

## LEAVE PROGRAM

Consistent employee presence on the job promotes and maintains excellence in the Albemarle County Public Schools ~~Division~~ (“~~Division~~ACPS”) by providing continuity of service and reduced temporary employee/substitute costs. The Albemarle County School Board (“School Board”) recognizes that some absences from providing services are necessary. In such cases, the return to work of employees at the earliest time commensurate with good health, safety, and reasonable personal consideration is an expectation. The School Board expects that all employees shall strive to maintain an acceptable attendance record, and that the occasional absences of employees shall not have an adverse effect on student services.

The following regulation is effective July 1, 2019, unless otherwise stated.

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Legal Refs: Code of Virginia, 1950, as amended, §§ 22.1-78, 22.1-296, 22.1-289.2, 44-93, 44-93.1, 44-93.3, 44.93.4, 44.102.1  
38 U.S.C. §§ 4312, 4313, 4316, 4317  
20 C.F.R. §§ 1002.259, 1002.261, 1002.262, 1002.267

Cross Ref.: GBAB, Americans with Disabilities Act  
GBCA, Employee Discipline  
GBEAC, Fitness for Duty  
GCA, Personnel - Definitions  
GCJ, Licensed and Classified Staff Schedules, Time Tracking, and Compensation  
GCLA, Professional Learning Time and Leave  
GCPA, Reduction in Licensed Staff  
GCPAA, Classified Employee Reduction in Force  
GCPCC, Insurance  
GCQA, Non-School Employment by Division Employees  
GCQC, Coverage of Schools Due to Weather and/or Emergency  
GCR, Consultants

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## I. General Information

### A. Eligibility

All ~~Division-ACPS~~ regular, benefits-eligible employees are eligible for the benefits and programs outlined in this policy. ~~While-Although~~ employees ineligible for benefits may not accrue paid leave as a benefit, they may be granted certain types of paid and unpaid leave under programs outlined in this policy. (See also; GCA, Personnel-Definitions.)

### B. Definitions

Unless otherwise stated in policy or defined by law, these definitions apply only to this policy.

Day of Leave or Day:

A “day of leave”, a “day”, or “daily” shall equal the total hours scheduled per school year divided by the number of days established for an employee’s position and number of months (i.e. 10, 11, or 12) worked in a school year. This will not necessarily be the same amount an employee works on a given day. Unless otherwise noted, this definition applies to all leave types.

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*For example*, a 12-month employee (260 days) scheduled for 2080 hours per school year has an eight (8)-hour day of leave; a 10-month employee (200 days) scheduled for 1450 hours per school year has a seven and one quarter (7.25)-hour day of leave; an 11-month employee (220 days) scheduled for 1760 hours per school year has an eight (8)-hour day of leave.

Employee:

Unless otherwise noted, “employee” in this policy refers to regular, benefits-eligible employees.

Flex:

This refers to the ability of a supervisor to allow an employee to work an alternative schedule.

FTE:

“Full-Time Equivalency” or “FTE” describes the full- or part-time status of an employee.

Household Member:

Household Member refers to 1) any individual who cohabits or who, within the previous ~~twelve (12)~~ months, cohabited with the employee, and any children of either of them then residing in the same home with the employee, 2) the employee’s former spouse, whether or not ~~he/she~~ the former spouse resides in the same home with the employee, or 3) any individual who has a child in common with the employee, regardless if the employee and individual have been married or have resided together at any time.

<u>Immediate Family:</u>	<p>Unless otherwise noted in policy or defined by law, “immediate family” is defined as the employee’s spouse, children, parents, siblings, grandparents or the employee’s spouse’s children, parents, siblings, grandparents (includes all direct lineage such as great-grandparents, grandchildren, etc. and step-immediate family members).</p> <p>Parents include persons standing <i>in loco parentis</i> and children include biological, adopted, or foster children, stepchildren, legal wards, or children of a person standing <i>in loco parentis</i>.</p> <p><i>In loco parentis</i> includes those who have or had day-to-day responsibilities to care for or financially support a child who is under 18 years of age, or 18 years of age or older and incapable of self-care because of a physical or mental disability. A biological or legal relationship to the child is not necessary.</p>
<u>In Writing:</u>	<p>“In writing” refers generally to any dated, written statement including a leave slip, letter, note, formal memorandum, or e-mail, unless otherwise noted or defined by law. Refer to specific policy sections or department requirements for specific forms that may be required.</p>
<u>Rolling Year:</u>	<p>A rolling 12-month period measured backward from the date an employee uses leave.</p>
<u>School Year:</u>	<p>This period is defined as the fiscal year adopted by the <a href="#">School</a> Board (July 1 to June 30).</p>
<u>Workday:</u>	<p>“Workday” specifically refers to a calendar day worked, as opposed to a “day of leave” or “day”.</p>

### C. General Leave Guidelines and Responsibilities

1. Leave under the Family Medical Leave Act (“FMLA”), Workers’ Compensation, Sick Leave Bank (“Bank”), Debilitating or Life-threatening Illness or Injury, and Income Replacement Program (“IRP”) is managed by the Department of Human Resources (“Human Resources”) for privacy reasons with administrative support from the employee’s school/department. All other leave is managed and administered by the employee’s school/department with support from Human Resources.
2. Employees and supervisors should be familiar with the types of leave available and the proper procedures for using, approving, and accounting for each. Unless specifically stated, leave is used when an employee is absent from work, not as a means of additional compensation. Pay and leave for non-exempt employees are determined on a total workweek basis, not a daily basis.

3. Leave is taken based upon an employee's schedule, which may be different from an employee's day of leave. Due to fluctuations in a day of leave and the varying base weekly hours of different positions throughout the ~~Division~~ACPS, leave may be taken at a different rate from the rate at which it was accrued.
4. An employee with two (2) or more regular positions (dual jobs) will have the FTE for each position combined to determine eligibility for leave benefits. Leave will be held in a single account for all regular positions. If one position is classified as 12-months and the other position is 10 or 11-months, leave benefits will be established in accordance with the position with the higher FTE. If the positions are the same FTE, the employee will be treated as a 12-month employee ~~in~~ regards-with respect to leave benefits.
5. Employees are expected to only take leave for which they have sufficient leave balances. "Leave without pay" ("LWOP") is not a leave type, but instead is a consequence of having insufficient applicable leave. Applicable types of accrued leave will be used before an employee may take LWOP. Human Resources will establish ~~Division~~ACPS-wide rules for the order in which different types of leave are used to account for absences.
6. Employees may not borrow against future leave accruals. Paid leave may only be taken when the employee has earned enough leave to cover the absence or when provided by established ~~Division~~ACPS programs/practices.
7. When an employee performs no work or is not in a paid leave status in a calendar month, no accrued leave will be earned for that month.
8. Employees are responsible for notifying their schools/departments as far in advance as possible whenever they will be absent. Employees are responsible for following department guidelines as applicable when making leave requests. Employees shall follow the notification requirements and procedures of their schools/departments.
9. Employees are responsible for discussing work-load/scheduling/coverage with their supervisors/designees when they need to be absent from work for any period, either as a block of time or intermittently.
10. Both the school/department and the employee are responsible for tracking leave approvals and absences.
11. Employees shall contact Human Resources for extended use or use of special leave types which require additional approval/administration as outlined in this policy, such as leave under FMLA, unpaid leave, or military leave. Also, as outlined, supervisors shall notify Human Resources if an employee is out of work and may need extended use or use of special leave types that require additional approval/administration, such as leave under the FMLA, unpaid leave, or military leave.
12. The Principal/Department Head/Designee may approve leave that an employee has available where provided in this leave policy. To the best of his/her abilities, the Principal/Department Head/Designee shall ensure that processes/procedures are in place to prevent employees from taking unapproved or not yet accrued leave. Employees are responsible for being aware of their leave balances and usage and requesting leave use appropriately.

~~12.~~

13. Any missed work that is not approved, or foreseeable absences that are not requested in a timely manner, may result in required leave use, denial of leave use, loss of pay, and/or disciplinary action. Failure to give proper notice or abuse of any of these policies may lead to disciplinary action up to and including termination.
14. Signs of leave abuse or excessive absenteeism will be addressed through performance management.
15. Employees shall receive prior authorization if they wish to work while on paid or unpaid leave pursuant to Policy GCQA, Non-school Employment by Division Employees.
16. It will remain the right of the Principal/Department Head/Designee to:
  - a. Authorize or refuse to authorize the advance request of an employee for permission to be absent;
  - b. Investigate absences;
  - c. Deny leave for absences in violation of any School Board policy;
  - d. Impose reasonable disciplinary action upon employees who have abused their leave privileges and who violate the provisions of this policy; and
  - e. Require written verification/proof of medical appointments or other types of absences, unless prohibited by Board policy or law.
17. The Superintendent/Designee may issue emergency regulations regarding employee work hours, absences, and leave usage in the event of a declared state of emergency, pandemic, or other crisis affecting the ~~Division's~~ ACPS's ability to operate under normal policies and procedures.
18. Employees who are placed on administrative LWOP for disciplinary reasons or other administrative reasons may not use other types of leave concurrently without permission from the Director of Human Resources/Designee.
19. Employees changing positions and/or departments within the ~~Division~~ ACPS without breaks in service shall maintain accrued leave and accrual rates in accordance with policy.
20. Employees changing employment between Albemarle County Local Government ("County") and the Division shall maintain accrued leave in accordance with policy; accrual rates shall be reciprocal. Employees of a Partner Agency changing employment to the County, ~~the~~ Division ACPS, or another Partner Agency shall maintain accrued leave in accordance with policy and accrual rates shall be reciprocal as agreed through a signed MOU or similar agreement.
21. Although employees ineligible for benefits are not eligible for some of the leave programs in this policy, they are required to follow procedures for requesting time off, recording time worked, and acceptable attendance. When flex time is not approved, benefits-ineligible employees will be docked pay in accordance with GCJ, Licensed and Classified Staff Schedules, Time Tracking, and Compensation, when applicable due to a lack of accrued paid leave.

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22. The decision of the Principal/Department Head/Designee may be appealed to the Superintendent/Designee.

#### **D. Acceptable Attendance Standards**

Acceptable attendance is a minimum expectation of all ~~Division-ACPS~~ employees. Generally, an employee will not be considered to have acceptable attendance when more than one (1) day of the designated types of absences below occur per month. On average this is ten (10) days for 10-month employees, eleven (11) days for 11-month, and twelve (12) days for 12-month per school year. However, the attendance of such employee shall be examined and addressed by the supervisor on a case-by-case basis as appropriate. An employee may have unacceptable attendance even though he/she may have sick leave or other paid leave available.

The following types of absences will count towards acceptable attendance standards. Sick leave, except that which is used concurrently with FMLA, Workers' Compensation, or bereavement will count towards these standards. Any other paid or unpaid leave used in lieu of sick leave also will be included. Unapproved annual, personal, and compensatory time leave, even if the employee uses paid leave, shall also count towards acceptable attendance standards.

#### **E. Leave Usage**

##### **1. Exempt Employees**

- a. Increments - Leave for teachers shall be taken in half-day and full-day increments. A half-day of leave shall be used when a partial day of work is performed by a teacher. Leave for employees other than teachers shall be taken in full-day increments. Leave under FMLA is subject to increments defined by law.
- b. Work Expectations - An exempt employee is expected to work ~~his/her~~ the employee's full schedule. When an exempt employee takes leave, the supervisor should respect the employee's time off. However, there may be occasions when the employee may need to respond to an emergency. An exempt employee who performs a minimal amount of work shall still use leave. If more than a minimal amount of work is performed, the employee should work with his/her supervisor to flex the time on a later date or not use leave.
- c. Flex Time – Supervisors may approve exempt employees to work alternative schedules in lieu of using leave or in recognition of work above and beyond the employee's regular schedule. Time may be flexed outside of the workweek for exempt employees.

##### **2. Non-Exempt Employees**

- a. Increments - Employees who are eligible for overtime under FLSA shall record leave in 15-minute increments.

- b. Work Expectations – A non-exempt shall not perform any work while on leave. Permission to work while out shall be granted by the supervisor in advance and shall be recorded as compensable time instead of leave.
- c. Flex Time – Supervisors may approve non-exempt employees to work alternative schedules in lieu of using leave within the same workweek. Pay and leave are determined on a total workweek basis. Leave will only be used to supplement an employee's total weekly hours when the hours worked are less than his/her base weekly hours. For example, if an employee misses two (2) hours of work for a doctor's appointment but works two (2) additional hours in the workweek with the supervisor's permission, no sick leave would be taken that week.

## **II. Administrative Leave**

Administrative leave may be granted on a case-by-case basis for reasons, including but not limited to, investigations, suspensions, releases from work for safety, or recognition of service. Administrative leave may be paid or unpaid as appropriate. Administrative leave with pay is not an adverse personnel or employment action.

## **III. Annual Leave**

### **A. Purpose**

Annual leave is provided to regular, benefits-eligible 12-month employees as a benefit.

### **B. Accrual Rates**

Twelve (12)-month benefits-eligible employees shall begin to accrue annual leave based on the hire date of regular, continuous employment. Employees accrue annual leave monthly based on the employee's day of leave at the time of distribution, as follows.

1. One (1) day per month for each month employed during the first five (5) years of continuous employment.
2. One and one quarter (1.25) days for each month employed during the sixth through the tenth (6-10) years of continuous employment.
3. One and one half (1.5) days for each month employed during the eleventh through the fifteenth (11-15) years of continuous employment.
4. One and three quarter (1.75) days for each month employed during the sixteenth through the twentieth (16-20) years of continuous employment.
5. Two (2) days for each month employed during the twenty-first through twenty-fifth (21-25) years of continuous employment.
6. Two and one quarter (2.25) days for each month employed during the twenty-sixth (26+) and succeeding years of continuous employment.



An employee who changes from a 10-month or an 11-month to a 12-month schedule shall begin to accrue annual leave based on the date ~~he/she~~the employee commenced continuous employment as a regular employee. This includes time worked as a 10, 11, or 12-month regular employee in both benefits-eligible and non-benefits-eligible positions.

With the approval of the Director of Human Resources/Designee and the Superintendent/Designee, an employee's annual accrual rate may be negotiated at a rate other than the rate determined by years of service and/or an employee may be granted a negotiated amount of additional annual leave.

### **C. Accumulation Maximum Cap**

Annual leave balances are subject to a maximum cap of 320 hours.

### **D. Use of Annual Leave**

1. An employee is required to obtain ~~his/her~~the Principal/Department Head/Designee's approval prior to taking annual leave.
2. Requests to use annual leave and approvals shall be in writing. All requests shall be made as far in advance as possible. Employees shall also refer to school/department-specific requirements and procedures.
3. The Principal/Department Head/Designee shall consider the workload and impact of leave on the service delivery of the school/department when approving or denying annual leave requests.
4. The Principal/Department Head/Designee shall reasonably accommodate annual leave requests.
5. An employee has the right to ask for and receive an explanation for the denial of an annual leave request.
6. Once annual leave has been approved by the Principal/Department Head/Designee, changes shall not be made to the approved annual leave use without notification in writing to the employee by the Principal/Department Head/Designee.
7. Employees are responsible for knowing their leave balances and usage and scheduling leave in a timely fashion.
8. Principal/Department Head/Designee shall not approve more than three (3) consecutive weeks of annual leave if the employee is not planning to return to work. Any time requested by a terminating employee beyond three (3) weeks of annual leave shall be approved by the Superintendent/Designee prior to use.

### **E. Conversion of Unused Annual Leave**

1. At the end of the employee's birth month each year, any annual leave balance that is above the maximum accumulation cap will be converted as follows: fifty (50%) percent to the employee's own sick leave balance and fifty (50%) percent donated to the County/~~Division-ACPS~~ Sick Leave Bank. The employee need not be a member of the Sick Leave Bank.

2. Employees are responsible for keeping track of and requesting use of their annual leave to avoid conversion of leave.
3. Employees and the Principal/Department Head/Designee are encouraged to work together to facilitate leave use to avoid losing annual leave.

#### **F. Payout of Annual Leave**

Payout of annual leave only occurs in the following situations:

1. Upon termination of regular employment, the employee will be paid at the employee's hourly rate for any remaining annual leave up to the maximum cap.
2. Prior to transfer/hire from a 12-month position to a 10-month or 11-month position, the employee will be paid at the employee's hourly rate for any remaining annual leave up to the maximum cap. The employee may request to convert accrued annual leave to personal leave up to a maximum of five (5) days of leave of the new 10- or 11-month position. If an employee requests leave conversion, it will be taken from the balance subject to the maximum cap. Employees transferring to benefits-ineligible positions will be paid at the employee's hourly rate for any remaining annual leave up to the maximum cap prior to the transfer.
3. Upon transfer/hire from a 12-month position eligible for annual leave under this policy to a Partner Agency position that does not have a signed Memorandum of Understanding accepting leave, the employee will be paid at the employee's hourly rate for any remaining annual leave up to the maximum cap.
4. Upon transfer/change in FTE from a 12-month benefits-eligible to a 12-months benefits-ineligible regular position, the employee will be paid at the employee's hourly rate for any remaining annual leave up to the maximum cap.
5. When an employee has two (2) regular 12-month positions (dual jobs), annual leave payout will be representative of the FTEs for each position. For example, a .60/.40 employee would be paid sixty (60%) percent of the annual leave at the hourly rate of job A and forty (40%) percent at the hourly rate of job B.

#### **IV. Bereavement Leave**

##### **A. Purpose**

The loss of an immediate family member or household member may deeply affect an employee. To allow an employee to grieve, tend to that person's estate, or other related matters, bereavement leave is available.

**B. Bereavement Leave Days and Use**

In the event of the death of a member of an employee's immediate family or a household member, any regular employee may use up to five (5) days of unpaid bereavement leave per occurrence. Accrued sick leave may be used concurrently for up to the first five (5) days of absence. Any additional time requested by the employee, shall be covered by other applicable leave in accordance with this policy. In the event of the death of a non-immediate family member or non-household member, employees may not use bereavement leave, but may use other applicable leave in accordance with this policy.

**C. Extraordinary Circumstances**

In the event of extraordinary circumstances, such as the death of a current colleague, the Principal/Department Head/Designee may allow employees to attend services with approval from the Superintendent//Designee, so long as it does not cause an undue hardship on the school/department. Administrative leave with pay shall be used in this situation for any regular employee.

**V. Building Closure Leave**

Paid leave and unpaid leave due to inclement weather and other ~~Division-ACPS~~ emergencies are addressed in Policy GCQC, Coverage of Schools Due to Weather and/or Emergency.

**VI. Compensatory Time Leave**

**A. Purpose**

Public sector employers are able to offer non-exempt employees compensatory time leave in lieu of money as compensation for overtime.

**B. Accrual, Maximum Balance, and Payout**

Please refer to Policy GCJ, Licensed and Classified Staff Schedules, Time Tracking, and Compensation for information on compensatory time leave as it is earned for overtime work performed.

**C. Use of Compensatory Time Leave**

Accrued compensatory time leave may be used for any leave purpose; however, classified, non-exempt employees are required to arrange use of compensatory time leave in advance with their supervisors. Principals/Department Heads/Designees shall be responsible for allowing employees to use compensatory time leave within a reasonable period after the employee requests it, as long as such use does not unduly disrupt the operations of the school/department. A "reasonable period" under the FLSA is determined by considering the customary work practices within the school/department, such as: a) the normal schedule of work; (b) anticipated peak workloads based on past experience; (c) emergency requirements for staff and services; and (d) the availability of qualified substitute staff. Leave is considered to "unduly disrupt the operations of the school/department" if the supervisor reasonably and in good faith anticipates that granting the request would impose an unreasonable

burden on the school/department's ability to provide services of acceptable quality and quantity for the public during the time requested without the use of the employee's services.

## VII. Court Duty Leave

### A. Purpose

The ~~Division School Board~~ recognizes the duty of employees to appear before a court of law when summoned or subpoenaed.

### B. Eligibility

The ~~Division ACPS~~ provides unpaid court duty leave for employees consistent with Virginia Code § 18.2-465.1. Employees are expected to notify their supervisors in as far in advance as possible prior to using court duty leave. Supervisors may require verification that an employee has been called for court duty. Court duty leave does not apply to any employee who is the defendant in a criminal case for which the employee is summoned or subpoenaed.

### C. Regulation

Please refer to Policy GCJ, Licensed and Classified Staff Schedules, Time Tracking, and Compensation for information on compensable work time.

Employees who are summoned or subpoenaed to appear, except as defendants in criminal cases, in court proceedings which take place during their scheduled hours, are allowed unpaid court duty leave for such appearances. Such employees may use accrued leave as applicable, subject to supervisor approval.

## VIII. Election Officer Leave (Polling Leave)

### A. Purpose

The ~~School~~ Board recognizes serving as an election official can provide a unique learning and community service experience.

### B. Eligibility

The ~~Division ACPS~~ offers paid polling leave for benefits-eligible employees and unpaid polling leave/time off for benefits-ineligible employees consistent with Virginia Code § 24.2-100, et. seq.

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### C. Guidelines

1. Any employee who serves as an officer of election (defined under Virginia Code § 24.2-101) shall not have any adverse personnel action taken against ~~him/her~~ the employee for performing such services. An employee is not required to use accrued paid leave to serve as an officer of election.
2. An employee shall give reasonable notice to ~~his/her~~ the employee's supervisor and comply with established procedures when he/she needs to take time off to serve as an officer of election.

3. Hours worked as an officer of election shall not be counted as “hours worked” for purposes of overtime compensation. Employees are not required to volunteer as an officer of election.
4. Employees who serve as officers of election for any locality are eligible for polling leave.
5. Employees are also eligible for any standard poll worker stipend that may be provided by an Electoral Board.
6. Employees employed by an elected official, the Electoral Board, or General Registrar are not eligible for polling leave.
7. Employees who work four (4) or more hours as an officer of election, including travel time, are not required to report for any shift that begins between 5 p.m. and 3 a.m. and will be granted polling leave.

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## IX. Emergency Leave

### A. Purpose

Emergency leave is for employees who need to address emergency or urgent circumstances beyond their control that affect their residences.

1. For example, emergency leave may be granted for situations similar to the following:

A disaster affecting the home or residence of the employee or ~~his/her~~ immediate family, including damage occurring during a declared State of Emergency or an employee’s house burning down.

2. Examples of circumstances for which emergency leave should not be granted are the following:

- a. Animal/vehicle strikes and other car repair-related issues;
- b. Employee’s water pump breaks during the normal course of wear and tear and other household repairs due to normal wear and tear; and
- c. Employee loses power due to a non-State of Emergency.

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### B. Eligibility and Days of Use

1. The Principal/Department Head/Designee may grant up to two (2) days of emergency leave without loss of pay to any benefits-eligible employee per school year.
2. These days do not accrue from year to year and are not paid out upon termination of employment.

### C. Requesting and Using Emergency Leave

1. To the extent possible, employees should request emergency leave in writing from the Principal/Department Head/Designee.
2. If the circumstances in a given case are unclear, the Principal/Department Head/Designee shall confer with the Director of Human Resources/Designee before granting approval.
3. Emergency leave is not intended and may not be used for absences covered by other types of leave, including sick, personal, or annual leave. In addition, emergency leave is not intended and may not be used as a substitute when other types of leave have been exhausted.

**X. Employee Recognition Leave**

Paid leave may be awarded to regular employees as recognition for extraordinary achievements and contributions to the ~~Division~~ACPS, including through the Employee Recognition Program.

**XI. Employee's Debilitating or Life-Threatening Illness or Injury**

An employee who has a debilitating or life-threatening illness or injury may be granted an unpaid period of leave for this purpose. The leave will be approved provided it does not cause an undue hardship to the ~~Division~~ACPS. This type of leave may be taken only in full-day increments and runs concurrently with paid leave, unpaid leave, any other leave program, and any accommodation if applicable.

An employee shall submit medical documentation of his/her need for leave to Human Resources. Whenever possible, documentation shall be provided prior to leave being taken. Approval from Human Resources shall be obtained prior to leave being taken when foreseeable or as soon as possible.

**XII. Family Medical Leave Act – Protected Leave Status**

**A. Purpose**

This FMLA section is written to assist the ~~Division~~ACPS in complying with the Federal Family and Medical Leave Act of 1993 (“Act”), its amendments, and regulations. This section seeks to balance the needs of the ~~Division~~ACPS (“Employer”) with the needs of its employees and their families. Any variation between this policy and the FMLA will be determined in favor of the Act.

**B. Definitions**

Definitions set forth below are applicable to FMLA only and may be different from general definitions listed elsewhere in this policy. If definitions in this FMLA section require clarification or conflict with Federal and/or State regulations, those regulations will prevail over this policy.

Child: Means a biological, adopted, or foster son or daughter; a stepchild; a legal ward; or a child of a person standing *in loco parentis* who is either (i) under 18 years of age or (ii) is

18 years of age or older and “incapable of self-care because of a mental or physical disability” at the time FMLA leave is to commence.

For a covered service member or for covered active duty, a child may be any age.

Covered Active Duty:

In the case of a member of the Regular Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; and

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 10 U.S.C. § 101(a)(13)(B).

Covered Service Member:

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

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

Eligible Employee:

An eligible employee: 1) Has been employed at least twelve (12) months or fifty-two (52) weeks within the last seven (7) years; 2) Has worked at least 1250 hours during the twelve (12) months immediately preceding the proposed leave; 3) Has not used all available FMLA Leave in the current rolling year; and 4) Meets the conditions of the FMLA.

Employer:

For purposes of this section, “Employer” means Albemarle County and the ~~Albemarle County Public Schools~~ ACPS as they are considered a single, integrated employer. See 29 C.F.R. §§ 825.104(2) and 825.108.

Family:

Family is defined as the employee’s spouse, employee’s children, and employee’s parents.

Health Care Provider:

A licensed doctor of medicine or osteopathy or any other person determined by the U.S. Secretary of Labor to be capable of providing health care service.

In Loco Parentis:

Persons who stand *in loco parentis* includes those who have or had day-to-day responsibilities to care for or financially support a child who is under eighteen (18) years of age, or eighteen (18) years of age or older and incapable of self-care because of a physical or mental disability. In the case of an employee, those who had such responsible when the employee was a child also stand *in loco parentis*. A biological or legal relationship to the child is not necessary.

Instructional Employees:

Those whose principal function is to teach and instruct students in a class, a small group, or an individual setting. This term includes not only teachers, but also athletic coaches, driving instructors, and special education assistants such as signers for the hearing impaired. It does not include, and the special rules do not apply to, teacher assistants or aides who do not have as their principal job actual teaching or instructing, nor does it include auxiliary personnel such as counselors, psychologists, or curriculum specialists. It also does not include cafeteria workers, maintenance workers, or bus drivers.

Job-Protected:

The employee is guaranteed the right to return to his/her former position or to an equivalent position.

Next of Kin:

“Next of kin” generally means the nearest blood relative of an individual when used in respect to that individual.

The “next of kin” of a current service member is the nearest blood relative, other than the covered service member’s spouse, parent, son, or daughter, in the following order of priority:

1. A blood relative who has been designated *in writing* by the service member as the next of kin for FMLA purposes;
2. blood relatives who have been granted legal custody of the covered service member by court decree or statutory provisions;
3. brothers and sisters;
4. grandparents;
5. aunts and uncles;
6. first cousins.



When a service member designates in writing a blood relative as next of kin for FMLA purposes, that individual is deemed to be the covered service member's *only* FMLA next of kin. When no such designation is made, and there are multiple family members with the same level of relationship to the covered service member, all such family members shall be considered the covered service member's next of kin and may take FMLA leave to provide care to the covered service member, either consecutively or simultaneously.

Parent:

Includes biological, adoptive, step, foster, or any individual who stood in *loco parentis* when the employee was a child. This does not include parents-in-law.

Serious Health Condition:

An illness, injury, impairment, or physical or mental condition that involves the following:

- any period of incapacity or treatment connected with inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility; or
- a period of incapacity requiring absence of more than three (3) calendar days from work, school, or other regular daily activities that also involves continuing treatment by (or under the supervision of) a health care provider; or
- any period of incapacity due to pregnancy, or for prenatal care; or
- any period of incapacity (or treatment therefore) due to a chronic serious health condition (e.g., asthma, diabetes, epilepsy, etc.); or
- a period of incapacity that is permanent or long-term due to a condition for which treatment may not be effective (e.g., Alzheimer's, stroke, terminal diseases, etc.); or,
- any absences to receive multiple treatments (including any period of recovery) by, or on referral by, a health care provider for a condition that likely would result in incapacity of more than three (3) consecutive days if left untreated (e.g., chemotherapy, physical therapy, dialysis, etc.).

Serious Injury or Illness:

In the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness incurred by the member in line of duty on active

duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating; and

A veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during a period described in 29 U.S.C. § 2611(15)(B), means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

Week: A week is defined as the weekly authorized regular hours of the employee's position.

Year: A rolling 12-month period measured backward from the date an employee uses FMLA leave.

### C. Posting and General Notice

The employer shall post, in a conspicuous place, on the premises where notices to employees and applicants for employment are customarily posted, a notice prepared or approved by the U.S. Secretary of Labor explaining the FMLA's provisions and providing information about the procedure for filing complaints with the U.S. Department of Labor. This posting requirement may be satisfied by electronic posting if every employee has access to a computer at work.

Employees' Rights and Responsibilities notification will be posted on the Human Resources website.

### D. Conditions of Leave

#### 1. General Information

The FMLA provides up to a combined total of twelve (12) workweeks of unpaid job-protected leave per year to eligible employees for- the birth of a child and to care for the newborn child, for the placement with the employee of a child for adoption or foster care, to care for the employee's spouse, child, or parent with a serious health condition, or because of the employee's own serious health condition that makes the employee unable to perform the functions of the employee's position.

The FMLA also provides up to a combined total of twenty-six (26) workweeks of unpaid job-protected leave per year to eligible employees because of any qualifying exigency arising out of the fact that the employee's spouse, child, or parent is a military member on covered active duty (or has been notified of an impending call or order to covered active duty status), or to care for a covered servicemember with a serious injury or illness if the employee is the spouse, child, parent, or next of kin of the covered servicemember. Military caregiver leave is available to an eligible employee once per veteran, per serious injury or illness. However, an eligible employee may take an additional twenty-six (26) weeks of leave in a different 12-month period to care for the same veteran if the veteran has another serious injury or illness.

## 2. Notification Requirements

### a. Foreseeable

When the need for leave under FMLA is foreseeable, the employee is required to provide at least thirty (30) days' advance notice to Human Resources either verbally or in writing. The employee shall make a reasonable effort to schedule the treatment, placement, or other foreseeable need for leave so as not to disrupt unduly the operations of the employer. In the event that it is not practicable to give such advance notice, the employee should give as much advance notice as is practicable, ordinarily within two (2) business days of when he/she learns of the need for the leave.

### b. Unforeseeable

When the approximate timing of the need for leave is not foreseeable, an employee shall provide notice to ~~his/her~~ the employee's supervisor or Human Resources as soon as practicable under the facts and circumstances of the particular case.

If an employee is out for more than three (3) consecutive workdays or if the employee's supervisor has reason to believe that an employee's leave may be for an FMLA-qualifying reason, the supervisor shall contact Human Resources and shall remind the employee to contact Human Resources to determine eligibility.

### c. Employee Request and Eligibility Notice

The employee's notice or request should be sufficient to make the employer aware that the employee needs FMLA-qualifying leave and of the anticipated timing and duration of the leave. When the employee requests FMLA leave or Human Resources has knowledge that an employee's leave may be for an FMLA-qualifying reason, Human Resources shall notify the employee of the employee's eligibility to take FMLA leave within five (5) business days, absent extenuating circumstances. The Eligibility Notice should state whether the employee is eligible for FMLA leave. If the employee is not eligible for FMLA leave, the Notice shall state at least one (1) reason why the employee is not eligible.

### d. Employee Rights and Responsibilities Notice

Human Resources shall provide the employee written notice detailing the specific expectations and obligations of the employee and explaining consequences of a failure to meet these

obligations. If leave has already begun, Human Resources shall mail this Notice to the employee's address of record.

e. Certification of Health Condition, Designation Notice, Second Opinion(s), Recertification, and Status Updates

Human Resources will provide the employee a Certification of Health Care Provider form that shall be completed by the employee's health care provider and returned to Human Resources within fifteen (15) calendar days of the Eligibility Notice. If the employee fails to return a Certification of Health Care Provider form or does not provide sufficient or complete information to determine whether the leave is FMLA-qualifying, FMLA leave may be denied or delayed. It is the employee's responsibility to maintain up-to-date medical status while on FMLA.

Human Resources will give the employee written notice (designation notice) whether the leave will be designated and counted as FMLA leave within five (5) business days of when Human Resources has enough information to determine whether the leave is being taken for a FMLA-qualifying reason.

The employer may require a second opinion by a health care provider of its choice and at its expense if it has reason to doubt the validity of the medical certification. The designated health care provider shall not be employed by the employer or regularly utilized by the employer. If the two (2) opinions differ, a third opinion may be requested from a provider selected jointly by the employee and the employer. This third opinion, for which the employer shall pay, is final and binding. The employer shall provide the employee copies of the medical opinions within five (5) days of the employee's request.

The employer may request recertification if it later has reason to question the appropriateness of the leave or its duration. The frequency for which the employer may request recertification is governed by federal regulation. The employee shall provide a complete and sufficient certification within fifteen (15) calendar days after Human Resources' request. When Human Resources requests certification, it will advise the employee of the anticipated consequences of the employee's failure to provide adequate certification.

The employer may also require periodic reports from the employee as to the employee's status and intent to return to work. If an employee gives unequivocal notice of an intent not to return to work, the employer's obligations under FMLA to maintain health benefits (subject to COBRA requirements) and to restore the employee cease. However, these obligations continue if an employee indicates he or she may be unable to return to work, but expresses a continuing desire to do so.

3. Spouses Both Working for the Employer

In cases where both spouses are employees, they may take a combined total of twelve (12) weeks of FMLA for the birth, bonding, adoption, or foster care placement of a child, and the care of a parent with a serious health condition. They may each take twelve (12) weeks for their own injury/illness or that of their spouse or child. An employee can at most take twelve (12) weeks for FMLA purposes in a year (twenty-six (26) weeks for a covered service member).

#### 4. Intermittent or Reduced Leave

While most FMLA occurrences will necessitate leave to be taken in a single block of several weeks, the employee may request “intermittent” leave or a “reduced leave schedule” to care for a seriously ill family member or for the employee’s own serious health condition where the need for leave is foreseeable and based on planned medical treatment. In the case of the need for a reduced schedule or intermittent use of leave, a certification of medical necessity is required from the health care provider and an appropriate work schedule should be planned in advance with the supervisor, when possible. An employee may take intermittent or reduced leave for the birth, adoption, or foster care placement of a child only if the employee and Principal/Department Head/Designee agree to such an arrangement.

If the employee requests intermittent leave or reduced leave schedule, the employer may temporarily transfer the employee to an available alternative position with equivalent pay and benefits, if the employee is qualified for the position and it better accommodates recurring periods of leave than the employee’s regular job. When a transferred employee no longer needs to continue on leave and is able to return to the prior position, the employee will be subject to restoration. See Section H(2) below.

##### Special Rules for School Employees

In order to provide the highest level of service to the students, instructional employees who need to take intermittent leave, a reduced leave schedule, or leave near the end of the term, may be given a temporary transfer to a position that better accommodates the leave schedule. Likewise, if the leave would end within the final three (3) weeks of the school term, instead of a temporary transfer, the employee may be required to extend the leave to the end of that term, under specified conditions.

If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule to care for a family member with a serious health condition, to care for a covered service member, or for the employee's own serious health condition, which is foreseeable based on planned medical treatment, and the employee would be on leave for more than twenty (20%) percent of the total number of working days over the period the leave would extend, the employer may require the employee to choose either to:

- a. Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
- b. Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position.

#### **E. Leave Related to a Qualifying Exigency arising from Covered Active Duty or a Call to Covered Active Duty**

If the necessity for leave because of a qualifying exigency arising because a family member is on covered active duty or has been notified of an impending call to covered active duty is foreseeable, the

employee shall give notice to the employer as is reasonable and practicable. The employee's notice should be sufficient to make the employer aware that the employee needs FMLA-qualifying leave and the anticipated timing and duration of the leave.

The first time an employee requests leave because of a qualifying exigency arising out of the covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of a military member, the employer may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to covered active duty status and the dates of the military member's covered active duty service. A copy of new active duty orders or other documentation issued by the military shall be provided to the employer if the need for leave because of a qualifying exigency arises out of a different covered active duty or call to covered active duty status (or notification of an impending call or order to covered active duty) of the same or a different military member.

#### **F. Substitution of Paid Leave**

Paid leave shall run concurrently with FMLA leave, as available. Employees should check with Human Resources to determine what types of leave will run concurrently with their FMLA leave. The type of leave taken shall be in compliance with the provisions of the applicable leave addressed in this policy. Otherwise, FMLA leave is unpaid. Time will be charged concurrently against paid leave and FMLA for a period of up to twelve (12) weeks, or up to twenty-six (26) weeks for certain covered service member conditions.

Time missed during Workers' Compensation related injuries, which otherwise meet the requirements of the FMLA, will run concurrently with FMLA leave as applicable.

#### **G. Benefits**

##### **1. Insurance Continuation Privileges**

Employees on FMLA leave will continue to receive the employer portion of the medical and dental insurance benefits up to the maximum twelve (12) workweeks allowed, or twenty-six (26) workweeks for certain covered service member conditions. These benefits will continue on the same basis as an active employee during the FMLA period. Employees are responsible for paying the necessary premium for the employee portion to cover themselves and eligible dependents, through paid leave, or other payment procedures.

##### **2. Other Employee Benefits**

In all cases where an employee is using some type of paid leave, all employee benefits continue as long as the employee remains on the payroll through the use of such paid leave time. If LWOP is

taken for one (1) continuous calendar month, employee benefits will be discontinued for the duration of the unpaid leave status as follows:

- a. Employer and employee contributions will not be made on behalf of the employee to VRS. Upon returning to work, the employee may be eligible to purchase this service through VRS if the leave is necessitated by birth or adoption as defined by VRS policies.
- b. Employees will not be eligible for any employer-paid life insurance during this period.
- c. Medical, dental, and optional life insurance premium payment arrangements may be made through Payroll and/or the appropriate vendor when applicable.

## H. Returning from FMLA Leave

### 1. Return to Work

- a. An employee returning from FMLA leave due ~~the employee's to his/her~~ own serious health condition shall submit a medical release on the required return to work form to Human Resources. The medical release shall be from the employee's health care provider certifying the employee's fitness-for-duty based upon the serious health condition that caused the employee's need for FMLA.
- b. If an employee would like to and is medically certified to return to work in a restricted capacity or through alternative schedule arrangements, supervisors and Human Resources will discuss possible options with the employee.

### 2. Restoration to Position

When an eligible employee is released to return to work following FMLA leave, ~~he/she/the~~ employee will be restored to the position held at the time the leave began or with approval of Human Resources, to an equivalent position with equivalent benefits, compensation, and other terms and conditions of employment. However, in the event that the employer needs to make reductions in staff, employees on FMLA leave shall be subject to Policies GCPA, Reduction in Licensed Staff and GCPAA, Classified Employee Reduction in Force. If an employee was subject to a reduction-in-force during FMLA leave and then is reinstated, any rights would be the same as if the employee had not been on FMLA leave.

Certain "key" employees may be denied job restoration if the employer determines that restoration of the employee to employment will cause "substantial and grievous economic injury" to the operations of the employer. A "key" employee is defined as a salaried FMLA-eligible employee who is among the highest paid ten (10%) of all employees. A key employee will be notified as soon as practicable after receipt of a request for FMLA leave that he/she qualifies as a key employee. The employer will also fully inform the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the employer should determine that substantial and grievous economic injury to the employer's operations will result if the employee is reinstated from FMLA leave.

### 3. Special Rules for School Employees Returning to Work:

- a. An instructional employee begins FMLA leave more than five (5) weeks before the end of an academic term. The employer may require the employee to continue taking leave until the end of the term if—
  - 1) The leave will last at least three (3) weeks, and
  - 2) The employee would return to work during the three (3)- week period before the end of the term.
- b. An instructional employee begins leave during the five (5)-week period before the end of a term. The employer may require the employee to continue taking leave until the end of the term if—
  - 1) The leave will last more than two (2) weeks, and
  - 2) The employee would return to work during the two (2)-week period before the end of the term.
- c. An instructional employee begins leave during the three (3)-week period before the end of a term. The employer may require the employee to continue taking leave until the end of the term if the leave will last more than five (5) working days.
- d. If an eligible instructional employee needs intermittent leave or leave on a reduced leave schedule which is foreseeable based on planned medical treatment, and the employee would be on leave for more than twenty (20%) percent of the total number of working days over the period the leave would extend, the employer may require the employee to choose either to:
  - 1) Take leave for a period or periods of a particular duration, not greater than the duration of the planned treatment; or
  - 2) Transfer temporarily to an available alternative position for which the employee is qualified, which has equivalent pay and benefits and which better accommodates recurring periods of leave than does the employee's regular position. If an instructional employee is required to continue leave until the end of an academic term, only the period of leave until the employee is ready and able to return to work shall be counted against the family and medical leave entitlement. However, the employer shall continue to provide group medical insurance coverage under the same conditions as if the employee were working.

#### **I. Unable to Return to Work**

If an employee is medically unable to return to work at the end of the twelve (12) weeks of FMLA, the employee shall request additional time off from his/her Principal/Department Head/Designee or resign; otherwise, employment may be terminated. Additional time is subject to approval.

#### **J. Record Keeping and Anti-Retaliation**



Human Resources shall maintain records necessary to demonstrate compliance with the FMLA. The FMLA requires also that no employee be subject to any penalty for enforcing rights under the Act or for testifying for or otherwise helping other employees seek rights under the Act.

### **XIII. Field Trips**

Please refer to Policy GCJ, Licensed and Classified Staff Schedules, Time Tracking, and Compensation for information on compensable work time. If an employee participates in a ~~Division~~ ACPS-sponsored trip as a volunteer or parent, leave may be requested in accordance with this policy.

### **XIV. Holiday Leave**

#### **A. Holidays Observed**

The Superintendent/Designee shall establish a holiday schedule for Division 12-month employees equal in number to the holiday schedule for County 12-month employees. The final holiday schedule for each school year shall be determined by the School Board/Designee. Other holidays may be granted by special proclamation of the School Board.

Employees of departments who serve both ~~Division~~ the ACPS and County client groups may choose, with supervisor approval, which holiday leave schedule to follow per fiscal year. If business needs necessitate a mid-year change, an employee's schedule should be adjusted so that the employee receives no more than the ~~Board-approved~~ number of holidays granted by the School Board that fiscal year.

#### **B. Qualifying for Holiday Leave**

1. Twelve (12)-month benefits-eligible employees are granted twelve (12) paid days of holiday leave per school year. Employees are eligible for holiday leave as soon as they begin working. New employees must be employed the day before a holiday to qualify for holiday leave.
2. Employees who are terminating employment with the ~~Division~~ ACPS will not qualify for holiday leave unless they work a working day after the holiday. Approved paid leave may be used in lieu of working following a holiday. If a holiday falls on the last day of the month or week, holiday leave may be granted by the Principal/Department Head/Designee for retiring employees.
3. If a holiday falls within the employee's scheduled annual leave, holiday leave may be used in lieu of annual leave.

#### **C. Working on Holidays**

1. ~~While-Although~~ dates for observing holidays are established annually, due to coverage requirements, some employees may be required to work on a holiday. Any non-exempt, benefits-eligible, 12-month employee who is required by the Principal/Department Head/Designee to work on a holiday which is observed by the ~~Division~~ ACPS shall:
  - a. Be paid the regular hourly rate for the hours worked on the holiday plus the hours normally granted for the holiday; or

- b. Take another day in the workweek as holiday leave, including days in the workweek before the established holiday.
2. Exempt 12-month employees who work on a holiday, may take the holiday on another day approved by the supervisor within the fiscal year. Employees may not take the holiday prior to the Board designated holiday date, unless it is within the same workweek as the holiday. Holidays that are not taken by these employees are not paid out and do not carry over fiscal years. Holidays do not transfer if an employee changes schools/departments; under these circumstances the holidays shall be taken prior to transfer or are forfeited.
3. Alternative Work Schedules: A “day of holiday leave” is equivalent to a “day of leave” as defined above. Employees are responsible for discussing the impact of holiday leave on their alternate work schedules with supervisors. Employees are responsible for making up any hourly difference between the hours granted for the holiday and the employees’ work schedules by either using additional applicable leave or working at another time during the workweek.

**Example:** A non-exempt employee’s a day of leave is eight (8) hours/day and the employee’s position is established at eight (8) hours/day, five (5) days/week for a total of 40 (~~forty~~) hours/week. The employee has an alternative work schedule of 10 hours/day, four (4) days/week for a total of ~~forty (40)~~ hours per week. Eight (8) hours of holiday leave would be granted and the employee shall account for the remaining two (2) hours by working two (2) additional hours within that workweek or using two (2) hours of compensatory time leave or annual leave.

**D. Half-day Holidays**

The Board may grant half-day holidays to benefits-eligible 12-month employees. A “half-day” is defined as half of an employee’s day of holiday leave. Any non-exempt employee who receives approval not to work the other half of the day, is responsible for taking compensatory time leave, annual leave, LWOP, or arranging with ~~his/her~~ the employee’s supervisor to work those hours within the workweek. An exempt employee who does not work on the half-day may make arrangements with the supervisor to work the time missed on another day within the fiscal year or use annual leave for the half-day.

**E. Religious Holidays**

Any regular or temporary employee observing a religious holiday occurring on the employee’s workday may request time off. Supervisors should allow employees to take time off for such occasion if the time off can be accommodated. Leave shall be requested in advance in accordance with policy. Supervisors shall contact Human Resources prior to denying religious holiday leave requests. Applicable accrued leave shall be used when available. LWOP will be considered in the absence of accrued leave.

**XV. Income Replacement Program – VRS Hybrid Plan members only**

**A. Purpose**

Effective January 1, 2014, VRS created a new retirement plan called the Hybrid Plan. Part of the VRS Hybrid Plan includes the implementation of a Disability Program for Hybrid Retirement Program Participants. The ~~Division ACPS~~ refers to this program as the Income Replacement Program (“IRP”). The IRP contains two (2) components: Short-Term Disability (“STD”) and Long-Term Disability (“LTD”), which contain different eligibility requirements. IRP-STD occurs first. If an employee is not able to return to work after the IRP-STD period, he/she may move into the IRP-LTD portion of the benefit. These programs are outlined below.

This section is intended to implement fully the Disability Program for VRS Hybrid Retirement Program Participants, VA Code §§ 51.1-1150, et seq. Any variation between this policy and the ~~VA~~ Virginia Code will be determined in favor of the Virginia Code.

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## B. Definitions

Catastrophic Condition: A catastrophic condition means an employee is unable to perform at least two (2) of the following six (6) activities of daily living:

1. Bathing
2. Transferring, such as getting in and out of bed
3. Dressing
4. Toileting (using the bathroom)
5. Continence
6. Eating (ability to feed oneself)

A condition may also be considered catastrophic if the employee has a severe cognitive impairment requiring substantial supervision to protect the employee from threats to health and safety.

Disability: A condition that prevents an employee from working or performing the full duties of the employee’s job for a short or extended period. It may be non-work-related or work-related. A work-related disability is the result of an occupational illness or injury that occurs on the job and the cause is determined to be compensable under the Virginia Workers’ Compensation Act.

Major Chronic Condition: A major chronic condition is a life-threatening health condition that exists over a prolonged period of time and is not expected to improve. The employee must have been disabled with the condition within six (6) months of the date the claim is filed and be under the care of a licensed treating health care professional for the condition.

Partial Disability: An employee has a partial disability if the disability exists during the first ~~twenty-four (24)~~ months following the occurrence or commencement of an illness or injury when an

employee is earning less than eighty (80%) percent of his pre-disability earnings and, as a result of an injury or illness, is (i) able to perform one or more, but not all, of the essential job functions of his own job on an active employment or a part-time basis; or (ii) able to perform all of the essential job functions of ~~his own~~ the employee's job only on a part-time basis.

### C. IRP Third-Party Administrator

The IRP program is administered through a Third-Party Administrator. The Third-Party Administrator handles all employee claims after detailed consultation with the Human Resources designee for IRP. Any variation between this policy and the Third-Party Administrator's interpretation of the Virginia Code will be determined in favor of the Third-Party Administrator.

### D. Qualifying for Income Replacement Program – Short-Term Disability

1. Shall be an active full-time VRS Hybrid Plan member to be eligible.
2. Waiting Period – Employees shall be employed for one (1) continuous year of service as an active Hybrid Plan member with a single employer before receiving nonwork-related disability benefits. The County and Partner Agencies which have VRS employer codes different from the ~~Division~~ ACPS are considered separate employers for this benefit. If, for example, a County employee transfers to the ~~Division~~ ACPS, the one (1)-year waiting period will begin again. This waiting period is waived for a work-related disability. For work-related disabilities, the effective date of participation in the program for participating employees shall be their first day of employment or the effective date of their participation in the VRS Hybrid Plan, whichever is later.
3. Elimination Period – To satisfy the elimination period, an employee shall have an approved claim of total or partial disability which commences after any required waiting period and be unable to work more than twenty (20) hours over seven (7) consecutive calendar days due to his/her total or partial disability.
  - a. This elimination period is waived for a catastrophic condition or as the result of a major chronic condition.
  - b. The elimination period requirement may be met during non-contract/non-scheduled days (i.e. over the summer or winter break).
4. IRP-STD runs concurrently with any other relevant benefits, including FMLA and Workers' Compensation. Receipt of other relevant benefits may offset IRP-STD benefits.
5. Once the waiting period and elimination period requirements have been met, VRS Hybrid Plan members are eligible for the IRP-STD benefit. However, the IRP-STD benefit is only available for when an employee would be actively working (i.e., during contract/scheduled workdays).
6. IRP-STD benefits shall be payable for periods of:
  - a. total disability,

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- b. partial disability,
- c. eligible maternity leave, or
- d. periodic absences due to a major chronic condition

## E. IRP-STD Benefit Amount

### 1. IRP-STD – Days of Income Replacement

The following charts show the number of days at the percentage of income replacement provided by the IRP-STD.

#### a. Days of Income Replacement: Non-Work-Related Disability

Months of Continuous Service	Workdays at 100%	Workdays at 80%	Workdays at 60%	Total Short-Term Paid Days
0 – 12	0	0	0	0
13 – 59	0	0	125	125
60 – 119	25	25	75	125
120 - 179	25	50	50	125
180 or more	25	75	25	125

#### b. Days of Income Replacement: Work-Related Disability

Months of Continuous Service	Workdays at 100%	Workdays at 80%	Workdays at 60%	Total Short-Term Paid Days
0 – 59	0	0	125	125
60 – 119	85	25	15	125
120 or more	85	40	0	125

### 2. Successive Periods of Short-Term Disability

- a. Within forty-five (45) consecutive calendar days. If an employee receiving IRP-STD returns to work with a release and then goes out again for the same or a similar condition within forty-five (45) consecutive calendar days, the employee will be on the same IRP-STD claim. The employee does not have to fulfill another seven (7)-calendar day elimination period. The employee's income replacement will resume at the level ~~he/she~~ the employee was receiving during the previous disability period. The number of days remaining on the 125-workday period for IRP-STD will also resume.
- b. On or After forty-five (45) consecutive calendar days. If an employee returns to work with a release and then goes out again for the same or a similar condition on after the 45<sup>th</sup> consecutive

calendar day, the subsequent period will be considered a new claim. The employee will need to satisfy a new elimination period. If approved, the employee will have up to 125 workdays of IRP-STD.

3. Partial Disability

If an employee is able to work, earnings from an employee's job during a period of IRP-STD for an eligible partial disability will offset the IRP-STD benefits. The IRP-STD benefits will be applied to the non-worked time.

4. Catastrophic Condition

If an employee is eligible to receive/is receiving sixty (60%) percent of pre-disability creditable compensation and is determined to have a catastrophic condition, the IRP-STD benefit will increase to eighty (80%) percent until his/her/the employee's condition improves and is no longer considered catastrophic.

5. IRP-STD and Workers' Compensation

If an employee is eligible for compensable Workers' Compensation and IRP-STD, the Workers' Compensation benefit will be paid first; if the employee is to receive any additional compensation under the IRP-STD days chart, the IRP-STD benefit will further supplement.

**F. IRP-STD Supplementing Benefit Amount**

1. Employees shall use current balances of sick, annual, personal, and compensatory time leave to supplement IRP benefits up to one-hundred (100%) percent of the employee's pre-disability creditable compensation.
2. The total leave hours (IRP plus supplement) shall not exceed the employee's normally scheduled work hours (full creditable compensation amount).
3. Participating employees enrolled in the VRS Hybrid Plan may not withdraw days from the Sick Leave Bank when the employee receives benefits pursuant to this program or has received benefits pursuant to this program for the same condition.

**G. IRP-STD Effect on Benefits**

1. Employees on IRP-STD will continue to receive the same benefits provided to active employees. Medical insurance will continue to be available while on IRP-STD.
2. Premiums paid by the Division for life insurance through VRS will continue to be paid by the Division ACPS.
3. Employees will continue to contribute their mandatory five (5%) percent VRS contributions while on IRP-STD. Retirement contributions will not be withheld if an employee is only receiving Workers' Compensation and no supplemental pay. An employee may be eligible to purchase VRS service credit for the period if he/she/the employee is receiving only Workers' Compensation and

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retirement contributions are not being withheld from ~~his/her~~the employee's Workers' Compensation payment.

#### H. Qualifying for Income Replacement Program – Long-Term Disability (IRP-LTD)

1. If an employee is unable to return to work after the IRP-STD period, the employee and the ~~Division-ACPS~~ will conduct a final interactive discussion on the likelihood of return and any additional reasonable accommodations that may help the employee reach full duty. The employee will continue into the IRP-LTD period. If the employee is unlikely to return to full duty following the IRP-STD period and no additional reasonable accommodations are available to bring the employee back to full duty, the employee's position will no longer be held and the employee will no longer be considered an active employee and will be separated from service. The IRP-LTD benefit will continue in accordance with the terms outlined below and Virginia Code.
2. The IRP-LTD benefit runs concurrently with any other relevant benefits, including FMLA leave and Workers' Compensation.
3. Employee eligibility for the IRP-LTD benefit is only available when an employee would be actively working (i.e., during contract/scheduled days).
4. IRP-LTD benefits shall be payable during periods of:
  - a. total disability, or
  - b. partial disability

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#### I. IRP-LTD Benefit Amount

1. IRP-LTD Amount
  - a. After short-term disability income replacement, if the employee continues to be disabled, ~~he/she~~the employee may be approved for IRP-LTD.
  - b. This is insurance coverage providing sixty (60%) percent of the employee's pre-disability creditable compensation.
  - c. Unless otherwise directed, to be eligible for IRP-LTD benefits, the employee shall apply for Social Security Disability Insurance ("SSDI") benefits or other relevant and available retirement benefits available ~~to him/her~~.
  - d. If the employee reaches normal retirement age while on IRP-LTD, ~~his/her~~the employee's benefit will stop. Normal retirement age is defined under the VRS Hybrid Retirement Plan.
  - e. Employees continue to accrue VRS service credit while on long-term disability income replacement.
2. Successive Periods of Long-Term Disability
  - a. Within 125 consecutive workdays. If an employee receives IRP-LTD, returns to work with a release, and then goes out again for the same or a similar condition within 125 consecutive

workdays, the employee will be covered by the same IRP-LTD claim. Workdays arranged pursuant to vocational, rehabilitation, or return-to-work programs shall not be counted in determining the duration of the employee's return to work period.

b. *On or After 125 consecutive workdays.* If an employee returns to work with a release and then goes out again for the same or a similar condition on or after 125 consecutive workdays, the subsequent period will be considered a new claim for IRP-STD if still actively employed by the ~~Division~~ACPS. The employee will need to satisfy a new elimination period and if approved, will have up to 125 workdays of IRP-STD before becoming eligible for IRP-LTD again.

~~b.~~

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### 3. Partial Disability

If an employee is able to work, earnings from an employee's job during a period of IRP-LTD for an eligible partial disability will offset the amount of his/her IRP-LTD benefit.

### 4. Catastrophic Condition

If an employee is receiving sixty (60%) percent of pre-disability creditable compensation and is determined to have a catastrophic condition, the IRP-LTD benefit will increase to eighty (80%) percent until his/her condition improves and is no longer considered catastrophic.

## J. IRP-LTD Effect on Benefits

1. Premiums paid by the ~~Division A~~ for life insurance through VRS will continue to be paid by the Division.
2. Employees on IRP-LTD will receive coverage as provided to retirees.
3. Employees on IRP-LTD are not eligible to contribute to their VRS defined benefit component ~~four (4%) percent~~ or their VRS defined contribution component ~~one (1%) percent~~.
4. Employees on IRP-LTD will be considered inactive for benefit purposes and will not continue to accrue leave. Employees will be responsible for any applicable employee contributions to their benefits during this period.

## K. Returning to Work After Illness

1. An employee shall submit a medical release prior to or upon the employee's return to work. The release shall be from and signed by the employee's health care provider certifying that ~~he/she~~the employee is able to return to work with or without restrictions.
2. Other return to work guidelines apply to leave taken concurrently under FMLA or Workers' Compensation. Supervisors should consult with Human Resources when an employee is on concurrent leave under FMLA or Workers' Compensation prior to requesting a medical release or other information.



3. If a supervisor offers restricted duty or other alternative schedule arrangements which the employee is medically able to perform, the employee shall return to work in that capacity.

#### **L. End of IRP Benefit Coverage**

1. Disability benefits shall cease to be paid to a participating employee upon the first of the following to occur:
  - a. The end of the period of disability coverage (ex. return to work or no longer totally or partially disabled);
  - b. Voluntary separation or just cause termination from covered employment;
  - c. The date of death of the participating employee;
  - d. The date that the participating employee attains normal retirement age;
  - e. The effective date of the participating full-time employee's service retirement under the VRS Hybrid Retirement Program;
  - f. Employee is determined to be no longer medically eligible;
  - g. Employee takes a refund of his/her member contributions and interest in the defined benefit component of his/her plan; or
  - h. Employee does not cooperate or comply with the requirements of the IRP-LTD.
2. Maximum Length of the IRP Benefit at Age 60 or Older

If an employee is age sixty (60) or older, he/she will be eligible for an IRP benefit according to the following schedule:

Age 60 – 64	Five (5) years from the date disability benefit begins
Age 65 – 68	Until age 70
Age 69 or older	One (1) year from the date disability benefit begins

#### **XVI. Jury Duty Leave**

##### **A. Purpose**

The ~~Division School Board~~ recognizes the duty of citizens to serve on a jury when summoned.

##### **B. Eligibility**

The Division-ACPS provides paid jury duty leave for benefits-eligible employees and unpaid jury duty leave for benefits-ineligible employees consistent with Virginia Code § 18.2-465.1. Employees are expected to notify their supervisors as far in advance as possible prior to using jury duty leave. Supervisors may require verification that an employee has been called for jury duty.

### C. Regulation

1. Employees may retain payment from the court for the daily rate of pay for each day of jury service in addition to jury duty leave provided by the Division-ACPS.
2. Employees are expected to report to work when jury is not in session, except:

If an employee has already been summoned for four (4) or more hours of jury duty, including travel time, on that day and starts ~~his/her~~the work shift between 5 p.m. and 3 a.m., the employee is not required to report to work and will be granted jury duty leave.

### XVII. Leave as a Reasonable Accommodation

Leave may be provided or used as a reasonable accommodation pursuant to the Americans with Disabilities Act (“ADA”), Title VII of the Civil Rights Act, or any other relevant statute. Leave granted as a reasonable accommodation will be considered on a case-by-case basis, may run in concert with other reasonable accommodations, and/or may run concurrently with other available leave.

### XVIII. Maternity Leave

From the date of birth, the Division-ACPS provides unpaid maternity leave to regular employees for up to six (6) weeks for natural birth and up to eight (8) weeks for Caesarian-section, regardless if an employee qualifies for FMLA leave. If an employee qualifies for FMLA leave, IRP, or any other benefit program, these leaves will run concurrently. If an employee has paid leave available, it will run concurrently with maternity leave. All paid leave shall be exhausted before LWOP is taken, excluding any rights permitted under the FMLA. Medical documentation regarding the length of recovery time shall be provided to Human Resources by the employee within fifteen (15) calendar days of the start of maternity leave.

### XIX. Military Leave

#### A. Purpose

Military leave is available to employees and candidates who have accepted offers of employment from the Division and perform service in the uniformed services while employed by the Division. This section was adopted and is intended to fully implement the United States Employment and Reemployment Rights Act (USERRA, 38 U.S.C. 43, et. seq.) and VA Code § 44-93, et. seq. Any variation between this policy and these laws will be determined in favor of the laws.

#### B. Definitions

Federal Fiscal Year: The “Federal Fiscal Year” is October 1 through September 30 of every calendar year.

Service in the Uniformed Services: “Service in the uniformed services” means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes: active duty, active duty for training, initial active duty for training, inactive duty training, full-time National Guard, a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the employment for the purpose of performing funeral honors duty as authorized by section 12503 of title 10 or section 115 of title 32.

Uniformed Services: “Uniformed services” means any of the Armed Forces, the Army National Guard, and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency. “Uniformed services” shall also refer to former members of the armed services or members of the organized reserve forces of any of the armed services of the United States or National Guard.

Workday of Military Leave: “Workday of military leave” means the period of time normally worked on approximately equal workdays on five (5) or more days of each calendar week. If an employee does not normally work approximately equal workdays five or more days each calendar week, then “workday of military leave” means 1/260 of the total working hours such employee would be scheduled to work during an entire Federal Fiscal Year, not including holidays, annual leave, or other absences.

### C. Advance Notice

An employee who is leaving to perform military service shall provide advance written notice to his/her immediate supervisor (including the best approximation of the expected dates of the leave), unless it would be unreasonable to provide notice at that time or the employee is precluded by military necessity from providing notice. When available, employees shall provide a copy of their military orders to their supervisors. Supervisors shall forward any notice of military service or military orders to Human Resources.

### D. Paid Military Leave

Upon presentation of a copy of final orders or other equivalent notice, any employee who is a member of the uniformed services shall be entitled to up to twenty-one (21) workdays of military leave with pay for service in the uniformed services per Federal Fiscal Year. If service in the uniformed services spans more than one (1) Federal Fiscal Year, employees are not entitled to an additional ~~15~~ twenty-

one (21) workdays of military leave with pay in the second year for the same tour. Employees on military leave with pay shall be paid their full gross salaries for regularly scheduled work hours during this period. Employees are requested to attempt to make arrangements for service in the uniformed services at times other than during scheduled work hours when possible.

#### **E. Unpaid Military Leave and Supplemental Pay**

1. An employee shall be placed on unpaid military leave for up to five (5) years while serving in the uniformed services after military leave with pay is exhausted.
2. If a regular employee's uniformed services gross base salary is less than the employee's ~~Division~~ ACPS gross base salary, the employee may request supplemental pay. Supplemental pay provides the amount necessary to bring the employee's monthly gross base salary to the gross base salary earned as an ~~ACPS-Division~~ employee at the time of recall to service in the uniformed services.
3. An employee shall provide the Leave Earning Statement (LES) (or equivalent) in order to receive supplemental pay. An employee is entitled to receive a maximum total of two (2) years of supplemental pay. Employees who are receiving supplemental pay are on military LWOP for purposes of benefits under this policy.

#### **F. Reinstatement**

1. An employee who is entitled to military leave by reason of service in the uniformed services shall be restored to the same position, if not abolished; to a position with like seniority, status, and pay; or to a comparable position if no like position exists, unless to do so would be unreasonable. Restoration is contingent on whether the employee:
  - a. Has given advance notice of the need for military leave (unless notice is precluded by military necessity or is otherwise impossible or unreasonable);
  - b. Has not been absent from ~~his/her/the~~ job for more than five (5) years; and
  - c. Provides documentation to the ~~Division-ACPS~~ from ~~his/her/the~~ respective military command that indicates a release from this period of active duty and that the service was performed under honorable conditions; and
  - d. Returns to work in the timeframes outlined below.
2. If the employee was absent from work for service in the federal military for:
  - a. Thirty (30) calendar days or less, ~~he/she/the employee~~ shall report back to work by the beginning of the next regularly scheduled work period after a reasonable amount of time to arrive home, rest, and report to work;

- b. Thirty-one (31) calendar days to 180 calendar days, the employee shall submit a notice of intent to return to work in writing within fourteen (14) calendar days after the completion of service; or
  - c. One hundred eighty-one (181) calendar days or more, the employee shall submit a notice of intent to return to work in writing within ninety (90) days after the completion of service.
3. If the employee was absent from work for service in the Virginia military:
- a. One hundred eighty (180) calendar days or less, the employee shall submit a notice of intent to return to work in writing within fourteen (14) days of release from duty or from hospitalization, or
  - b. One hundred eighty-one (181) calendar days or more, the employee shall submit a notice of intent to return to work in writing within ninety (90) days of his release from duty or from hospitalization.
4. Upon returning from duty, a returning service member will be reinstated in the job that he/she would have attained had he/she/the employee not been absent for military service, (the "escalator" principle), with the same seniority, status and pay, as well as other rights and benefits determined by seniority, if the position exists, or to a comparable vacant position for which he/she/the employee is qualified, unless to do so would be unreasonable. The Division-ACPS is not obligated to reinstate persons returning from military leave in certain situations specified by state and federal law.

#### G. Benefits

During paid military leave, the employee will continue to accrue seniority and any other benefits available to him/her/the employee as if regularly employed by the Division-ACPS.

During unpaid military leave, the employee will continue to accrue seniority. Employees on unpaid military leave for more than one (1) calendar month will be placed on a leave of absence ("LOA") and will be eligible for benefits pursuant to the LOA policy.

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#### H. Discrimination Against Members of the Uniformed Services Prohibited

Members of the uniformed services will not be denied initial employment, reinstatement, retention in employment, promotion, or any benefit of employment on the basis of that membership.

#### XX. Personal Leave – Classified Employees

Regular, benefits-eligible 10- and 11-month classified employees may use accrued sick leave for personal reasons, if granted by the Principal/Department Head/Designee, not to exceed their total sick leave balances.

##### A. Use of Personal Leave

Personal leave requires approval from the Principal/Department Head/Designee prior to the leave being taken. An employee shall submit his/her request for personal leave to the Principal/Department Head/Designee at least five (5) days in advance of the day or days to be taken. If it is necessary for an employee to request personal leave without five (5) days' notice, the Principal/Department Head/Designee may require an explanation from the employee regarding the leave and the short notice.

Guidelines for granting personal leave for eligible personnel are as follows:

1. Personal leave may not be taken during the first ten (10) student instructional days and/or the last five (5) contract days, including any snow makeup days at the end of the school year.
2. Personal leave may be used provided it does not immediately precede or follow a school holiday. A school holiday is defined as a time when schools are closed for students and teachers exclusive of normal weekends. If an employee is retiring directly following the personal leave use, personal leave may be used immediately preceding or following a school holiday.
3. The Principal/Department Head/Designee may limit the number of employees who may be granted personal leave on a given day in order to assure the orderly and efficient operation of the school/department.
4. Personal leave may be denied to an employee who has not met expectations for acceptable attendance during the current and/or previous school year.

**B. Exceptions**

Principals/Department Heads/Designees may grant exceptions to the use of personal leave days articulated above when there is a bona fide reason for doing so.

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**XXI. Personal Leave – Classified Employees (Replaces Section XX, effective with the implementation of the time and attendance system.)**

**A. Purpose**

It is vital that staff are present to provide the quality education and services expected for our students. Personal leave is provided to allow 10- and 11-month employees time off from work to attend to personal matters that are not due to illness or injury. Personal leave accrues separately from sick leave, and sick leave is not to be used for personal reasons.

**B. Accrual for 10- and 11-Month Employees**

Regular, benefits-eligible 10- and 11-month classified employees accrue up to two (2) personal days of leave per school year. Personal days will be distributed on the following schedule:

**New Hires**

1. Employees who are hired into benefits-eligible positions effective between August 1<sup>st</sup> and October 1<sup>st</sup> will receive two (2) personal days granted on October 1<sup>st</sup> based on the day of leave as of October 1<sup>st</sup>.
2. Employees who are hired into benefits-eligible positions effective between October 2<sup>nd</sup> and December 31<sup>st</sup> will receive two (2) personal days at the time of hire or eligibility based on the day of leave at the time of distribution.
3. Employees who are hired into benefits-eligible positions effective between January 1<sup>st</sup> and June 30<sup>th</sup> will receive one (1) personal day at the time of hire or eligibility based on the day of leave at the time of distribution.

**Returning Employees**

Employees who are employed with the ~~Division-ACPS~~ as of June 30<sup>th</sup> of the current calendar year and return in August in the same calendar year, will receive two (2) personal days granted on October 1<sup>st</sup> based on the day of leave as of October 1<sup>st</sup> as a benefits-eligible employee.

**C. Accumulation Maximum Cap**

Personal leave balances are subject to a maximum cap. Employees may accrue up to five (5) personal leave days.

**D. Changes in Status**

1. Personal leave is not paid out upon termination or transfer to a benefits-ineligible position and has no cash value. Employees who had breaks in service and are rehired will be treated as new hires per above. Leave balances shall be cleared upon termination of regular employment.
2. Employees transferring without breaks in service to 12-month positions may request to convert accrued personal leave to annual leave up to a maximum of five (5) days of leave of the new 12-month position.
3. Those employees changing to benefits-ineligible statuses will have their personal leave balances deactivated and leave will not accrue. In the event that they become benefits-eligible again without breaks in service, the personal leave balances will be re-activated for use and accrual will resume.
4. Employees who have increases in FTE during the school year will not receive additional personal leave at the time of the increase. If an employee had an accrued personal leave balance of five (5) days and has an increase in the day of leave, the leave balance will be capped at the rate of the day of leave on the October 1<sup>st</sup> distribution.

5. Employees who change from regular benefits-ineligible to regular benefits-eligible positions will be treated as new hires per above.
6. If an employee who has a balance at the maximum cap has a decrease in FTE during the school year, the balance will be capped at the rate of the new day of leave on October 1<sup>st</sup>.
7. Employees on leaves of absence do not accrue personal leave. If an employee who was on a leave of absence status on October 1<sup>st</sup> returns to an active status during the school year, ~~he/she~~ the employee will accrue personal leave as a new hire for that year.

#### **E. Use of Personal Leave**

Employees may use up to two (2) personal leave days per school year. Personal leave requires approval from the Principal/Department Head/Designee prior to the leave being taken, unless used in conjunction with sick leave. An employee shall submit ~~his/hers~~ request for personal leave to the Principal/Department Head/Designee at least five (5) days in advance of the day or days to be taken. If it is necessary for an employee to request personal leave without five (5) days' notice, the Principal/Department Head/Designee may require an explanation from the employee regarding the leave and the short notice.

Guidelines for granting personal leave for eligible personnel are as follows:

1. Personal leave may not be taken during the first ten (10) student instructional days and/or the last five (5) contract days, including any snow makeup days at the end of the school year.
2. Personal leave may be used provided it does not immediately precede or follow a school holiday. A school holiday is defined as a time when schools are closed for students and teachers exclusive of normal weekends. If an employee is retiring directly following the personal leave use, personal leave may be used immediately preceding or following a school holiday.
3. The Principal/Department Head/Designee may limit the number of employees who may be granted personal leave on a given day in order to assure the orderly and efficient operation of the school/department.
4. Personal leave may be denied to an employee who has not met expectations for acceptable attendance during the current and/or previous school year.

#### **F. Exceptions**

Principals/Department Heads/Designees may grant exceptions to the use of personal leave days articulated above when there is a bona fide reason for doing so. While two (2) days of personal leave is the standard allowance, up to five (5) days of personal leave may be approved for exceptional circumstances when an employee's leave balance permits.

### **XXII. Personal Leave – Licensed Employees**

#### **A. Purpose**



It is vital that staff are present to provide the quality education and services expected for our students. Personal leave is provided to 10- and 11-month licensed teachers and administrators to attend to personal matters that are not due to illness or injury. Personal leave will be added to the employee's accrued sick leave balance.

**B. Accrual for 10- and 11-Month Employees**

Regular, benefits-eligible 10-month licensed employees accrue up to two (2) personal days of leave per school year. Regular, benefits-eligible 11-month licensed employees accrue up to two and two-tenths (2.2) personal days of leave per school year. Personal leave will be accrued at the rate of two-tenths (.2) of a day of leave per month based on the employee's day of leave at the time of distribution.

**C. Accumulation Maximum Cap**

Personal leave is subject to any caps for sick leave.

**D. Changes in Status**

1. Personal/sick leave is not paid out upon termination or transfer to a benefits-ineligible position and has no cash value. Employees who had breaks in service and are rehired will be treated as new hires. Leave balances shall be cleared upon termination of regular employment.
2. Employees transferring without breaks in service to 12-month positions may request to convert accrued personal/sick leave to annual leave up to a maximum of five (5) days of leave of the new 12-month position.
3. Those employees changing to benefits-ineligible statuses will have their personal/sick leave balances deactivated and leave will not accrue. In the event that they become benefits-eligible again without breaks in service, the personal/sick leave balances will be re-activated for use and accrual will resume.
4. Employees who have increases in FTE during the school year will accrue personal leave based on the day of leave at the time of distribution.
5. Employees who change from regular benefits-ineligible to regular benefits-eligible positions will accrue personal leave based on the established accrual rates.
6. Employees on leaves of absence do not accrue personal leave. If an employee returns to active status, leave accrual will resume based on the established accrual rates.

**E. Use of Personal Leave**

Licensed staff may use accumulated sick/personal leave for personal reasons, if granted by the Principal/Department Head/Designee, not to exceed the employee's total sick leave balance. Personal leave requires approval from the Principal/Department Head/Designee prior to the leave being taken. An employee shall submit his/her request for personal leave to the Principal/Department Head/Designee at least five (5) days in advance of the day or days to be taken. If it is necessary for an

employee to request personal leave without five (5) days' notice, the Principal/Department Head/Designee may require an explanation from the employee regarding the leave and the short notice.

Guidelines for granting personal leave for eligible personnel are as follows:

1. Personal leave may not be taken during the first ten (10) student instructional days and/or the last five (5) contract days, including any snow makeup days at the end of the school year.
2. Personal leave may be used provided it does not immediately precede or follow a school holiday. A school holiday is defined as a time when schools are closed for students and teachers exclusive of normal weekends. If an employee is retiring directly following the personal leave use, personal leave may be used immediately preceding or following a school holiday.
3. The Principal/Department Head/Designee may limit the number of employees who may be granted personal leave on a given day in order to assure the orderly and efficient operation of the school/department.
4. Personal leave may be denied to an employee who has not met expectations for acceptable attendance during the current and/or previous school year.

#### **F. Exceptions**

Principals/Department Heads/Designees may grant exceptions to the use of personal leave days articulated above when there is a bona fide reason for doing so. The employee must provide a written request for an exception to the Principal/Department Head/Designee.

### **XXIII. Professional Learning Leave**

For information on compensation and leave options for professional learning, please refer to Policy GCLA, Professional Learning Time and Leave.

### **XXIV. Sick Leave**

#### **A. Purpose**

The ~~Division School Board~~ recognizes that its employees may need time away from work due to personal health-related matters or those involving their immediate families, and/or health-related appointments. The ~~Division ACPS~~ provides a program of paid leave to benefits-eligible employees to cover such circumstances. Employees should schedule health-related appointments outside of regular work hours whenever possible to minimize the impact on the efficient operation and delivery of services to students and the public.

Employees and supervisors are encouraged to be flexible when employees or their immediate family members are sick or injured. Depending on the situation, a telework, alternate schedule, or a restricted duty accommodation may be considered instead of or in combination with sick leave use.

Sick leave is provided for legitimate health-related matters and does not protect an employee from disciplinary action including termination as may be permitted by law. Sick leave may run concurrently

with other programs defined by School Board policy. Other types of accrued leave may be used in lieu of sick leave when sick leave has been exhausted, but sick leave may not be used in lieu of other types of leave unless specifically stated in School Board policy. An employee who is unable to return to work due to his/her own or an immediate family member's health-related matter may be separated from employment, subject to applicable law, if it causes an undue hardship on the school/department regardless of the employee's sick leave balance.

Accrued sick leave is not paid out upon termination. It has no cash value and may not be exchanged for pay. Employees who had breaks in service and are rehired will begin with zero balances.

Those employees changing to benefits-ineligible statuses will have their sick leave balances deactivated and leave will not accrue. In the event that they become benefits-eligible again without breaks in service, the sick leave balances will be re-activated for use and accrual will resume.

#### **B. Accrual Rates**

Employees accrue sick leave at the rate of one (1) day per month worked, ~~ten (10)~~ eleven (11) days for 10-month positions, eleven (11) days for 11-month positions, twelve (12) days for 12-month positions) based on the employee's day of leave at the time of distribution.

Grandfathered Employees: ~~School Division~~ ACPS employees employed before November 1, 1989 accrue sick leave at a rate of 1.25 days per month (12.5 days for 10-month, 13.75 days for 11-month, 15 days for 12-month per school year).

With the approval of the Director of Human Resources/Designee and the Superintendent/Designee, an employee may be granted a negotiated amount of sick leave.

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#### **C. Sick Leave Transfer, Applicable to Licensed Employees**

When hiring licensed personnel, the ~~Division~~ ACPS accepts a maximum of ninety (90) sick leave days which have been accumulated by that employee while serving as a teacher or administrator in the ~~Division~~ ACPS or another school division within the Commonwealth of Virginia, under the following conditions:

1. The individual's record of continuous service as a licensed or non-licensed teacher or administrator in a Virginia public school system has not been interrupted for more than two (2) school years; and,
2. The employee provides evidence of this accumulated sick leave within six (6) months of being hired by the ~~Division~~ ACPS into an eligible position.

Provision for Previous Employees. A newly hired licensed personnel who was employed with the ~~Division~~ ACPS within the last two (2) school years and had a break in service, may transfer a maximum of ninety (90) sick leave days from the previous position to the current position. To transfer sick leave, the last position with the ~~Division~~ ACPS must have been as a licensed teacher or

administrator. Additionally, no sick leave may have been transferred to another school division within this two (2) school year period. The employee must request transfer of previously accumulated sick leave within six (6) months of being hired by the ~~Division-ACPS~~ into an eligible position. Any previously accumulated sick leave in excess of ninety (90) days is not eligible for future transfer and is forfeited.

**D. Accumulation Maximum Cap**

1. There is no maximum cap on sick leave for employees not enrolled in the Virginia Retirement System (“VRS”) Hybrid plan.
2. Employees enrolled in the VRS Hybrid Plan shall have a maximum cap of 720 hours.
3. Any employee who becomes eligible for the VRS Hybrid Plan may retain any accrued sick leave, even if it exceeds the maximum cap. However, the employee will not accrue sick leave until the balance is below the maximum cap, and then will only accrue to the maximum cap.

**E. Sick Leave Use**

1. Sick leave may be used by employees for personal health-related matters, health-related matters in an employee’s immediate family, an employee’s health-related appointment, or health-related appointments in an employee’s immediate family. Sick leave may not be used as personal leave when they accrue separately.
2. Sick leave may run concurrently as paid leave with other relevant policies as appropriate/applicable (e.g. FMLA, bereavement leave, income replacement, and Workers’ Compensation).

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**F. Medical Verification/Returning to Work**

1. The ~~Division-ACPS~~ reserves the right to seek medical verification (i.e. a doctor’s note) and medical clearance for sick leave used by the employee for ~~him/herself~~ the employee’s own health issue or immediate family member at any time.
  - a. When an employee has been absent for ~~his/her~~ the employee’s own medical issue, a supervisor may require that an employee submit a medical release from the treating health care provider certifying that ~~he/she~~ the employee is well enough to return to work. Requests to provide a medical release should be made prior to the employee’s return when possible, so that the employee may obtain the medical release in a timely manner. If requested, an employee shall provide the requested medical release within three (3) business days of the request or upon return to work whichever comes later.
  - b. The Principal/Department Head/Designee may create reasonable guidelines as to when a medical release is expected for employees who are out on sick leave (excluding concurrent

FMLA leave use). Such guidelines shall be approved by the Director of Human Resources/Designee prior to the effective date.

- c. A medical release should specify the name of the employee, specify the date on which the employee was seen, state if the absence from work was medically necessary, and specify the date on which the employee is/was able to return to work. It may further stipulate any period of partial or total disability or incapacity to perform a job. If a medical release stipulates any disability or incapacity, the Principal/Department Head/Designee shall contact Human Resources.
  - d. Supervisors may neither solicit information about the employee's underlying medical condition nor contact the employee's health care provider. If additional information is needed, the supervisor should contact Human Resources.
  - e. Other return to work guidelines apply to FMLA, Workers' Compensation, Bank, and IRP-STD. Supervisors should consult Human Resources when an employee is on these types of leave prior to requesting a medical release or other information.
2. If a supervisor offers restricted duty or other alternative schedule arrangements which the employee is medically able to perform, the employee shall return to work in that capacity.

## **XXV. Sick Leave Bank**

### **A. Purpose**

The School Board authorizes the creation and maintenance of the Sick Leave Bank ("Bank") to be used when a member of the Bank becomes incapacitated by extended illness (defined as more than twenty (20) workdays) or injury as long as one-third (1/3) of the eligible members agree to participate in accordance with the terms contained herein.

### **B. Administration of the Sick Leave Bank**

The Director of Human Resources/Designee is designated as the administrator of the Bank. Members of the Bank will be assessed one (1) additional day of sick leave at such time as the Bank is depleted to 1600 hours, unless they choose not to participate further in the Bank.

### **C. Employee Membership in the Sick Leave Bank**

Membership in the Bank shall be voluntary and open to all benefits-eligible employees.

An eligible employee may enroll within the first thirty (30) calendar days of employment by donating one (1) day of sick leave. An employee who does not enroll when first eligible may do so during any subsequent Benefits Open Enrollment period by applying, providing satisfactory evidence of good health, and donating one (1) day of sick leave. One (1) additional day may be requested for continued membership in the Bank whenever an assessment is required. The donated days of leave will be deducted from the donor's accrued sick leave balance. Members who have no sick leave to contribute at the time of assessment will be assessed one (1) day at the next available accrual.

#### D. Requesting Use of Sick Leave Bank

1. Requests for use of leave time from the Bank shall be made in writing by the member or ~~his/her~~the member's representative prior to use of any Bank leave. Requests cannot be applied retroactively except in the case of absences that were presumed to be covered by Workers' Compensation, but were subsequently denied.
2. Requests shall be supported by appropriate medical documentation. Human Resources may require additional medical documentation to support the request. Failure to meet applicable requirements set forth in this policy will result in the denial of the member's Bank usage request.
3. Members should also be aware of leave under the FMLA and how it relates to the use of sick leave and Bank leave. Members should also be aware of their rights and responsibilities under the ADA. Employees may also contact HR-Human Resources for assistance.

#### E. Rules for Use

1. General Information
  - a. For initial use of the Bank, a member of the Bank must miss scheduled work equivalent to twenty (20) days of leave within thirty (30) workdays for the same illness, injury, impairment, or physical or mental condition and the member shall also have used to exhaustion all of ~~his/her~~the member's own sick leave. Members are responsible for using other available paid or unpaid leave for time not covered by the Bank.
  - b. Eligible members may take a maximum of forty-five (45) days of leave from the Bank in any year (defined as a 365-day period beginning with the first day of Bank usage). For example, if an eligible member begins Bank usage on March 1<sup>st</sup>, he/she may take up to forty-five (45) days of leave from the Bank in the following 365-day period.
  - c. Days drawn from the Bank for any one (1) period of eligibility shall be consecutive, except recurrence or relapse of the original illness will be covered fully on a continuing basis up to the annual maximum of forty-five (45) days. Once a member has used all forty-five (45) days of Bank, ~~he/she~~the member shall return to work and shall meet the requirements of the Rules for Use Section (a.) before becoming eligible to utilize Bank benefits again.
  - d. Bank time will run concurrently with FMLA leave or as part of an ADA reasonable accommodation where applicable and appropriate.
  - e. Members utilizing sick leave days from the Bank will not have to replace these days except as a regular contributing member of the Bank.
  - f. The Bank request form shall be signed by the member's health care provider. Human Resources reserves the right to require additional medical documentation supporting the request or documentation from a different health care provider.

- g. Participating members enrolled in the VRS Hybrid Plan may not withdraw days from the Bank when the member receives benefits pursuant to the IRP or has received benefits pursuant to the IRP for the same condition.

2. Termination

- a. Upon termination of employment or membership in the Bank, a member may not withdraw the days he/she contributed to the Bank.
- b. The Bank may be dissolved if less than one-third (1/3) of eligible employees agree to participate.

**XXVI. Student Sponsor Activity Leave (“SSA”)**

Regular employees may need to attend ~~Division~~ACPS-supported events for ~~Division~~ACPS students during the regular workday. This may be to attend athletic or academic events as a coach or sponsor. The ~~School~~ Board does not want employees to lose income or take accrued leave when its students are benefiting from services provided by its employees. SSA leave is paid leave granted to benefits-eligible and benefits-ineligible regular employees in these situations. It does not accrue, is not paid out, and is not compensable as time worked.

When attendance at events is part of the normal work duties, SSA leave would not be taken as regular work is being performed. Employees who need SSA leave shall request time off and receive approval from supervisors in advance. SSA leave may not be used if the employee is receiving an hourly rate of pay for the activity. In these situations, annual, personal, compensatory time leave, and LWOP procedures apply for taking leave.

**XXVII. Total Leave Exhaustion**

When an employee has exhausted all applicable paid leave types and wants additional time off from work, ~~he/she~~the employee should request short or long-term unpaid leave. If unpaid leave is not approved, ~~he/she~~the employee is obligated to report for work fit for duty. If an employee is unable to work due to injury or disability, he/she should discuss options with Human Resources prior to leave exhaustion. Employees who do not have approved paid or unpaid leave and do come to work fit for duty may be disciplined up to and including termination.

**XXVIII. Unpaid Leave – Leave of Absence (Long-Term)**

**A. Purpose**

An employee may need to request a leave of absence (“LOA”) from his/her regular employment. The School Board authorizes the Superintendent/Designee to consider all requests for leave and will establish a procedure by which these requests may be processed in a fair and consistent manner. The Superintendent/Designee will, however, make decisions on granting or denying LOA requests based on the best interests of the DivisionACPS. The following procedure is intended to be utilized for leave requests not covered by other School Board policies.

#### **B. Eligibility**

To qualify, an employee shall have completed at least six (6) months of continuous employment in a benefits-eligible position prior to commencement of a LOA.

#### **C. Period of Leave of Absence**

A long-term LOA is for a period from twenty-eight (28) consecutive calendar days up to twelve (12) consecutive months.

#### **D. Requesting Unpaid Leave**

1. LOA requests shall be submitted in writing to the employee’s supervisor as soon as possible in advance of taking the leave. The request shall state the reason for the leave and the starting and ending dates of the leave. Generally, requests for leave to pursue other employment will not be approved. The requirement that this request be in advance of taking the leave may be waived by the Principal/Department Head/Designee based on the circumstances/immediate need of the request.

The employee, supervisor, Principal/Department Head/Designee, and Superintendent /Designee will work together to determine whether this request creates a hardship for the DivisionACPS, or impedes the Division’s ACPS’s ability to provide the necessary level of service to the public, students, and any other relevant factors. LOA requests for instructional employees are typically only approved for school semesters or the entire school year to minimize the interruption to students’ educations.

2. After completion of the unpaid LOA, an employee will be assigned to a similar position in the school/department from which he/she took leave. Licensed and non-licensed administrative employees will be returned to positions for which they are qualified. However, if Division ACPS needs to make reductions in staff, employees on a LOA are subject to the procedures outlined in policies GCPA, Reduction in Licensed Staff and GCPAA, Classified Employee Reduction in Force.
3. School DivisionACPS employees who request LOAs with scheduled return dates in the next school year are required to notify Human Resources in writing of their intentions to return or not by March 1. Failure to do so may result in disciplinary action.

#### **E. Effect on Benefits**



1. Employees on long-term LOAs will not accrue annual, personal, or sick leave and will not receive holiday leave or employer contributions to life insurance, VRS, medical insurance, or dental insurance.
2. If an employee has opted for any optional voluntary benefits, the employee shall make additional arrangements with the payroll department and/or the vendor providing the benefit/product (as applicable) to cover these obligations ~~because the employee since he/she~~ will not be paid salary or wages.
3. An employee requesting a LOA should contact Human Resources to discuss the effect of the leave on ~~his/her~~ benefit options.

## XXIX. Unpaid Leave – Leave Without Pay (Short-Term)

### A. Purpose

An employee's presence at work is essential. The ~~Division's ACPS's~~ Leave Program has been created to recognize that life circumstances do not always permit an employee to work. There may be unforeseeable circumstances when employees are unable to work and do not have paid leave available to them. The School Board authorizes the use of short-term leave without pay ("LWOP") and to establish a procedure by which these requests may be processed in a fair and consistent manner. To take LWOP, all other applicable leave options must be exhausted.

### B. Period of Short-Term Leave Without Pay

LWOP may be approved as requested through the Time and Attendance System or other applicable process as follows. Requests should be reviewed to determine whether they will create a hardship for the ~~Division ACPS~~, impede the ~~Division's ACPS's~~ ability to provide the necessary level of service to students and the public, and any other relevant factors.

1. A regular employee's supervisor may approve up to ~~ten~~ (10) days per rolling year. Supervisors shall also notify the Principal/Department Head/Designee of employee LWOP use. Schools/departments may create notification procedures as to the time and manner in which supervisors keep Principal/Department Head/Designee informed of such use. Principals/Department Heads/Designees are responsible for ensuring reasonable audit procedures ~~around for~~ LWOP usage ~~occur~~.
2. Eleven (11~~+~~) or more days of LWOP per rolling year requires Principal/Department Head/Designee approval in writing. Principals/Department Heads/Designees shall also notify the Superintendent/Designee of employee LWOP use at this amount. The Superintendent/Designee may also create additional notification procedures. LWOP may not be approved for more than ~~twenty-seven~~ (27) consecutive calendar days.
3. Human Resources may approve LWOP regardless of length when it runs concurrently with FMLA, Workers' Compensation, IRP, Maternity Leave, Military Leave, or during the Bank initial waiting period, when applicable.

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### C. Effect on Benefits

1. As long as the employee has income by working or using paid leave in a calendar month, employees on LWOP will continue as applicable to accrue and use holiday leave, annual leave, sick leave, and participate in life insurance, medical insurance, dental insurance, and VRS contributions.
2. If an employee on LWOP does not work during a calendar month and does not use any paid leave during the month, the employee will not accrue annual, sick, or holiday leave and the ~~Division~~ ACPS will not contribute to the employee's life insurance, medical insurance, or dental insurance nor make a VRS contribution.
3. Employees will be responsible for any applicable employee contributions to their benefits during this period of leave.
4. Employees should schedule time with Human Resources to discuss the effect of LWOP on benefits if taking leave for a block of longer than two (2) weeks.

### XXX. Workers' Compensation

For details on Workers' Compensation, see Policy GCPCC, Insurance. Any additional types of applicable leave will run concurrently with Workers' Compensation when the employee is out for the Workers' Compensation-related injury/illness.

Amended: January 23, 2003; August 11, 2005; November 3, 2005; September 11, 2008; October 22, 2009; June 12, 2014; January 22, 2015; October 8, 2015; February 28, 2019; August 8, 2019