement.
- c. the time within which a child care adoption or foster care leave must be taken is 12 months from the birth, adoption or placement of the child (FMLA §102[a][2] - 29 CFR §825.121[a][2]).

- d. there is no age maximum on the adoption of a child or a child received into foster care placement.
  - e. the time within which a child care adoption or foster care leave must be taken is 12 months from the birth, adoption or placement of the child (FMLA §102[a][2] - 29 CFR §825.121[a][2]).
  - f. if spouses work for the same employer, only a combined 12 weeks may be taken within the 12 month period for the purposes of child care (29 CFR §825.121[a][3]).
  - g. intermittent leave for the purposes of child care, foster care and adoption is subject to the employer's permission and is not a right granted by law (29 CFR §825.121[b]).
  - h. if the leave is foreseeable, at least 30 days prior verbal or written notice of the timing and expected duration of the leave is required by the employer. The employee does not have to specifically ask for FMLA leave, but must provide a FMLA qualifying reason for the leave. Where unforeseeable, notice must be given as soon as possible and practical (within one or two working days of the need for leave becoming known to the employee) (see 29 CFR §825.302 and §825.303) or else the employer may deny the leave until there is 30 days actual notice (see 29 CFR §825.304[b]).
4. Intermittent Leave or Reduced Leave Schedule
- a. This leave refers to serious health conditions as described at II(B)(4), *supra*, at page 2.
  - b. in addition to the availability of up to 12 consecutive weeks of leave, intermittent leave is available, as is reduced schedule leave, when the same is medically necessary (FMLA §102[b][1]).
  - c. medical necessity refers to the health care provider's certification that the medical need "can be best accommodated" through an intermittent or reduced leave schedule (29 CFR §825.202[b]).
  - d. spouses working for the same employer are entitled to a combined 12 weeks of leave to care for a parent (but not an in-law) (29 CFR §825.201[b]).
  - e. intermittent leave is leave that is taken in separate blocks of time, rather than continuously, broken down to units upon the same basis as the breakdown employed for sick leave use (e.g., for medical appointments, chemotherapy, radiation, physical therapy for severe arthritis and dialysis) (see 29 CFR §825.201[b]). If FMLA leave is taken for a period ending with the school year and beginning the following semester, it will be deemed to be consecutive, rather than intermittent leave. (29 CFR §825.202[a])
  - f. reduced leave schedule refers to a diminished number of hours in the workday (e.g., from 8 to 6 hours, due to limited health capacity -- see 29 CFR §825.202[a]).

- g. the increment of time for intermittent leave may be as brief as the minimum interval of time used in the employer's payroll system to account for absences (e.g., one hour or less) (29 CFR §825.205[a]).
- h. where the need for intermittent or reduced schedule leave is foreseeable, at least 30 days prior written notice shall be given by the employee to the employer. (FMLA §102[e][1] and [2]; 29 CFR §825.302-303).
- i. the employee must make a reasonable effort to schedule the treatment so as not to disrupt unduly the employer's operations (FMLA §102[e][2][a]); (29 CFR 825.203).
- j. the medical certification should be presented, upon the employer's request, at the time of leave, but must be presented within 15 calendar days of the employer's request, where practicable (29 CFR §825.305[a] and [b]).
- k. an employee requesting intermittent or reduced schedule leave due to a planned medical treatment may be required to transfer temporarily to an available alternative position:
  - 1. for which the employee is qualified;
  - 2. with equivalent pay and benefits;
  - 3. which better accommodates the treatment schedule (see FMLA §102[b][2]; 29 CFR §825.204[a]).
- l. an employee able to return to work full-time must be restored to the same or equivalent position held at the time intermittent or reduced schedule leave commenced.

5. Leave because of a qualifying exigency.

6. Leave to care for a covered service mentor with a serious injury or illness.

### III. PAID AND UNPAID LEAVE

- A. The employer shall not be required to provide notice to the employee of its intent to designate leave as FMLA leave time until the employer has had an opportunity to ascertain whether a medical condition constitutes a serious health condition or, in the case of child-care leaves, when reasonable evidence is presented to support such leave. The employer shall be permitted to retroactively designate leave time as FMLA leave time. If an employee alleges prejudice or harm as a result of a retroactive designation, that employee must prove impairment of his or her FMLA rights and the resulting prejudice. The employer must then evaluate that employee's individual situation to determine the appropriate remedy.
- B. If the employee is receiving workers' compensation or disability benefits, the employer may run FMLA leave concurrently (29 CFR 825.207[e]).
- C. Where an employer provides a greater period of unpaid leave than FMLA, the designation by the employer determines the FMLA leave. An employee may not

elect when the FMLA leave begins and ends (29 CFR § 825.700[a]). Unpaid leave under FMLA has a neutral effect upon exempt status under FLSA (FMLA §102[c]).

- D. Instructional employees on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.

**IV. CERTIFICATION OF LEAVES**

- A. This employer requires timely certification of a medical leave application pursuant to these standards:
  - 1. date when serious health condition commenced;
  - 2. its probable duration;
  - 3. relevant medical facts within the health care provider’s knowledge which the employer should need to know;
  - 4. in the case of caring for another by the eligible employee, a statement of the need for the employee to provide care, including a time requirements estimate;  
[NOTE: “Care” includes physical and psychological, and may be provided intermittently, where several family members share in the care duties (29 CFR §825.116)]
  - 5. where the medical leave is the employee’s own, a statement that s/he is unable to perform the functions of the position;
  - 6. in the case of intermittent leave for planned medical treatment, the dates on which the treatment is scheduled to be given and its duration (see FMLA §103[a] and [b]).
  - 7. Appendix “A” to this Guidance Document are the forms to be used which the information needed to meet medical certification requirements for a serious health condition leave (29 CFR §825.306).
  - 8. Appendix “B” to this Guidance Document is the employer’s response to the employee’s request for leave, to be furnished to the employee. This form sets forth the consequences for failure to timely furnish medical certifications.
  
- B. This employer may require that an employee’s leave because of a qualifying exigency or to care for a covered service member with a serious injury or illness be supported by a certification.

**V. SECOND OPINIONS AND CONFLICTING OPINIONS REGARDING CERTIFICATION**

- A. When the employer has reason to doubt the validity of a medical opinion regarding a medical leave, the employer may require, at its expense, that the employee obtain a second health care provider’s opinion by one designated or approved by the employer. Such designee may not be employed by the employer or regularly utilized by the employer (FMLA §103[d][1]; 29 CFR §825.307[a] and [b]).

- B. A third health care provider resolves conflicts between the first and second opinions via a final and binding decision (FMLA §103[d][2]; 29 CFR 825.307).
- C. Subsequent recertifications may be required by an employer no more often than 30 days unless an exception exists (FMLA §103[e]; 29 CFR §825.308).

**VI. RESTORATION TO POSITION UPON RETURN TO REGULAR WORK SCHEDULE**

- A. Upon return from a covered leave, the employee must be restored by the employer to the position from which leave was granted; or
- B. Restored to a position which is virtually identical to the position previously held in terms of pay, benefits and working conditions, including privileges, perquisites and status (FMLA §104[a][1]; 29 CFR §825.214 and §825.215). If, for example, the employee went on leave from the night shift, s/he must be restored to the night shift (29 CFR §825.216[a]).
- C. Restoration may be avoided if it can be shown that the employee would have been laid-off anyway.
- D. The employer may require an employee to periodically report on intent to return status (29 CFR §825.311[a]).
- E. If an employee gives the employer an unequivocal notice of intent not to return to work, the employer's obligations to maintain health benefits (except pursuant to COBRA requirements) and restore to position cease (29 CFR §825.311[b]).
- F. The employer has adopted a fitness for duty certification policy, which uniformly applies to employees returning from medical leaves of the same nature (29 CFR §825.312[a]).
- G. Fitness for duty review must be limited to the condition(s) for which the FMLA leave was granted (29 CFR §825.312[b]).
- H. The terms in a collectively negotiated agreement, if any, shall supersede the return to work (fitness for duty) requirements of FMLA, so long as they do not run afoul of the Americans with Disabilities Act (Id.).
- I. This employer may deny restoration from leave until the employee furnishes a required fitness for duty certification, but only if the notice requirements of §825.312[d] have been met. (The §825.301 "notice of rights" to FMLA leave applicants, including fitness for duty requirements upon return to work and a specific individualized notice of certification requirement, must be given at or immediately after leave commencement unless the employer could not foresee the need for such

notice when the leave commenced (such as when leave begun as paid vacation, but due to intervening unforeseen accident, became a leave for a serious health condition) -- see 29 CFR §825.312[e]).

1. Appendix “C” to this Guidance Document is a notice of an employee’s intent to return from leave, setting forth the conditions for reinstatement.
- J. Fraudulent actions by employees are not protected under FMLA (see 29 CFR §825.216[d]).

**VII. HEALTH BENEFITS DURING LEAVE**

- A. The employer shall maintain group health plan coverage for employees on FMLA leaves as if they were actively engaged at work for the duration of the leave (FMLA §104[c]; 29 CFR §825.209 and §825.800).
- B. The Employer does not maintain group health insurance benefits for employees who are laid off during the course of FMLA leave and employment is terminated, unless pursuant to a collectively negotiated agreement (29 CFR §825.216[a][1]).
- C. Instructional employees on FMLA leave at the end of the school year must be provided with any benefits over the summer vacation that employees would normally receive if they had been working at the end of the school year.
- D. Group health care coverage shall extend beyond health insurance, alone, to any other health related benefits provided such as dental care, vision care, mental health counseling (e.g., EAP) and substance abuse treatment (29 CFR §825.209[b]).
- E. Improvements in benefits accrete to an employee on FMLA leave, as if s/he was actively engaged at work (29 CFR §825.209[c]).
- F. Window periods for plan or coverage changes must be made on notice to those on FMLA leaves, giving them an opportunity to participate (29 CFR §825.209[d]).
- G. While on FMLA leave, an employee may opt-out from coverage, but must be allowed to re-enter the plan(s) unconditionally upon return to work (e.g., without waiting period or physical examination -- 29 CFR §825.209[e]).
- H. Employees on an FMLA leave become immediately ineligible for employer health premium funding as soon as the employer is informed of an intent not to return from leave, except as required by COBRA (29 CFR §825.209[f]).
- I. Where employee premium contributions exist, those on FMLA leaves shall be required to remit their shares to the employer or the carrier, without any additional charges (29 CFR §825.210[c]).

- J. If the employee on FMLA leave is more than 30 days late in paying his/her share of the premium, the employer's obligation to pay its share ceases (29 CFR §825.212[a]).
- K. If coverage lapses during a FMLA leave due to the employee's failure to make premium share payments, the coverage must be unconditionally restored upon return to work (29 CFR §825.212[c]).
- L. The employer shall recover from the employee who was on FMLA leave the employee's premium share, if the employer made a voluntary payment to avoid a lapse in coverage (29 CFR §825.212[b]).
- M. The employer shall recover its premium payments from an employee who fails to return from FMLA leave, unless:
  - 1. the serious health condition persists beyond the time of leave;
  - 2. there are circumstances beyond the employee's control occur (e.g., spouse is transferred to a job location more than 75 miles away; the employee is needed for the health care of an immediate family member; the employee is laid-off while on leave; the employee is a key employee who was given notice not to return at the end of the leave; but not to extend child care leave).
- N. The employer shall recoup premiums from an employee through payroll deductions (29 CFR §825.213[e]).
- O. Return to work means resumption of duties for at least 30 days (29 CFR §825.213[b]).

**VIII. ANTI-DISCRIMINATION AND ENFORCEMENT PROVISIONS**

- A. The employer is prohibited from interfering with or denying an employee the opportunity to exercise rights provided under FMLA (FMLA §105[a]; 29 CFR §220[a]).
- B. Protected activities include: filing a charge, instituting a proceeding, furnishing information and testifying (FMLA §105[b]; 29 CFR §825.220[a]).
- C. Discouraging an employee from using FMLA leave constitutes a violation (29 CFR §825.220[b]).
- D. Individual rights are not delegable to the collective negotiations process (29 CFR §825.220[d]).
- E. The U.S. Secretary of Labor is empowered with investigative authority under the FMLA (FMLA §106[a]).



- F. Records must be preserved by employers pursuant to standards set forth in the FLSA at §11(c) (29 USC §211[c]) and are subject to annual submission for inspection, unless reasonable cause warrants more frequent inspection (FMLA §106[b] and [c]).
- G. Employees may file complaints administratively with the Wage and Hour Division, Employment Standards Administration of the U.S. Department of Labor (29 CFR §825.400-401).

**IX. POSTING AND NOTICE REQUIREMENTS**

This employer shall post and maintain conspicuously in places where employees are employed a notice explaining the Act and providing the procedures for filing complaints of violations with the Wage and Hour Division (29 CFR §300[a]). [See Appendix “D” hereto]

**X. EMPLOYER RECORDKEEPING REQUIREMENTS**

- A. In the form required by §11(c) of the FLSA, the following FMLA relevant information must be retained for at least three (3) years:
  1. basic payroll data;
  2. FMLA leave dates (all employees) and so designated as such in records;
  3. days and hours (where applicable) of FMLA taken by employees;
  4. copies of employee notices of FMLA leave given to the employer; copies of employer notices (both general and specific) given to employees. Copies may be maintained in employee personnel file;
  5. documents which describe employee benefits, policies and practice regarding the taking of paid and unpaid leaves;
  6. premium payments of employee benefits;
  7. written records of disputes about FMLA leave conferral issues (29 CFR §500[a] and [b]).
- B. For employees not subject to FLSA recordkeeping requirements (e.g., exempt), the employer need not keep records of actual hours worked if:
  1. eligibility for FMLA leave is presumed;
  2. intermittent or reduced leave schedule hours are agreed upon between employer and employee (e.g., the parties agree what the regular or average hours of work are) (29 CFR §825.500[d]).
- C. Medical certification and recertification documents shall be maintained in separate files/records and treated confidentially, except when supervisors and/or safety personnel have a need to know (29 CFR §825.500[e][1] and [2]).
- D. Government officials investigating compliance with FMLA must be provided with relevant information upon request (29 CFR §825.500[e][3]).

**XI. SPECIAL RULES FOR SCHOOL TEACHING PERSONNEL**

- A. Whenever primarily instructional employees will miss more than 20% of the working days during the intended FMLA leave for planned treatment of serious health condition (personal or family member), the employer may require:
1. the employee to take leave for periods of a particular duration, but not in excess of the leave period;
  2. to transfer temporarily to an alternative position for which the employee is qualified which:
    - (a) has equivalent pay and benefits;
    - (b) better accommodates recurring periods of leave than the regular employment position (FMLA §108[c][1]; 29 CFR §825.601).
- B. To be eligible for the 20% leave described in paragraph “A”, above, the employee must make a reasonable effort to schedule treatments in a manner which will not unduly disrupt the employer’s operation and, if practicable, give at least 30 days prior notice (FMLA §102[e][2] and §108[c][2]).
- C. For leaves near the conclusion of an academic term (semester), the following rules may be applied by the employer in the case of primarily instructional employees:
1. If the leave commences at least five (5) weeks before the end of an academic term and the leave is of at least three (3) weeks duration, leave may be required until the end of the term if the return date would otherwise be within the last three (3) weeks of the term (FMLA §108[d][1]).
  2. If a FMLA leave, other than for an employee’s own medical condition, begins within the last five (5) weeks before the end of an academic term, the employer may require the leave to extend through the end of the term if it is for more than two (2) weeks duration and the return date would be within the last two (2) weeks of the term (FMLA §108[d][2]; 29 CFR §825.602).
  3. If a FMLA leave, other than for an employee’s own medical condition, begins less than three (3) weeks before the end of an academic term and would last for more than five (5) working days, the employer may require the leave to extend to the end of the term (FMLA §108[d][3]).
- D. Periods of one or more weeks when school is closed and employees are not expected to report to work do not count toward FMLA leave. Examples include school closings during the Christmas/New Year holidays, summer vacation, or closings for maintenance and repairs. However, when a particular holiday falls during a week taken as FMLA leave, the entire week is counted as FMLA leave.
- E. Restoration to an equivalent position upon return from leave regarding all school employees is to be governed by school board policy and practices or collectively negotiated provisions (FMLA §108[e]; 29 CFR §825.600[d]).

- F. “Instructional employees” are defined as those whose principal function is to teach and instruct students in class, a small group or individual settings, coaches, special education assistants such as signers for the hearing impaired. It does not include counselors, psychologists, curriculum specialists, non-instructional personnel and teaching assistants or aides, unless their principal job is actually teaching or instructing (29 CFR §825.600[c]).
  
- G. If FMLA leave is extended at the employer’s option, the extension is considered to be FMLA leave time as well, including health benefits and restoration rights (29 CFR §825.603[b]).

Adopted: August 12, 2014

Updates: January 14, 2016 (formatting and number updates only)

## CHILD ABUSE IN AN EDUCATIONAL SETTING

The Board of Education recognizes that children have the right to an educational setting that does not threaten their physical and emotional health and development. Child abuse by school personnel and school volunteers violates this right and therefore is strictly prohibited.

Allegations of child abuse by school personnel and school volunteers shall be reported in accordance with the requirements of Article 23-B of the Education Law.

### Required Reporters

Any person holding any of the following positions shall be required to promptly report written and oral allegations of child abuse in an educational setting:

- school board member
- teacher
- school nurse
- school guidance counselor
- school psychologist
- school social worker
- school administrator
- other school personnel required to hold a teaching or administrative license or certificate.

For purposes of this policy, persons holding these positions shall be referred to as “required reporters.”

Other district employees may, of course, report allegations of child abuse allegedly committed by district staff and volunteers and are encouraged to do so.

### Definitions

For purposes of this policy, “educational setting” means the buildings and grounds of the district, the vehicles provided by the district to transport students to and from school buildings, field trips, co-curricular and extra-curricular activities both on and off school district grounds, all co-curricular and extra-curricular activity sites, and any other location where direct contact between an employee or volunteer and a child has allegedly occurred.

“Child” means a person under the age of 21 enrolled in a New York State school district, other than New York City.

“Child abuse” generally refers to any intentional or reckless act by an employee or a volunteer against a child which injures or kills a child or creates a risk of injury or death, or constitutes child sexual abuse, or involves the actual or attempted dissemination of indecent materials to minors. If a required reporter or any other district employee has a question as to whether alleged conduct constitutes “child abuse,” he or she shall promptly raise the question to the Principal of the building where the abuse is alleged to have occurred. The Principal shall

consult Article 23-B of the Education Law or the school attorney, if necessary, to determine whether the allegations constitute child abuse.

### Reporting Requirements

Required reporters and any other district employee deciding to report an allegation of child abuse by district staff or volunteers shall complete a written report as soon as practical after receiving the allegation, but in no event shall a required reporter wait more than one workday to file a report.

The required reporter shall personally file the report with the Principal of the school in which the child abuse allegedly occurred.

If the alleged abuse did not occur in a school building, the report shall be filed with the Principal of the school attended by the alleged victim.

If the alleged abuser is an employee or volunteer of another district, the report shall be sent to the Superintendent of the district where the alleged child victim attends school and to the Superintendent of the district where the abuse allegedly occurred (if different). The report shall be prepared on a standard form supplied by the district. Each Building Principal shall keep a supply of the forms available in his or her office.

Upon receiving a written report, the Principal shall determine whether there is reasonable suspicion to believe that an act of child abuse has occurred. If the person making the allegation of abuse is someone other than the child or the child's parent, the Principal shall contact the person making the report to learn the source and basis for the allegation.

If the Principal determines there is reasonable suspicion, he or she shall promptly notify the parent of the alleged child victim (assuming that the parent is not the person who originally reported the alleged abuse). The notice shall be given by telephone (if possible) and in writing, sent via overnight mail to the parent.

The notice shall inform the parent of his or her rights and responsibilities related to the allegations of abuse.

The Principal shall also promptly provide a copy of the written report to the Superintendent and send a copy to the appropriate law enforcement authorities. In no event shall the Principal delay in sending the report to law enforcement because of an inability to contact the Superintendent.

The Superintendent shall send to the Commissioner of Education any written report forwarded to the local law enforcement authorities where the employee or volunteer alleged to have committed an act of child abuse holds a certificate or license issued by the department.

### Rights of Employees and Volunteers

Employees. Pending resolution of the allegations, no employee against whom an allegation of child abuse has been made shall be permitted to have unsupervised contact with any district student. Any employee against whom an allegation of child abuse has been made and against whom the district intends to take adverse action shall be entitled to receive a copy of the report and to respond to the allegations.

Volunteers. Pending resolution of the allegations, no volunteer against whom an allegation of child abuse shall be permitted to render volunteer services to the district. Any volunteer against whom an allegation of child abuse has been made and against whom the district decides to take adverse action shall be entitled to receive a copy of the report and to respond to the allegations.

### Confidentiality

All reports and other written material submitted pursuant to this policy and Article 23-B of the Education Law shall be confidential and may not be redisclosed except to law enforcement authorities involved in investigating the alleged abuse or except as expressly authorized by law or pursuant to a court-ordered subpoena. The Principal and Superintendent shall exercise reasonable care to prevent unauthorized disclosure.

### Penalties

Required Reporters. Any required reporter who willfully fails to make a written report of alleged child abuse required by Article 23-B of the Education Law shall be subject to criminal penalties provided for in law, as well as disciplinary sanctions imposed in accordance with law and any applicable collective bargaining agreement.

Administrators. Any administrator who (1) willfully fails to submit a written report of alleged child abuse to an appropriate law enforcement authority as required by Article 23-B of the Education Law, or (2) makes any agreement to withhold from law enforcement authorities, the Superintendent or the Commissioner, the fact that an allegation of child abuse in an educational setting on the part of any employee or volunteer has been made in return for the employee's or volunteer's resignation or voluntary suspension from his or her position, or (3) willfully discloses a confidential record shall be subject to criminal penalties provided for in law, as well as disciplinary sanctions imposed in accordance with law and any applicable collective bargaining agreement. In addition, the Commissioner of Education may, following an administrative determination, impose a civil penalty of up to five thousand dollars on any administrator who fails to submit a report of child abuse to an appropriate law enforcement authority.

### Record Retention

Any report of child abuse by an employee or volunteer that does not result in a criminal conviction shall be expunged from the records kept by the district with respect to the subject of the report after five years from the date the report was made.

Training

The Superintendent shall be responsible for establishing and implementing on an ongoing basis a training program for all required reporters on the procedures required under Article 23-B. The program shall include at a minimum all the elements specified in Commissioner's regulations.

Cross-ref: 5460, Child Abuse in a Domestic Setting

Ref: Education Law §§1125-1133  
8 NYCRR §100.2 (hh) (Reporting of Child Abuse in an Educational Setting)

Adoption date: July 7, 2009

## DISCLOSURE OF WRONGFUL CONDUCT

The Board of Education expects officers and employees of the district to fulfill the public's trust and to conduct themselves in an honorable manner, abiding by all district policies and regulations and by all applicable state and federal laws and regulations.

However, when district officers or employees know or have reasonable cause to believe that serious instances of wrongful conduct (e.g., mismanagement of district resources, unethical behavior, violations of law or regulation, and/or abuse of authority) have occurred, they should report such wrongful conduct to the Board or one of its designated officers.

For purposes of this policy, the term "wrongful conduct" shall be defined to include:

- theft of district money, property, or resources;
- misuse of authority for personal gain or other non-district purpose;
- fraud;
- actions that compromise the security and integrity of the district's or state's testing program;
- violations of applicable federal and state laws and regulations; and/or
- serious violations of district policy, regulation, and/or procedure.

### Disclosure and Investigation

Employees and officers who know or have reasonable cause to believe that wrongful conduct has occurred shall report such mismanagement, fraud or abuse to the Superintendent of Schools, the School Attorney or the Independent Auditor. Each of these Board-designated officers, upon receiving a report of alleged wrongful conduct, shall take immediate steps to conduct an investigation.

Staff members who suspect that a violation of state testing procedures has occurred by a certified educator, or non-certified individual involved in the state testing program, must report their concerns to the State Education Department (SED) in the manner prescribed by the Commissioner of Education, and must also report concerns to the Superintendent or Board of Education. Any Building Principal receiving such a report shall relay this information to the Superintendent.

The Superintendent, School Attorney or the Independent Auditor shall maintain a written record of the allegation, conduct an investigation to ensure that the appropriate unit (auditors, police, SED, etc.) investigates the disclosure, and notify the Board when appropriate to do so.

Except as otherwise provided in either state and/or federal law, the Board-designated officer shall make all reasonable attempts to protect the identity of the employee making the disclosure in a confidential manner, as long as doing so does not interfere with conducting an investigation of the specific allegations or taking corrective action.



The district shall not take adverse employment action against an employee who has notified the district of wrongdoing, allowing the district the opportunity to investigate and correct the misconduct. The district shall not take adverse action against an employee who has reported misconduct when mandated to do so by federal or state law or regulation.

### Complaints of Reprisal

An employee who has been subject to an adverse employment action based on his or her prior disclosure of alleged or actual wrongful conduct may contest the action by filing a written complaint of reprisal with the Board President. The Board President, or his/her designee, will review the complaint expeditiously to determine:

- whether the complainant made a disclosure of alleged wrongful conduct before an adverse employment action was taken;
- whether the responding party could reasonably have been construed to have had knowledge of the disclosure and the identity of the disclosing employee;
- whether the complainant has in fact suffered an adverse employment action after having made the disclosure; and
- whether the complainant alleges that adverse employment action occurred as a result of the disclosure.

If the designee determines that all elements above are present, he or she shall appoint a review officer or panel to investigate the claim and make a recommendation to the Board. At the time of appointment, the designee shall inform the complainant and the respondent, in writing, of:

- the intent to proceed with an investigation;
- the specific allegations to be investigated;
- the appointment of the review officer or panel; and
- the opportunity of each party to support or respond, in writing, to the allegation.

Once the review officer or panel has conducted a review and considers the investigation to be complete, the officer or panel will notify the designee of its completion. From the date of that notice, the review officer has 30 days to report his or her findings and make any recommendations he or she deems appropriate to the designee. The designee, in conferral with the appropriate administrator shall issue a findings letter to the complainant and the respondent.

The decision of the review officer or panel is binding. Nothing in this policy is intended to interfere with legitimate employment decisions. The Superintendent of Schools shall establish regulations necessary to implement this policy.

This policy and accompanying regulations shall be published in employee handbooks, posted in employee lounges and given to all employees with fiscal accounting and/or money handling responsibilities on an annual basis.

The Superintendent of Schools, the Auditor, the School Attorney and others involved in implementing this policy shall meet with the Board once a year to evaluate the effectiveness of

this policy and to make appropriate adjustments, if any, to the policy and accompanying regulations.

Ref: Civil Service Law §75-b  
Labor Law §740  
8 NYCRR §§102.3, 102.4 (testing misconduct)  
*Garrity v. University at Albany*, 301 A.D. 2d 1015 (3<sup>rd</sup> Dept. 2003) (Article 75-b protections only apply if employee first discloses wrongdoing to employer, allowing for investigation and correction prior to disclosure to outside agencies)  
*Matter of Brey v. Bd. of Educ.*, 245 A.D. 2d 613 (3<sup>rd</sup> Dept. 1997) (termination based on work deficiency, not retaliation)

First Reading: September 8, 2015  
Second Reading September 8, 2015  
Adoption date: September 8, 2015

## STAFF DEVELOPMENT

The Board of Education believes that staff training and development help ensure the success of educational programs and improve the efficiency of the district. Therefore, the district will provide development opportunities to staff to increase their effectiveness and job performance. The Superintendent of Schools shall be responsible for implementing and administering staff development programs for the district's employees.

### Administrators

All administrators in the school district will receive appropriate training and professional development in accordance with law, regulation or any applicable collective bargaining agreement. The Superintendent will be responsible for providing such training and development.

### Teachers

All teachers will be provided with substantial professional development opportunities directly related to student learning in accordance with any applicable collective bargaining agreement and the district's Professional Development Plan. Level III Teaching Assistants and long-term substitute teachers (employed for more than 40 days in a school year) shall have the opportunity to participate in the district's professional development program. The plan shall include:

- A needs analysis, goals, objectives, strategies, activities and evaluation standards for professional development in the district and a description of how the district will provide all teachers substantial professional development activities directly related to student learning needs identified in school report cards and other sources.
- A description of how the professional development provided will align with New York standards and assessments, teacher capacities and student needs, including linguistic, cultural diversity and special needs. Activities must be articulated across grade levels and subject areas and show how they will be provided and measured in a continuous manner.
- A description of how it will provide teachers and Level III teaching assistants with opportunities to maintain their certificate in good standing by successfully completing 175 100 hours of professional development every five years.
- A mentoring program to provide support for new teachers in order to ease the transition from teacher preparation to practice, thereby increasing retention of teachers in the public schools, and to increase the skills of new teachers in order to improve student achievement.
- Unless granted an exemption by the Commissioner of Education, a description of how the district will provide professional development to teachers and Level III teaching assistants to address the needs of English Language Learners.

The Board will establish a Professional Development Team to review and revise the district's Professional Development Plan annually. The Board shall appoint members to the team at the first regular Board meeting in September.

The Professional Development Team shall meet on or before October 1. The Superintendent or his/her designee will serve as the chair of the team and will be responsible for ensuring the timely review and revision of the district's Professional Development Plan.

The Professional Development Team will submit the recommended Professional Development Plan to the Board by April 1. The Board will consider the recommended plan at its first regular meeting in April. The Board may accept or reject the plan in whole or in part. Those portions of the plan not approved by the Board will be returned to the team for further consideration. Any further changes in the plan must be submitted to the Board by June 1. The Board will consider and act on the revised plan at its first regular meeting in June. The Board reserves the right to make changes to the revised plan.

#### Other Professional Staff and Support Staff

Holders of professional certificates in educational leadership service (i.e., school building leader, school district leader, school district business leader) are required to complete at least 100 hours of continuing education during every five-year registration period. Unless the district is granted an exemption by the Commissioner of Education, at least 15 percent of those hours shall address the language acquisition needs of English Language Learners.

The district will provide staff development activities for other professional staff and support staff within the financial constraints of the district budget and in accordance with applicable collective bargaining agreements.

#### Other Staff Development Opportunities

The Board recognizes that many staff development opportunities are provided through non-school district sources. Within budgetary restraints, district employees may attend conferences, workshops, study councils, in-service courses, summer study grants, school visitations, and other relevant staff development opportunities.

Released time and reimbursement for such activities will be available upon approval of the Superintendent and in accordance with applicable collective bargaining agreements. The Superintendent may establish regulations pursuant to this policy to establish the circumstances under which such released time and reimbursement may be available. Staff members who attend such activities will be required to prepare a report or summary of the activity attended.

Cross-ref: 9420, Staff Evaluation

Ref: Education Law § 3604(8) (Superintendent conference days)

8 NYCRR § 100.2(dd) (Professional Development Plans)

8 NYCRR § 100.2(o)(iii)(b)(5) (required training on conducting staff evaluations)

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