

## 215 – FMLA (Family and Medical Leave Act) Policy



1. George Washington Academy’s (GWA) Family and Medical Leave policy is designed to comply with the provisions of the Family and Medical Leave Act (FMLA), 29 USC 2601. This law entitles eligible employees to receive up to 12 workweeks of unpaid leave measured on a rolling twelve month period looking back from the date the leave is needed for serious medical conditions or other qualifying events. An eligible employee shall be required to use all paid time off (PTO) prior to the use of leave without pay for the family and medical leave period. GWA shall also provide all applicable leave requirements for military leave as designated by Family and Medical Leave Act (FMLA), 29 USC 2601.

2. The Board authorizes the Principal and the District Secretary to establish administrative regulations for Family and Medical Leave Act.

### ADMINISTRATIVE REGULATION— (Definitions)

For purposes of this regulation the following definitions apply:

1. An “eligible employee” means any employee who has been employed for at least 12 months by GWA and worked for at least 1,250 hours during the 12-month period immediately preceding the commencement of leave.
2. The term “employment benefits” means all benefits provided by GWA to its employees such as group life insurance, health insurance, disability insurance, PTO and retirement benefits.
3. The term “eligible family member” means a spouse, son, daughter or parent of the eligible employee.
4. The term “spouse” is defined in accordance with applicable Utah State law.
5. The term “son or daughter” means biological, adopted, or foster child, a stepchild, or a legal ward, or a child of a person standing in loco parentis. A child is: less than 18 years of age; or older than 18 years, but incapable of self-care due to mental or physical disability.
6. The term “parent” means the biological parent of the eligible employee or an individual who stands or stood in loco parentis to an employee when the employee was under 18 or incapable of self-care. This does not include parents-in-law.
7. The term “serious health condition” means an illness, impairment, or physical or mental condition that requires:
  - 7.1. Inpatient care in a hospital, hospice, or residential medical facility; or
  - 7.2. Continuing treatment certified as required by a health care provider.
8. The term “health care provider” means:
  - 8.1. Doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the state in which the doctor practices; or
  - 8.2. Any person determined by the secretary of labor to be capable of providing health care services (§29 C.F.R.–825.118); or
  - 8.3. Any health care provider from whom GWA’s group health plan benefits manager will accept medical certification of the evidence of a serious health condition.

### ADMINISTRATIVE REGULATION— (Administering Family and Medical Leave Benefits)

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1. Entitlement to Leave: An eligible employee is entitled to 12 workweeks of leave without pay based on a rolling twelve month period looking back from the date the leave is needed in the event of any of the following:

- 1.1. The birth of a son or daughter of the employee and to care for that son or daughter;
- 1.2. The placement of a son or daughter with the employee for adoption or foster care;
- 1.3. An eligible family member has a serious health condition; or
- 1.4. The employee suffers from a serious health condition that makes the employee unable to perform the essential functions of the employee's position.
- 1.5. Qualifying military exigency leave.

2. Relation to Other Leave

2.1. GWA shall require the employee to use accrued Paid Time Off (PTO), as applicable, before the use of leave without pay for the family and medical leave period. Existing District policy governing appropriate use of sick, personal leave, and vacation days are applicable. If an employee uses accrued compensatory time, that leave time will be counted against the FMLA leave entitlement. The total family leave period, whether paid or unpaid, shall not exceed 12 workweeks.

3. Foreseeable Leave: Employees, or an appropriate representative, shall submit a request for family or medical leave 30 days in advance when the need for the leave is foreseeable, or as soon as possible in emergencies.

3.1. GWA may designate FMLA leave after the fact:

3.1.1. If the reason for leave was previously unknown, provided the reason for leave is made within two business days after the employee's return to work; and

3.1.2. GWA has preliminarily designated the leave as FMLA pending medical certification.

4. Intermittent Leave

4.1. Leave due to a serious health condition of an employee or eligible family member may be taken intermittently or on a reduced schedule when medically necessary. The employee requesting intermittent leave or leave on a reduced leave schedule for planned medical treatment must develop a schedule with his or her immediate supervisor, and, based on input from the health care provider, meets GWA's needs without unduly disrupting GWA's operation. If an employee requests intermittent leave or leave on a reduced schedule for a foreseeable, planned medical treatment, GWA may require the employee to transfer temporarily to an available alternative position with equivalent pay and benefits that better accommodates recurring periods of leave. GWA will make the determination as to whether a position is an equivalent position.

5. Required Documentation: GWA shall document leave requests which qualify as FMLA leave, and will designate any qualifying leave taken by employees as FMLA leave. All leave qualifying as FMLA leave shall be designated as such and shall be subject to all provisions of this rule. GWA shall notify the employee in writing of the designation of FMLA within five business days, or as soon as a determination can be made, that the leave requested qualifies as FMLA if the preliminary information is not sufficient to make such determination.

5.1. Written notice to employees shall be provided on the approved Department of Labor form.

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6. Spouses of Employees Employed by GWA: In any case, where both husband and wife are employees of GWA and both seek leave under this policy, such leave shall be limited to an aggregate 12 workweeks during any 12-month period if:

- 6.1. Leave is sought to care for a newborn daughter or son or the adoption of a daughter or son; or
- 6.2. Leave is sought to care for a sick parent.
- 6.3. If the leave is requested for either the husband's or the wife's own serious illness or the serious health condition of the couple's son or daughter, the aggregate 12- workweek limitation in the FMLA does not apply.

7. Required Medical Certification for Leave: A certificate issued by a health care provider of the eligible employee or the eligible family member must support all requests for leave under this policy.

7.1. The Certificate: "Medical Certification Statement—Employee's Own Serious Illness" or "Medical Certification Statement for Family Members," shall be provided within 15 days after leave is requested.

7.2. A certificate is sufficient if it states:

- 7.2.1. the date on which the serious health condition commenced.
- 7.2.2. the probable duration of the condition.
- 7.2.3. the appropriate medical facts regarding the condition.
- 7.2.4. a statement that the serious medical condition prevents the employee from performing the essential tasks of the applicable employment position or that it requires the employee to attend and care for an eligible family member.

7.3. GWA may require, at its option and expense, second or third certifications in support of a request for leave.

7.4. GWA shall require recertification of the necessity for the family or medical leave at reasonable intervals, but not more than every 30 days, unless:

- 7.4.1. the employee requests an extension of leave.
- 7.4.2. circumstances described in the previous certification has changed significantly; or
- 7.4.3. GWA receives information that casts doubt on the continuing validity of the certification.

8. Required Medical Certification for Return: All employees returning from leave caused by a serious health condition shall provide a certificate, "Notice of Intention to Return From Family or Medical Leave," issued by a health care provider of the eligible employee.

8.1. The certificate shall be provided at least two business days before the requested return date.

8.2. A certificate is sufficient if it states:

- 8.2.1. the employee is medically fit to return to work in the previous position.
- 8.2.2. the appropriate medical facts regarding the employee's fitness to return to work.
- 8.2.3. a statement that the serious medical condition no longer prevents the employee from performing the essential tasks of the position.

8.3. GWA may require, at its option and expense, second or third certification in support of a request to return to work.

9. Restoration of the Employee: An employee who takes a leave complying with the provisions of this policy is entitled upon return from leave to:

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- 9.1. Be restored to the position held by the employee prior to leave; or
- 9.2. Be provided an equivalent position in terms of benefits, pay and other terms and conditions of employment.
- 9.3. A determination as to whether a position is an equivalent position will be made by GWA.
10. Denial of Restoration: GWA may deny restoration of status or equivalent position, if:
  - 10.1. The denial is necessary to prevent substantial and grievous economic injury to the operations of GWA.
  - 10.2. GWA notifies the employee that it intends to deny restoration when it determines that injury to the employee would occur;
  - 10.3. The employee elects not to return to employment.
11. Effects on Benefits
  - 11.1. During the family or medical leave period, GWA shall continue to pay its portion of the employee's group health insurance premium. An employee on family or medical leave must continue to pay his or her portion of the health insurance premium in order to keep coverage in effect.
12. Rules Applicable Near End of School Year: If the employee begins leave more than five weeks prior to the end of the school year, GWA may require the employee to continue taking unpaid leave until the end of the school year if:
  - 12.1. The leave requested is of at least three weeks duration; and
  - 12.2. The return to employment would occur during the one-week period before the end of the school year.
13. Leave Less Than Five Weeks Prior to the End of School Year: If the employee begins leave for reasons other than a personal serious health condition which commences less than five weeks prior to the end of the school year, then GWA may require the employee to continue to take unpaid leave until the end of the school year if:
  - 13.1. The leave requested is of greater than a two-week duration; and
  - 13.2. The return to employment would occur during the two-week period before the end of the school year.
14. Leave Less Than Three Weeks Prior to End of School Year
  - 14.1. If the employee begins leave for reasons other than personal serious health conditions during the period that commences three weeks prior to the end of the school year and the leave is greater than five working days, then GWA may require the employee to continue to take unpaid leave until the end of the school year.
15. Application For Leave
  - 15.1. Forms for application and certification of FMLA are available from the District Secretary. Medical records created for the purpose of FMLA and the Americans with Disabilities Act must be maintained in a separate, confidential file.
16. Posting of Notice: GWA shall post in a conspicuous place on school premises a notice of rights under this policy.

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### ADMINISTRATIVE REGULATION— (Military Exigency Leave)

1. Qualifying exigency leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.
2. An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member's call-up or service. The qualifying exigency must be one of the following: 1) short-notice deployment, 2) military events and activities, 3) child care and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities and 8) additional activities that arise out of active duty, provided that the employer and employee agree, including agreement on timing and duration of the leave.
3. "Covered active duty" means:
  - 3.1. in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and
  - 3.2. in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.
4. The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee's 12-week maximum of FMLA leave in a 12-month period.

### ADMINISTRATIVE REGULATION— (Military Caregiver Leave)

1. Military caregiver leave (also known as covered servicemember leave) to care for an injured or ill servicemember or veteran.
2. An employee whose son, daughter, parent or next of kin is a covered servicemember may take up to 26 weeks in a single 12-month period to take care of leave to care for that servicemember.
3. Next of kin is defined as the closest blood relative of the injured or recovering service member.
4. The term "covered servicemember" means:
  - 4.1. A member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or
  - 4.2. A veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or

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Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

### ADMINISTRATIVE REGULATION— (Certification of Qualifying Exigency for Military Family Leave)

1. GWA will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the Certification of Qualifying Exigency for Military Family Leave Form.
2. Certification for Serious Injury or Illness of Covered Service member for Military Family Leave.
3. The company will require certification for the serious injury or illness of the covered servicemember. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the Certification for Serious Injury or Illness of Covered Servicemember Form.