

**All Personnel**

BP 4156.3

4256.3

**EMPLOYEE PROPERTY REIMBURSEMENT**

4356.3

The Governing Board does not authorize payment for the reimbursement of employee personal property which may be stolen or intentionally destroyed or damaged while being used for work-related purposes.

*Legal Reference:*

EDUCATION CODE

35213 *Reimbursement for loss, destruction or damage of personal property*

48904 *Liability of parent/guardian for willful misconduct; withholding of grades, diplomas and transcripts*

CIVIL CODE

1714.1 *Liability of parent or guardian for act of willful misconduct by a minor*

**All Personnel**

BP 4157

4257

**EMPLOYEE SAFETY**

4357

The Governing Board believes that safety is every employee's responsibility. The Board expects all employees to use safe work practices and to report and correct any unsafe conditions which may occur. Supervisors shall constantly promote safety and correct any unsafe work practice through education, training and enforcement.

No employees shall be required to work under unsafe or hazardous conditions or to perform tasks which endanger their health, safety, or well-being. Working conditions and equipment shall be maintained in compliance with standards prescribed by federal, state, and local laws and regulations.

The Superintendent or designee shall establish a written Injury and Illness Prevention Program in accordance with law. The program shall include training in safe and healthful work practices for all employees. (Labor Code 6401.7)

*(cf. 3514 - Environmental Safety)*

*(cf. 3514.1 - Hazardous Substances)*

*(cf. 4119.41/4219.41/4319.41 - Employees with Infectious Disease)*

*(cf. 4119.42/4219.42/4319.42 - Exposure Control Plan for Bloodborne Pathogens)*

*(cf. 4158/4258/4358 - Employee Security)*

*Legal Reference:*

EDUCATION CODE

32066 *Safety: public and private institutions*

32210-32224 *Safety: public institutions*

LABOR CODE

6305 *Occupational safety and health standards; special order*

6310 *Retaliation for filing complaint prohibited*

6401.7 *Injury prevention programs*

CODE OF REGULATIONS, TITLE 8

3203 *Injury and Illness Prevention Program*

**All Personnel**

AR 4157(a)  
4257  
4357

**EMPLOYEE SAFETY**

The personal safety and health of each district employee is of primary importance. All employees shall comply with all occupational safety and health standards, rules, regulations and orders required by law and district regulations.

**Injury and Illness Prevention Program**

The district shall maintain and implement a written injury and illness prevention program which clearly defines the responsibilities of supervisors and employees and which identifies: (8 CCR 3203)

1. The person(s) with authority and responsibility for implementing the program.
2. A system for ensuring that employees comply with safe and healthful work practices. This system may include:
  - a. Disciplinary actions
  - b. Programs for training and retraining in safety rules and procedures
  - c. Means for recognizing or rewarding employees who follow safe and healthful work practices
3. A system for communicating with employees in a way readily understandable by all employees on occupational health and safety matters, including provisions designed to encourage employees to report hazards at the worksite without fear of reprisal. This system may include:
  - a. Regular, scheduled meetings at which safety is freely and openly discussed
  - b. Training programs
  - c. Display of posters and bulletins
  - d. Written communications such as newsletters and reproductions of the district's employee safety policy
  - e. A reporting form, safety suggestion box or other system of anonymous notification by employees about hazards
  - f. Labor/management safety and health committees
4. Procedures for identifying and evaluating workplace hazards, including scheduled periodic inspections to identify unsafe conditions and work practices. Inspections to identify and evaluate hazards shall be made:

**EMPLOYEE SAFETY** (continued)

- a. Whenever introducing into the workplace new substances, processes, procedures or equipment that represent a new occupational safety or health hazard
5. Procedures for investigating occupational injury or illness, including near-miss incidents.
6. Procedures for the timely correction of unsafe or unhealthful conditions and work practices, based on the severity of the hazard when observed or discovered.

When an imminent hazard exists which cannot be immediately abated without endangering employee(s) and/or property, these procedures shall call for the removal of all exposed staff from the area except those necessary to correct the hazardous condition. Employees needed to correct the condition shall be provided necessary safeguards.

7. A training program designed to instruct employees in general safe and healthful work practices and the hazards specific to each employee's job assignment. Training shall be provided:
  - a. To all new employees
  - b. To all employees given new job assignments for which training has not previously been received
  - c. Whenever new substances, processes, procedures or equipment are introduced into the workplace and represent a new hazard
  - d. Whenever the district is made aware of a new or previously unrecognized hazard
  - e. To familiarize supervisors with the safety and health hazards to which employees under their immediate direction and control may be exposed

Records of the steps taken to implement and maintain the Injury and Illness Prevention Program shall be kept in accordance with law.

No employee shall be discharged or discriminated against for making complaints, instituting proceedings, or testifying with regard to employee safety or health, or for participating in any occupational health and safety committee established pursuant to Labor Code 6401.7. (Labor Code 6310)

**EMPLOYEE SAFETY** (continued)

**Eye Safety Devices**

Eye safety devices shall be worn by teachers, other employees, students and visitors whenever they are engaged in or observing an activity involving hazards or hazardous substances likely to cause injury to the eyes. (Education Code 32030)

Such occasions include, but are not limited to, the following: (Education Code 32031)

1. Working with hot molten metal
2. Milling, sawing, turning, shaping, cutting, grinding and stamping of any solid materials
3. Heat treating, tempering, or kiln firing of any metal or other materials
4. Gas or electric arc welding
5. Repair or servicing of any vehicles, machinery or equipment
6. Working with hot liquids or solids or with chemicals which are flammable, toxic, corrosive to living tissues, irritating, strongly sensitizing, radioactive, or which generate pressure through heat, decomposition, or other means.

*(cf. 5142 - Safety)*

**All Personnel**

BP 4157.1

4257.1

**WORK-RELATED INJURIES**

4357.1

District employees may be insured for on-the-job specific or cumulative injuries in accordance with law. In order to reduce costs and facilitate employee recovery, the Governing Board desires to have an efficient claims handling process. Employees are required to report any work-related injuries or illnesses to their supervisor as soon as practicable.

*(cf. 3320 - Claims and Actions Against the District)*

*Legal Reference:*

EDUCATION CODE

*44984 Industrial accident and illness leaves, certificated employees*

*45192 Industrial accident and illness leaves, classified employees*

GOVERNMENT CODE

*21153 Employer not to separate for disability members eligible to retire*

LABOR CODE

*3200-4855 Workers' compensation, especially:*

*3550 Posting of notice re workers' compensation insurance carrier*

*3551 Written notice to new employees*

*3552 Indication of employee's personal physician*

*3600-3605 Conditions of liability*

*3760 Report of injury to insurer*

*4600 Provision of medical and hospital treatment by employer*

*4906 Disclosures and statements*

*5400-5404 Notice of injury or death*

*6409.1 Reports*

**All Personnel**

AR 4157.1(a)  
4257.1  
4357.1

**WORK-RELATED INJURIES**

**Notifications**

The Superintendent or designee shall post a notice of employee rights related to workers' compensation and shall provide this information in writing to new employees. (Labor Code 3550-3551)

This notice shall also include a statement of the district's policy requiring employees to report work-related injuries as soon as practicable.

Employees shall also be informed that pursuant to Labor Code 4906, it is a felony for an employee to make a false workers' compensation claim.

**District Responsibilities**

Supervisors receiving reports of a work-related employee injury shall gather appropriate information, including but not limited to:

1. The date, time and place of the injury
2. The name, occupation and signature of the injured employee
3. Details of how the injury occurred
4. The names of any witnesses

Supervisors shall promptly remit information about work-related injuries to the Superintendent or designee.

Whenever a work-related injury results in lost work time beyond the date of the injury or requires medical treatment beyond first aid, the employee shall be given a workers' compensation claim form and a notice of potential eligibility for benefits within one working day of the injury. (Labor Code 5401) In the case of stress claims, the claim form shall be provided only if the employee indicates that he/she is going to a physician or is unable to work.

Within five working days of obtaining knowledge of any injury which results in lost time beyond the date of the injury or which requires medical treatment beyond first aid, the Superintendent or designee shall file a complete report of the injury with the district's insurer. (Labor Code 6409.1)

**WORK-RELATED INJURIES** (continued)

**Employee Responsibilities**

Upon receiving treatment for a work-related injury, the employee shall obtain a medical verification of his/her condition, indicating any limitations on the employee's ability to work, the anticipated time needed for recovery from these limitations, and the type of work modification needed.

*(cf. 4113.4/4213.4/4313.4 - Temporary Modified/Light-Duty Assignment)*

The district has designated a medical carrier where employees will be taken in case of a work-related injury. Employees who wish to be taken to their personal physician for treatment of work-related injuries must have a written request on file with the Superintendent or designee. It is the employee's responsibility to inform his/her supervisor that he/she has such a request on file. (Labor Code 4600)

*(cf. 4161.11/4361.11 - Industrial Accident/Illness Leave)*

*(cf. 4261.11 - Industrial Accident/Illness Leave)*

To qualify for workers' compensation, employees must notify their supervisor of a work-related injury within 30 days. (Labor Code 5400)

**All Personnel**

BP 4158(a)  
4258  
4358

**EMPLOYEE SECURITY**

The Governing Board desires to provide a safe, orderly working environment for all employees. As part of the district's comprehensive school safety plan, the Superintendent or designee shall develop strategies for protecting employees from potentially dangerous persons and situations and for assisting them in the event of an emergency situation.

*(cf. 0450 - Comprehensive Safety Plan)*  
*(cf. 5131.4 - Campus Disturbances)*

The Superintendent or designee shall ensure that employees are informed, in accordance with law, regarding crimes and offenses by students who may pose a danger in the classroom.

When violence is directed against an employee by any individual and the employee so notifies the district, the district shall take steps to ensure that appropriate legal measures are instituted. When the employee notifies the district of a threat of bodily harm, the district shall take appropriate measures to enable the employee to request assistance if an attempt occurs on school grounds.

The Superintendent or designee shall ensure that employees are trained in crisis prevention and intervention techniques in order to protect themselves and students. Staff development may include training in classroom management, effective communication techniques and crisis resolution.

*(cf. 4131 - Staff Development)*  
*(cf. 4231 - Staff Development)*  
*(cf. 4331 - Staff Development)*

The Board recognizes that access to two-way communications devices allows employees to call for assistance from their supervisor or law enforcement in the event of a threat of violence or medical emergency. The district shall provide such communications devices in classrooms to the extent possible.

*(cf. 5141 - Health Care and Emergencies)*

Employees may possess a pepper spray weapon that meets the requirements of Penal Code 12403.7 on school property and at school activities for their own safety. Any employee who is negligent or careless in the possession or handling of pepper spray shall be subject to appropriate disciplinary measures.

*(cf. 4118 - Suspension/Disciplinary Action)*  
*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

*Legal Reference: (see next page)*

## **EMPLOYEE SECURITY (continued)**

*Legal Reference:*

EDUCATION CODE

32210-32212 *Willful disturbance, public schools or meetings*

32225-32226 *Communication devices*

35204 *Contract with attorney in private practice or use of administrative advisor*

35205 *Contract for legal services*

35208 *Liability insurance*

35213 *Reimbursement for loss, destruction or damage of school property*

44014 *Report of assault by pupil against school employee*

44807 *Duty concerning conduct of students*

48201 *Transfer of student records*

48900 *Grounds for suspension or expulsion*

48900.3 *Suspension for hate violence*

48900.4 *Suspension for harassment*

48900.7 *Suspension for terroristic threats*

48902 *Notification of law enforcement authorities if student violates assault or controlled substance provision*

48904 *Parental liability*

48905 *Injury or damage to person or property of school district employee; request for legal action*

49079 *Notification to teacher; student who has engaged in acts constituting grounds for suspension or expulsion*

49330 *Definition of injurious object*

49331 *Removal of injurious object from possession of pupil by designated employee*

CIVIL CODE

51.7 *Freedom from violence or intimidation*

CODE OF CIVIL PROCEDURE

527.8 *Workplace violence safety act*

GOVERNMENT CODE

995-996.4 *Defense of public employees*

3543.2 *Scope of representation*

PENAL CODE

71 *Threatening public officers and employees and school officials*

240 *Definition of assault*

241.2 *Assault on school or park property against any person*

241.3 *Assault against school bus drivers*

241.6 *Assault on school employee includes board member*

242 *Definition of battery*

243 *Battery; definition of "injury" and "serious bodily injury"*

243.2 *Battery on school or park property against any person*

243.3 *Battery against school bus drivers*

*Legal Reference continued: (see next page)*

**EMPLOYEE SECURITY (continued)**

*Legal Reference: (continued)*

PENAL CODE (continued)

*243.6 Battery against school employee includes board member*

*245.5 Assault with deadly weapon; school employee includes board member*

*290 Registration of sex offenders*

*601 Trespass by person making credible threat*

*626.9 Gun-Free School Zone Act of 1995*

*626.10 Exceptions to bringing weapons on school grounds*

*646.9 Stalking*

*12403.7 Weapons approved for self defense*

WELFARE AND INSTITUTIONS CODE

*827 Juvenile court proceedings; reports; confidentiality*

*828.1 District police or security department, disclosure of juvenile records*

**All Personnel**

AR 4158(a)  
4258  
4358

**EMPLOYEE SECURITY**

An employee may use reasonable force when necessary to protect himself/herself from attack, to protect another person or property, to quell a disturbance threatening physical injury to others, or to obtain possession of weapons or other dangerous objects on or within the control of a student. (Education Code 44807, 49331)

*(cf. 5131.7 - Weapons and Dangerous Instruments)*

Employees shall promptly report to their principal or other immediate supervisor any attack, assault or physical threat made against them by a student.

Both the employee and the principal or other immediate supervisor shall promptly report such instances to the appropriate local law enforcement agency. (Education Code 44014)

In addition, employees shall promptly report to their principal or supervisor, and may report to law enforcement, any attack, assault or threat made against them on school grounds by any other individual.

*(cf. 3515.2 - Disruptions)*

Reports of attack, assault or threat also shall be forwarded immediately to the Superintendent.

An employee whose person or property is injured or damaged by willful misconduct of a student may ask the district to pursue legal action against the student or the student's parent/guardian. (Education Code 48905)

*(cf. 3515.4 - Recovery for Property Loss or Damage)*

**Notice Regarding Student Offenses Committed While Under School Jurisdiction**

The Superintendent or designee shall inform the teacher of any student in his/her class who has engaged in, or is reasonably suspected of, any act during the previous three years which could constitute grounds for suspension or expulsion under Education Code 48900, with the exception of the possession or use of tobacco products. This information shall be based upon written district records or records received from a law enforcement agency. Teachers shall keep the information confidential. (Education Code 49079)

**Notice Regarding Student Offenses Committed While Outside School Jurisdiction**

When informed by the court that a minor student has committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Penal Code 290, assault or battery, larceny, vandalism or graffiti, the Superintendent shall so inform the school principal. The principal shall keep this information in a separate confidential file and give it to the counselors who directly supervise or report on the student's behavior or progress. The principal also may inform any teacher or administrator he/she thinks may need the information so as to work with the student appropriately, avoid being needlessly vulnerable, or protect others from vulnerability. (Welfare and Institutions Code 827)

## **EMPLOYEE SECURITY (continued)**

Any court-initiated information that a teacher, counselor or administrator receives shall be kept confidential and used only to rehabilitate the student and protect other students and staff. The information shall be further disseminated only when communication with the student, parent/guardian, law enforcement staff and probation officer is necessary to rehabilitate the student or to protect students and staff. (Welfare and Institutions Code 827)

When a student is removed from school as a result of his/her offense, the Superintendent shall hold the court's information in a separate confidential file until the student is returned to public school. If the student is returned to a different district, the Superintendent shall transmit the information provided by the student's parole or probation officer to the Superintendent of the new district of attendance. (Welfare and Institutions Code 827)

Any confidential file of court-initiated information shall be kept until the student becomes 18, graduates from high school, or is released from juvenile court jurisdiction, whichever occurs first; it shall then be destroyed. (Welfare and Institutions Code 827)

### **Procedures to Maintain Confidentiality of Student Offenses**

In order to maintain confidentiality when providing information about student offenses to counselors and teachers of classes/programs to which a student is assigned, the principal or designee shall send the staff member a written notification requesting him/her to review a student's file in the school office. This notification shall not name or otherwise identify the student. The staff member shall be asked to initial the notification and return it to the principal or designee.

The staff member shall also initial the student's file when reviewing it in the school office. Once the district has made a good faith effort to comply with the notification requirement of Education Code 49079 and Welfare and Institutions Code 827, an employee's failure to review the file may be construed as a waiver of the district's liability.

*(cf. 5125 - Student Records)*  
*(cf. 5145.1 - Privacy)*

### **Use of Pepper Spray**

Employees who possess pepper spray on school property shall be notified of the following conditions:

1. The pepper spray shall be used only in self-defense.

**EMPLOYEE SECURITY** (continued)

2. An employee who uses pepper spray other than in self-defense shall be subject to disciplinary action by the district and, in accordance with law, a fine and/or imprisonment.
3. The employee shall ensure that the pepper spray is stored in a secure place and not accessible to students or other individuals. An employee who is negligent in the storage of pepper spray may be subject to disciplinary action.

**LEAVES**

The Governing Board shall provide for paid and unpaid employee leaves of absence in accordance with law, Board policy, administrative regulation and collective bargaining agreements.

The Board recognizes the following justifiable reasons for absence as provided by law:

1. Personal illness or injury
2. Industrial accident or illness
3. Childbirth and recovery, care of newborn, placement of a child with the employee for foster care or adoption of a child
4. Military service
5. Family illness or accident; bereavement; fire, flood or other immediate danger to the employee's home or property; and other personal emergencies
6. Vacations for classified staff and certificated management staff, as applicable
7. Jury duty or required court appearances
8. Religious observances
9. Participation in child's school or day care activities
10. For certificated staff, sabbaticals for purposes of study or travel; for classified staff, sabbaticals for purposes of study or retraining
11. Attendance at work-related meetings and staff development opportunities
12. Compulsory leave

*(cf. 4118 - Suspension/Disciplinary Action)*

*(cf. 4131 - Staff Development)*

*(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)*

*(cf. 4161.11/4361.11 - Industrial Accident/Illness Leave)*

*(cf. 4161.2/4261.2/4361.2 - Personal Leaves)*

*(cf. 4161.3 - Professional Leaves)*

*(cf. 4161.5/4261.5/4361.5 - Military Leave)*

*(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)*

*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

*(cf. 4231 - Staff Development)*

*(cf. 4261.1 - Personal Illness/Injury Leave)*

*(cf. 4261.11 - Industrial Accident/Illness Leave)*

*(cf. 4261.3 - Professional Leaves)*

*(cf. 4331 - Staff Development)*

## LEAVES (continued)

### Long-Term Leaves

With Board approval, employees may receive a long-term leave of absence without pay and without increment, seniority or service credit, for a period of up to one school year. Applications for long-term leave shall be made in writing and shall state the purpose for which leave is requested. All long-term leave agreements shall be in writing and shall state the terms and conditions of the leave, including the conditions governing the employee's return.

At the end of a long-term leave, the employee shall be reinstated in a position at the same level as that held at the time leave was granted, unless otherwise agreed upon.

The Board shall consider any written request by an employee to return to work prior to the expiration date of the leave.

#### *Legal Reference:*

##### EDUCATION CODE

*44036 Leaves of absence for judicial and official appearances*

*44037 Unlawful to encourage exemption from jury duty*

*44842 Failure to provide notice or to report to work*

*44940 Sex offenses and narcotic offenses; compulsory leave of absence*

*44962-44988 Leaves of absence (certificated)*

*45190-45210 Leaves of absence (classified)*

##### GOVERNMENT CODE

*3543.2 Scope of representation*

## **LEAVES**

### **Disability Leave**

The Governing Board may grant a leave of absence to any certificated employee who has applied for disability benefits, not to exceed 30 days beyond final determination of the employee's eligibility for disability benefits by the State Teachers' Retirement System. If the employee is determined to be eligible, that leave shall be extended for the term of the disability, but not more than 39 months. (Education Code 44986)

### **Return to Service After Leaves**

By May 30 of each school year, the clerk or secretary of the Board may request any certificated employee on leave of absence to notify the district, in the manner described in Education Code 44842, of his/her intention to remain in service with the district the following school year. (Education Code 44842)

Following a request by the district to give notice in the manner described in Education Code 44842, an employee who is on leave of absence for 20 or more consecutive working days after April 30 of any school year may have his/her employment terminated if: (Education Code 44842)

1. The employee, without good cause, fails to notify the district by July 1 that he/she intends to remain in service the following school year.
2. The employee, without good cause and without being granted a leave of absence, fails to report for duty at the beginning of the next school year for 20 consecutive days after being notified at least five days in advance of the time and place at which to report to work.

*(cf. 4117.4 - Dismissal)*

*(cf. 4218 - Dismissal/Suspension/Disciplinary Action)*

### **Use of Leaves by Classified Employees**

A classified employee may interrupt or terminate vacation leave in order to begin another type of paid leave without a return to active service, as long as the employee provides adequate notice and relevant supporting information regarding the basis for such interruption or termination. (Education Code 45200)

approved: July 10, 2001  
**Certificated Personnel**

Palermo, California  
AR 4161.1(a)  
4361.1

## **PERSONAL ILLNESS/INJURY LEAVE**

Full-time certificated employees are entitled to 10 days leave of absence for personal illness or injury (sick leave) per school year, with full pay. Employees working less than five days per week shall be granted comparable sick leave in proportion to the time they work. (Education Code 44978)

*(cf. 4161/4261 - Leaves)*  
*(cf. 4161.9/4261.9/4361.9 - Catastrophic Leave Program)*  
*(cf. 4361 - Leaves)*

An employee may take sick leave at any time during the school year, even if credit for sick leave has not yet been accrued. (Education Code 44978)

An employee who does not complete a given year of service shall be charged for any unearned sick leave used as of the date of termination.

Unused days of sick leave shall be accumulated from year to year without limitation. (Education Code 44978)

Any certificated employee who leaves the district after at least one year of employment and accepts a certificated position in another district, county office of education or community college district within one year shall have transferred with him/her the total amount of accumulated sick leave. The district may not require new employees to waive their leave accumulated in a previous district. (Education Code 44979, 44980)

Sick leave may be used by certificated employees for:

1. Cases of temporary inability to perform duties because of illness, accident or quarantine, whether or not the cause of absence arises out of and in the course of employment (Education Code 44964)

*(cf. 4157.1/4257.1/4357.1 - Work-Related Injuries)*

2. Absences due to pregnancy, miscarriage, childbirth and recovery (Education Code 44965, 44978)

*(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)*

3. Cases of personal necessity (Education Code 44981)

*(cf. 4161.2/4261.2/4361.2 - Personal Leaves)*

4. Medical and dental appointments, in increments of not less than one hour
5. Cases of industrial accidents or illnesses when leave granted specifically for that purpose has expired (Education Code 44984)

*(cf. 4161.11/4361.11 - Industrial Accident/Illness Leave)*

AR 4161.1(b)  
4361.1

## **PERSONAL ILLNESS/INJURY LEAVE (continued)**

An employee shall notify the district of his/her need to be absent as soon as such need is known, so that substitute services may be secured. This notification shall include an estimate of the expected duration of absence. If the absence becomes longer than estimated, the employee shall so notify the district. If the duration of absence becomes shorter than estimated, the employee shall notify the district not later than 2 p.m. of the day preceding the day on which he/she intends to return to work. If failure to so notify the district results in a substitute being secured, the cost of the substitute shall be deducted from the employee's pay.

*(cf. 4121 - Temporary/Substitute Personnel)*

### **Sick Leave Beyond 10 Days**

When a certificated employee has exhausted all available sick leave, including all accumulated sick leave, and continues to be absent from his/her duties due to illness or accident for an additional period up to five school months, the employee shall receive his/her regular salary minus the actual cost of a substitute to fill the position. If the district has made every reasonable effort to secure the services of a substitute and has been unable to do so, the amount that might have been paid to a substitute shall be deducted from the employee's salary. (Education Code 44977)

The sick leave, including accumulated sick leave, and the five-month period shall run consecutively. (Education Code 44977)

An employee shall not be provided more than one five-month period per illness or accident. However, if the school year ends before the five-month period is exhausted, the employee may take the balance of the five-month period in a subsequent school year. (Education Code 44977)

After five months, if a certificated employee has exhausted all available sick leave and is not medically able to resume his/her duties, the employee shall be placed either in another position or on a reemployment list. If the employee is on probationary status, he/she shall be placed on the reemployment list for 24 months beginning at the expiration of the five-month period provided pursuant to Education Code 44977; if on permanent status, the employee shall be placed on the reemployment list for 39 months. If during this time the employee becomes medically able, he/she shall be returned to employment in a position for which he/she is credentialed and qualified. (Education Code 44978.1)

*(cf. 4116 - Probationary/Permanent Status)*

## **PERSONAL ILLNESS/INJURY LEAVE (continued)**

### **Verification Requirements**

After any absence due to illness or injury, the employee shall verify the absence by submitting a completed and signed district absence form to the District Personnel Office.

The Superintendent may, at any time, require additional written verification by the employee's physician or practitioner. Such verification shall be required whenever an employee's absence record shows chronic absenteeism or a pattern of absences immediately before or after weekends and/or holidays or whenever clear evidence indicates that an absence is not related to illness or injury.

The Superintendent may require an employee to visit a physician selected by the district and at district expense in order to receive a report on the medical condition of the employee. The report shall include a statement as to the employee's need for further leave of absence and a prognosis for when the employee will be able to return to work. If the report concludes that the employee's condition does not warrant continued absence, the Superintendent may, after giving notice to the employee, deny further leave.

Before returning to work, an employee who has been absent for surgery, hospitalization or extended medical treatment shall submit a letter from his/her physician stating that he/she is able to return and stipulating any recommended restrictions or limitations.

*(cf. 4032 - Reasonable Accommodation)*

*(cf. 4113.4/4213.4/4313.4 - Temporary Modified/Light-Duty Assignment)*

#### *Legal Reference:*

##### EDUCATION CODE

*44964 Power to grant leave of absence in case of illness, accident or quarantine*

*44965 Granting of leaves of absence for pregnancy and childbirth*

*44976 Transfer of leave rights when school is transferred to another district*

*44977 Salary deduction during absence from duties*

*44978 Provisions for sick leave of certificated employees*

*44979 Transfer of accumulated sick leave to another district*

*44980 Transfer of accumulated sick leave to a county office of education*

*44981 Leave of absence for personal necessity*

*44983 Exception to sick leave when district adopts specific rule*

*44986 Leave of absence for disability allowance applicant*

##### CODE OF REGULATIONS, TITLE 5

*5601 Transfer of accumulated sick leave*

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**Certificated Personnel**

Palermo, California  
AR 4161.11(a)  
4361.11

## **INDUSTRIAL ACCIDENT/ILLNESS LEAVE**

In each fiscal year, allowable leave for certificated employees for any single industrial accident or illness shall be for 60 days during which the schools of the district are in session or when the employee would otherwise have been performing work for the district.

*(cf. 4113.4/4213.4/4313.4 - Temporary Modified/Light-Duty Assignment)*

*(cf. 4157.1/4257.1/4357.1 - Work-Related Injuries)*

*(cf. 4157.2/4257.2/4357.2 - Ergonomics)*

*(cf. 4161/4261 - Leaves)*

*(cf. 4361 - Leaves)*

Allowable industrial accident/illness leave shall not accumulate from year to year. (Education Code 44984)

When a certificated employee is absent from his/her duties because of an industrial accident or illness: (Education Code 44984)

1. Industrial accident or illness leave shall start on the first day of absence.
2. The employee shall be paid such portion of the salary due for any month in which the absence occurs as, when added to the temporary disability indemnity under Division 4 or 4.5 of the Labor Code, will result in a payment to the employee of not more than his/her full salary.
3. Industrial accident or illness leave shall be reduced by one day for each day of authorized absence, regardless of a temporary disability indemnity award.
4. When an industrial accident or illness leave overlaps into the next fiscal year, the employee is entitled to only the amount of unused leave due the employee for the same illness or injury.

Upon expiration of allowable leave for an industrial accident or illness, the employee may use personal illness and injury leave. If the employee continues to receive temporary disability indemnity, he/she may elect to take as much of the accumulated sick leave which, when added to his/her temporary disability indemnity, will result in a payment to the employee of not more than the employee's full salary. (Education Code 44984)

*(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)*

During any paid leave of absence, the employee may endorse to the district the temporary disability indemnity checks received on account of his/her industrial accident or illness. In those cases, the district shall issue appropriate salary warrants for payment of the employee's salary, and shall deduct normal retirement, other authorized contributions, and the temporary disability indemnity, if any, actually paid to and retained by the employee for periods covered by such salary warrants. (Education Code 44984)

**INDUSTRIAL ACCIDENT/ILLNESS LEAVE (continued)**

Any employee receiving benefits under this leave shall, during periods of injury or illness, remain within the State of California unless the Governing Board authorizes travel outside the state. (Education Code 44984)

*Legal Reference:*

EDUCATION CODE

*44977 Salary deductions during absence from duties*

*44978 Provisions for certificated employee sick leave*

*44983 Exception to sick leave*

*44984 Required rules for industrial accident and illness leave of absence*

*Management Resources:*

WEB SITES

*Department of Industrial Relations: <http://www.dir.ca.gov/DIR/OS&H/DOSH/dosh1.html>*

approved: July 10, 2001  
**All Personnel**

Palermo, California  
AR 4161.2(a)  
4261.2  
4361.2

## **PERSONAL LEAVES**

Whenever possible, employees shall request personal leaves in advance and prepare suitable lesson plans or instructions for a substitute employee.

### **Bereavement**

Employees are entitled to a leave of up to three days, or five days if out-of-state travel or travel more than 300 miles is required, upon the death of any member of the employee's immediate family. No deduction shall be made from the employee's salary, nor shall such leave be deducted from any other leave to which the employee is entitled. (Education Code 44985, 45194)

Members of the immediate family shall include: the mother, father, step-parents, aunt, uncle, niece, nephew, stepson, stepdaughter, grandmother, grandfather, or grandchild of the employee or of the employee's spouse; the employee's spouse, son, son-in-law, daughter, daughter-in-law, brother, or sister; or any relative living in the employee's immediate household. (Education Code 44985, 45194)

At his/her discretion, the Superintendent may grant additional unpaid bereavement leave.

At the employee's request, bereavement leave may be extended under personal necessity leave provisions. (Education Code 44981, 45207)

### **Personal Necessity**

Employees may use up to seven days of their accrued sick leave during each contract year for reasons of personal necessity. (Education Code 44981, 45207)

Acceptable reasons for the use of personal necessity leave include:

1. Death of a member of the immediate family when the number of days of absence exceeds the limits set by bereavement leave provisions (Education Code 44981, 45207)
2. An accident involving the employee's person or property or the person or property of a member of the employee's immediate family (Education Code 44981, 45207)
3. A serious illness of a member of the employee's immediate family

*(cf. 4161.8/4261.8/4361.8 - Family Care and Medical Leave)*

4. Required court appearance of an employee

AR 4161.2(b)  
4261.2  
4361.2

## **PERSONAL LEAVES (continued)**

Leave for personal necessity may be allowed for other reasons at the discretion of the Superintendent. However, no such leave shall be granted for purposes of personal convenience, for the extension of a holiday or vacation, or for matters which can be taken care of outside of working hours. The Superintendent shall have final discretion as to whether a request reflects true personal necessity.

The employee shall request advance permission for personal necessity leave, except in urgent situations such as the death or serious illness of a member of the immediate family or an accident involving the employee's person or property or the person or property of a member of the immediate family.

After any absence due to personal necessity, the employee shall verify the absence by submitting a completed and signed district absence form to his/her immediate supervisor.

### **Personal Leave for a Child's School Activities**

Any employee who is a parent, guardian or grandparent having custody of one or more children in grades K-12, or attending a licensed day care facility, may use up to 40 hours of personal leave, vacation or compensatory time off each school year in order to participate in school or day care activities. Such leave shall not exceed eight hours in any month of the school year, and the employee shall give reasonable advance notice of the absence. (Labor Code 230.8)

*(cf. 1240 - Volunteer Assistance)*

If both parents of a child are employed at the same work site, this leave shall be allowed for the first parent who applies; simultaneous absence by the second parent may be granted by the Superintendent. (Labor Code 230.8)

The employee shall use existing vacation, personal leave or compensatory time off for purposes of this leave, unless otherwise provided by a collective bargaining agreement entered into before and in effect on January 1, 1995. (Labor Code 230.8)

Upon request, the employee shall provide documentation from the school or licensed day care facility to prove that he/she participated in school or licensed day care facility activities at the time of the leave. (Labor Code 230.8)

### **Legal and Civic Duties**

Employees shall be granted leave with pay to appear in court as jurors and may be granted leave to appear in court as witnesses other than litigants. (Education Code 44036, 44037)

AR 4161.2(c)

4261.2

4361.2

## **PERSONAL LEAVES (continued)**

The employee shall turn over to the district any jury or witness fees received. (Education Code 44036)

Notices, summons and subpoenas for court appearances shall be submitted to the district office when requesting leave.

Employees shall be granted up to 20 days of paid leave per year for service performed within the state on any boards, commissions, committees or groups authorized by Education Code 44987.3, provided that the service is in the state of California, the organization informs the district in writing of the service and the organization reimburses the district, upon the district's request, for compensation paid to the employee's substitute and for actual related administrative costs. (Education Code 44987.3)

### *Legal Reference:*

#### EDUCATION CODE

*44036-44037 Leaves of absence for judicial and official appearances*

*44963 Power to grant leaves of absence (certificated)*

*44981 Leaves of absence for personal necessity (certificated)*

*44985 Leave of absence due to death in immediate family (certificated)*

*44987.3 Leave of absence to serve on certain boards, commissions, etc.*

*45190 Leaves of absence and vacations (classified)*

*45194 Bereavement leave of absence (classified)*

*45198 Effect of provisions authorizing leaves of absence*

*45207 Personal necessity (classified)*

#### LABOR CODE

*230.8 Leave to visit child's school*

#### CALIFORNIA CONSTITUTION

*Article I, Section 8 Religious discrimination*

#### UNITED STATES CODE, TITLE 42

*2000d-2000d-7 Title VII, Civil Rights Act of 1964*

#### COURT DECISIONS

*Rankin v. Commission on Professional Competence (1988) 24 Cal. 3d 167*

Regulation  
approved: July 10, 2001  
**Certificated Personnel**

**PALERMO UNION SCHOOL DISTRICT**  
Palermo, California  
AR 4161.3(a)

## **PROFESSIONAL LEAVES**

The Governing Board may grant a leave of absence of up to one year to certificated employees for the purpose of permitting study or travel which will benefit the schools and students of the district. (Education Code 44966)

*(cf. 4161/4261 - Leaves)*

*(cf. 4361 - Leaves)*

To be eligible for a leave of absence for these purposes, the employee must have served in the district for at least seven consecutive years preceding the leave. No more than one such leave of absence shall be granted in each seven-year period. No other types of leaves shall be considered a break in service for purposes of meeting this requirement and the period of such absence shall not be included as service in computing the seven consecutive years of service required for a professional leave. (Education Code 44967)

The Board may require that such leaves of absence be taken in separate six-month periods or separate quarters as long as the total leave is completed within three years. Any period of service by the employee between the separate periods of leave shall comprise a part of the service required for a subsequent leave of absence. (Education Code 44966)

Every employee granted a leave of absence for these purposes may be required to perform such services during the leave as the Board and employee agree upon in writing. (Education Code 44968)

Compensation during the leave shall be paid in the manner authorized by Education Code 44969 and 44970.

Unless the employee agrees in writing with the Board not to receive compensation during the leave, the employee shall receive such compensation during the leave as the Board and employee agree upon in writing, which shall be not less than the difference between the employee's salary and the salary of a substitute employee. In lieu of such a difference, the Board may pay one-half of the salary of the employee or any additional amount up to and including the full salary of the employee. (Education Code 44968, 44968.5)

As a condition to being granted such leave, the employee shall agree in writing to render service in the district following his/her return for a period equal to twice the period of the leave. (Education Code 44969)

At the end of the leave, the employee shall be reinstated in the position he/she held when the leave was granted. (Education Code 44973)

*Legal Reference: (see next page)*

**PROFESSIONAL LEAVES** (continued)

*Legal Reference:*

EDUCATION CODE

*44966-44973 Leaves of absence for study or travel*

Regulation  
approved: July 10, 2001  
**All Personnel**

**PALERMO UNION SCHOOL DISTRICT**  
Palermo, California  
AR 4161.5(a)  
4261.5  
4361.5

**MILITARY LEAVE**

Any employee who is a member of the State Military Reserve is entitled to a temporary military leave of absence without pay while engaged in military training, drills, unit training assemblies or similar inactive duty, not to exceed 15 calendar days each year. (Military and Veterans Code 395.9)

*(cf. 4161/4261 - Leaves)*

*(cf. 4361 - Leaves)*

Military leave with pay for the first 30 calendar days of the absence shall be granted to the following employees:

1. Members of the reserves, National Guard or Naval Militia on temporary leave of absence for active military training, encampment, naval cruises, special exercises, or like activity, provided that: (Military and Veterans Code 395, 395.01)
  - a. The ordered duty does not exceed 180 calendar days, including time involved in going to and returning from such duty and that paid military leave is not required for periods of inactive military duty.
  - b. The employee has been an employee of the district for at least one year immediately prior to the day the military leave begins. All military service shall count toward the period of time that the employee has been employed by the district.
2. An employee who has served with the district for at least one year who is ordered, on other than a temporary basis, into active military duty as a member of the reserves, National Guard or Naval Militia or who otherwise is inducted, enlisted, entered, ordered or are called into active duty as a member of the armed forces of the United States (Military and Veterans Code 395.02)
3. Members of the National Guard, however long employed by the district, who are engaged in military or naval duty during states of extreme emergency as declared by the Governor or during such time as the National Guard may be on active duty in situations described in Military and Veterans Code 146, provided that the leave does not exceed the duration of the emergency (Military and Veterans Code 395.05)

The 30-day pay entitlement is the maximum allowance which shall be paid for any one military leave or during any one fiscal year for employees on military leave as provided in items #1-2 above. (Military and Veterans Code 395.03)

For classified employees, 30 days' compensation shall be one month's salary. (Education Code 45059)

AR 4161.5(b)  
4261.5  
4361.5

## **MILITARY LEAVE** (continued)

For certificated employees, 30 days' compensation shall be one-tenth of the employee's annual salary. (Education Code 45059)

Teachers shall not be entitled to compensation during non-teaching, non-paying months of the year.

Employees on temporary military leave or on leave in states of extreme emergency shall receive the same vacation, sick leave and holiday privileges to which they would be entitled if they had not been on military leave. (Military and Veterans Code 395, 395.05)

*(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)*  
*(cf. 4261.1 - Personal Illness/Injury Leave)*

Whenever the United States is engaged in war or whenever the Governor proclaims that an emergency exists in preparing for the national defense, employees may take a military leave of absence for the duration of the war or until the Governor proclaims that the emergency no longer exists, and 90 days thereafter, or for 90 days after the termination of such service. (Military and Veterans Code 395.4)

Absence on military leave shall not affect the classification of any certificated employee. In the case of a probationary employee, the period of such absence shall not count as part of the service required to obtain permanent status, but shall not be construed as a break in the continuity of service for any purpose. (Education Code 44800)

*(cf. 4116 - Probationary/Permanent Status)*

Within six months after an employee honorably leaves military service or has been placed on inactive duty, the employee shall be entitled to return to his/her position at the salary to which he/she would otherwise have been entitled. If a probationary employee was employed by the district under a lawful contract for at least one year, he/she shall be entitled to return to such position for the remainder of the period provided in the contract. (Education Code 44800)

If the employee's previous position has been abolished, he/she shall be reinstated in a position of like seniority, status and pay if such position exists or to a comparable vacant position for which he/she is qualified. (Military and Veterans Code 395.1)

*Legal Reference: (see next page)*

AR 4161.5(c)  
4261.5  
4361.5

## MILITARY LEAVE (continued)

### *Legal Reference:*

#### EDUCATION CODE

44800 *Effect of active military service on status of employees*

45059 *Employee ordered to military/naval duty - computation of salary*

#### GOVERNMENT CODE

18540 *Definition of armed forces*

18540.3 *Recognized military service*

#### MILITARY AND VETERANS CODE

146 *Events justifying calling of militia into active service*

389 *Definition of temporary military leave*

395 *Temporary military leave; public employees*

395.01 *Compensation of public employees on temporary military leave*

395.02 *Salary while absent on military leave other than temporary*

395.03 *Return to employment after termination of active military service*

395.05 *Military duty during state of extreme emergency*

395.1 *Public employees; return to position after active service*

395.2 *Noncertificated employees; return to position after active service*

395.3 *Resignation to enter military service, return to employment*

395.4 *Length of leave in case of war or national emergency*

395.9 *Unpaid leave for inactive duty*

#### COURT DECISIONS

*Wright v. City of Santa Clara* (1989) 213 Cal. App. 3d 1503

*Bowers v. San Buenaventura* (1977) 75 Cal. App. 3d 65

#### ATTORNEY GENERAL OPINIONS

77 *Ops. Cal. Atty. Gen.* 209 (1994)

69 *Ops. Cal. Atty. Gen.* 185 (1986)

63 *Ops. Cal. Atty. Gen.* 924 (1978)

19 *Ops. Cal. Atty. Gen.* 132 (1952)

18 *Ops. Cal. Atty. Gen.* 178 (1951)

Regulation  
approved: July 10, 2001  
**All Personnel**

**PALERMO UNION SCHOOL DISTRICT**  
Palermo, California  
AR 4161.8(a)  
4261.8  
4361.8

## **FAMILY CARE AND MEDICAL LEAVE**

The district shall not refuse to hire and shall not discharge, fine, suspend, expel or discriminate against any employee because he/she exercises the right to family care leave or because he/she gives information or testimony related to his/her or another person's family care leave in an inquiry related to family leave rights. (29 USC 2615; Government Code 12945.2)

### **Definitions**

"Child" means a biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis as long as the child is under 18 years of age or an adult dependent child. (29 USC 2611; Government Code 12945.2)

"Parent" means a biological, foster or adoptive parent, a stepparent, a legal guardian, or another person who stood in loco parentis to the employee when the employee was a child. Parent does not include a spouse's parents. (CFR 825.122; CCR 7297.0) (29 USC 2611; Government Code 12945.2)

"Eligible employee" means an employee who has at least 12 months of service with the district and who has at least 1,250 hours of service with the district during the previous 12-month period. *Full-time teachers* are deemed to meet the 1,250 hours of service requirement. (29 USC 2611; 29 CFR 825.110; Government Code 12945.2)

"Full-time teacher" means an employee whose principal function is to teach and instruct students in a class, a small group, or individual setting and includes athletic coaches, driving instructors, special education assistants and signers for the hearing impaired. The term does not include teacher assistants or aides, counselors, psychologists, curriculum specialists or other primarily noninstructional employees. (29 CFR 825.600)

Serious health condition" means an illness, injury, impairment or physical or mental condition that involves either of the following: (29 USC 2611; Government Code 12945.2)

1. Inpatient care in a hospital, hospice or residential health care facility.
2. Continuing treatment or continuing supervision by a health care provider, including one or more of the following:
  - a. A period of incapacity of more than three consecutive full days
  - b. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition

- c. For purposes of leave under the Family and Medical Leave Act (FMLA), any period of incapacity due to pregnancy or for prenatal care

AR 4161.8(b)

4261.8

**FAMILY CARE AND MEDICAL LEAVE (continued)**

4361.8

- d. Any period of incapacity which is permanent or long term due to a condition for which treatment may not be effective
- e. Any period of absence to receive multiple treatments, including recovery, by a health care provider

“Spouse” means a partner in marriage as defined in Family Code 300 or 1 USC 7. In addition, for purposes of rights under the California Family Rights Act (CFRA), a registered domestic partner shall have the same rights, protections, and benefits as a spouse and protections provided to a spouse's child shall also apply to a child of a registered domestic partner. (29 CFR 825.122; Family Code 297.5; 2 CCR 7297.0)

**Eligibility**

Any eligible employee who has served the district more than one continuous year shall be eligible to take unpaid family care and medical leave under the provisions of state and federal law. The district may deny family care and medical leave to part-time employees who worked fewer than 500 hours during the previous year. (29 USC 2611; Government Code 12945.2; 29 CFR 825.110; 2 CCR.7297.0)

For eligibility purposes, full-time teachers are deemed to meet the 500 hour test. (29 CFR 825.110)

Family care and medical leave may be used for the following reasons: (29 USC 2612; Government Code 12945.2; 29 CFR 825.112; Family Code 297.5)

1. Because of the birth of the employee's child, and in order to care for the child or placement of a child with the employee in connection with the adoption or foster care of the child by the employee.
2. Because of the placement of a child with the employee for foster care or in connection with the employee's adoption of the child.
3. In order to care for the employee's child, parent or spouse with a serious health condition.
4. Because of the employee's own serious health condition which makes the employee unable to perform the functions of his/her job, except for leave taken for disability on account of pregnancy, childbirth or related medical conditions.

5. To care for a covered servicemember with a serious injury or illness if the employee is the spouse, child, parent, or designated next of kin of the servicemember.

AR 4161.8(c)

4261.8

**FAMILY CARE AND MEDICAL LEAVE (continued)**

4361.8

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

The district shall not interfere with, restrain, or deny the exercise of any right provided to an eligible employee under the law. Also, the district shall not discharge or discriminate against any employee for opposing any practice made unlawful by, or because of, his/her involvement in any inquiry or proceeding related to the family care and medical leave. (29 USC 2615; Government Code 12945.2)

*(cf. 4030 - Nondiscrimination in Employment)*

**Requests, Advance Notice and Certification**

The employee shall give the district at least 30 days' written advance notice of his/her need for family care and medical leave and the anticipated timing and duration of the leave. The employee need not expressly assert or mention FMLA/CFRA to satisfy this requirement; however, he/she must state the reason the leave is needed (e.g., birth of child, medical treatment). If more information is necessary to determine whether the employee is eligible for family care and medical leave, the Superintendent or designee shall inquire further and obtain the necessary details of the leave to be taken. (2 CCR 7297.4) Based on the information provided by the employee or his/her spokesperson, the Superintendent or designee shall designate the leave, paid or unpaid, as FMLA/CFRA qualifying leave and shall give notice of such designation to the employee. (2 CCR 7297.4) If the employee learns of the need for this leave fewer than 30 days in advance, he/she shall provide such notice as soon as practicable. (29 USC 2612; Government Code 12945.2)

When the need for the leave is foreseeable based on an expected birth, placement for adoption or foster care, or planned medical treatment for a serious health condition of the employee or a family member, the employee shall provide the district with at least 30 days advance notice before the leave.

If leave is needed for a planned medical treatment or supervision, the employee shall make a reasonable effort to schedule the treatment or supervision to avoid disruption of district operations. This scheduling shall be subject to the health care provider's approval. (29 USC 2612; Government Code 12945.2)

AR 4161.8(d)

4261.8

**FAMILY CARE AND MEDICAL LEAVE (continued)**

4361.8

When requesting family care and medical leave because of a serious health condition, the request shall be supported by a certification from the health care provider of the person requiring care. This certification shall include the following: (29 USC 2613; Government Code 12945.2; 2 CCR 7297.0)

1. The date on which the serious health condition began.
2. The probable duration of the condition.
3. If the employee is requesting leave to care for a child, spouse or parent who has a serious health condition, the health care provider's certification of both of the following:
  - a. Estimated amount of time the health care provider believes the employee needs to care for the child, parent or spouse.
  - b. Statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the child, parent or spouse.
4. If the employee is requesting leave because of his/her own serious health condition, the health care provider's certification that due to the serious health condition, the employee is unable to perform the functions of his/her job .
5. If the employee is requesting leave for intermittent treatment or is requesting leave on a reduced leave schedule for planned medical treatment, a statement of the medical necessity for the leave, the dates on which treatment is expected to be given, the duration of such treatment, and the expected duration of the leave

At the time of the employee's request for leave or within five business days, the Superintendent or designee shall request that the employee provide certification of the need for leave. Upon receiving the district's request, the employee shall provide the certification within 15 days, unless either the Superintendent or designee provides additional time or it is not practicable under the particular circumstances, despite the employee's diligent, good faith efforts. (29 CFR 825.305; 2 CCR 7297.4)

When the employee has provided sufficient medical certification to enable the district to determine whether the employee's leave request is FMLA-eligible, the district shall notify the

employee within five business days whether the leave is FMLA-eligible. The district may also retroactively designate leave as FMLA/CFRA as long as there is no individualized harm to the employee. (29 CFR 825.301)

AR 4161.8(e)

4261.8

**FAMILY CARE AND MEDICAL LEAVE (continued)**

4361.8

The health care provider's certification need not identify the serious health condition involved. When the employee is requesting leave because of his/her own serious health condition, this information may be included at the employee's option. (2 CCR 7297.0)

If additional leave is needed when the time estimated by the health care provider expires, the district may require the employee to provide recertification as specified above. (29 USC 2613; Government Code 12945.2)

If the employee is requesting leave for intermittent treatment or is requesting leave on a reduced leave schedule for planned medical treatment, the certification must also state the medical necessity for the leave, the dates on which treatment is expected to be given, the duration of such treatment, and the expected duration of the leave. (29 USC 2613)

If the district has reason to doubt the validity of a certification that accompanies a request for leave, the district may challenge the certification and require the employee to obtain, at district expense, a second opinion from a district-approved health care practitioner. If the second opinion is contrary to the first, the district may require, again at district expense, that the employee obtain a third medical opinion from a third health care practitioner approved by both the employee and the district. The opinion of the third health care provider shall be final and binding. (29 USC 2613; Government Code 12945.2)

If additional leave is needed when the time estimated by the health care provider expires, the district may require the employee to provide recertification in the manner specified in items #1-5 above. (29 USC 2613; Government Code 12945.2)

**Terms of Leave**

Except in the case of leave to care for a covered servicemember, family care and medical leave shall not exceed 12 work weeks during any 12-month period. (29 USC 2612; 2 CCR 7297.3)

This 12-month period shall coincide with the fiscal year. (29 CFR 825.200)

In the case of leave taken pursuant to the FMLA for the purpose of caring for a covered servicemember with a serious injury or illness, an eligible employee shall be entitled to a total of 26 work weeks of family care and medical leave during a single 12-month period measured forward from the date an employee's first FMLA leave to care for the covered servicemember begins.

AR 4161.8(f)  
4261.8  
4361.8

**FAMILY CARE AND MEDICAL LEAVE (continued)**

Leave taken pursuant to the California Family Rights Act shall run concurrently with leave taken pursuant to the federal Family and Medical Leave Act (FMLA), except in the following circumstances:

1. Leave taken to care for a registered domestic partner or a child of a domestic partner. Such leave shall count as leave under the CFRA only. (Family Code 297.5)
2. Leave taken under the FMLA for disability on account of pregnancy, childbirth, or related medical conditions. In addition to federal family care and medical leave, an employee may be entitled to take California pregnancy disability leave of up to four months. During the otherwise unpaid portion of pregnancy disability leave, the employee shall may use any accrued vacation, sick time or other paid leave. Such FMLA leave shall run concurrently with any pregnancy disability leave taken by the employee, except that CFRA leave shall not commence until the expiration of the pregnancy disability leave. (Government Code 12945, 12945.2; 2 CCR 7297.6)

*(cf. 4161/4261 - Leaves)*  
*(cf. 4161.114361.1 - Personal Illness/Injury Leave)*  
*(cf. 4261.1 Personal Illness/Injury Leave)*

Leave taken for the birth or placement of a child must be concluded within one year of the birth or placement of the child. Such leave does not have to be taken in one continuous period of time. The basic minimum duration of the leave shall be two weeks. However, the district shall grant a request for leave of less than two weeks' duration on any two occasions. (2 CCR 7297.3)

If both parents of a child work for the district, their family care and medical leave related to the birth or placement of the child shall be limited to a total of 12 weeks. (Government Code 12945.2)

During the period of family care and medical leave, the district shall require the employee to use his/her accrued vacation leave, other accrued time off, and any other paid or unpaid time off negotiated with the district. Accrued sick leave shall be used when the purpose of the family care and medical leave is one for which sick leave may be taken pursuant to collective bargaining agreements and/or Board policy. During pregnancy disability leave, the employee may elect to use her accrued vacation leave or other accrued time off. (Government Code 12945.2)

*(cf. 414114241 - Collective Bargaining Agreement)*

AR 4161.8(g)  
4261.8  
4361.8

## **FAMILY CARE AND MEDICAL LEAVE (continued)**

### **Instructional Employees: Leaves Near the End of the Term**

The district may require an instructional employee to continue taking a requested leave until the end of the term in any of the following situations: (29 USC 2618)

1. If the instructional employee begins a leave of three or more weeks' duration more than five weeks before the end of a term and would subsequently return to work during the last three weeks of the term.
2. If the instructional employee, for reasons other than his/her own serious health condition, begins a leave of more than two weeks' duration during the period that begins five weeks before the end of the term and would subsequently return to work during the last two weeks of the term.
3. If the instructional employee, for reasons other than his/her own serious health condition, begins a leave of more than five days' duration during the period that begins three weeks before the end of the term

### **Intermittent/Reduced Work Schedule Leave**

Leave related to the serious health condition of the employee or his/her child, parent or spouse may be taken intermittently or on a reduced work schedule when medically necessary. In such a case, the district may limit leave increments to the shortest period of time that the payroll system uses to account for absences or use of leave. The employee may also be required to transfer temporarily to a different job that has the equivalent pay and benefits but could better accommodate recurring periods of leave. The employee must be qualified for the position, but the position does not need to have equivalent duties. Transfer to an alternative position may include altering an existing job to better accommodate the employee's need for intermittent leave or a reduced work schedule. (2 CCR 7297.3)

*(cf. 4113.414213.414313.4 - Temporary Modified/Light-Duty Assignment)*

### **Fitness for Duty Upon Return to Work**

Upon expiration of leave taken for his/her own serious health condition, an employee shall present certification from his/her health care provider that he/she is able to resume work.

*(cf. 4112.4/4212.4/4312.4 - Health Examinations)*

The certification from the employee's health care provider shall address the employee's ability to perform the essential functions of his/her job.

	AR 4161.8(h)
	4261.8
<b>FAMILY CARE AND MEDICAL LEAVE (continued)</b>	4361.8

### **Maintenance of Benefits**

During the period of family care and medical leave, the employee shall continue to be entitled to participate in the district's medical, dental and vision plan. (29 U.S.C 2614; Government Code 12945.2)

If the employee fails to return from leave after the leave period has expired for a reason other than the continuation, recurrence or onset of a serious health condition or other circumstances beyond the employee's control, the employee shall be required to reimburse any health premiums paid by the district during the period of leave. (Government Code 12945.2)

The employee shall also continue to be entitled to participate in life, disability and accident insurance plans, pension and retirement plans, supplemental unemployment benefit plans, and/or any other employee welfare benefit plan to the same extent and under the same conditions as apply to an unpaid leave taken for any other purpose. In the absence of these conditions, the employee shall continue to be entitled to participate in these plans and the district may, at its discretion, require the employee to pay the premium for periods not covered by accrued leave. (Government Code 12945.2)

### **Maintenance of Status**

The employee shall retain his/her employee status with the district during the leave period, and the leave shall not constitute a break in service for purposes of longevity or seniority under any employee benefit plan or collective bargaining agreement. For purposes of layoff, recall, promotion, job assignment and seniority-related benefits such as vacation, the employee returning from family care and medical leave shall return with no less seniority than he/she had when the leave began. (29 USC 2614; Government Code 12945.2)

### **Reinstatement**

Upon granting an employee's request for family care and medical leave, the district shall guarantee to reinstate the employee in the same or a comparable position when the leave ends. (29 USC 2614; Government Code 12945.2)

The district may refuse to reinstate an employee returning from leave to the same or a comparable position if all of the following apply: (29 USC 2614, Government Code 12945.2)

1. The employee is a salaried "key employee" who is among the highest paid 10 percent of those district employees who are employed within 75 miles of the employee's worksite.

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**FAMILY CARE AND MEDICAL LEAVE (continued)**

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2. The refusal is necessary to prevent substantial and grievous economic injury to district operations.
3. The district informs the employee of its intent to refuse reinstatement at the time it determines that the refusal is necessary, and the employee fails to immediately return to service.

An employee who takes leave has no greater right to reinstatement or to other benefits and conditions than if he/she had been continuously employed during the leave period. If the district reduces its work force during the leave period and the employee is laid off for legitimate reasons at that time, he/she is not entitled to reinstatement, provided the district has no continuing obligations under a collective bargaining agreement or otherwise. (29 CFR 825.216)

*(cf. 4117.3 - Personnel Reduction)*

*(cf. 4217.3 - Layoff/Rehire)*

*(cf. 4317.3 - Personnel Reduction)*

### **Military Caregiver Leave**

The district shall grant up to a total of 26 work weeks of leave during a single 12-month period, measured forward from the first date of leave taken, to an eligible employee to care for a covered servicemember with a serious illness or injury. In order to be eligible for such military caregiver leave, an employee must be the spouse, son, daughter, parent, or next of kin of the covered servicemember. This 26-week period is not in addition to the up to 12-weeks of leave that may be taken for other FMLA qualifying reasons, but rather is inclusive of such 12 weeks. (29 USC 2611, 2612; 29 CFR 825.127)

“Covered servicemember” means a current member, or member who is on the temporary disability retired list, of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty while on active duty for which he/she is undergoing medical treatment, recuperation, or therapy; is otherwise in outpatient status; or is otherwise on the temporary disability retired list for that injury or illness. (29 USC 2611, 2612; 29 CFR 825.127)

“Son or daughter of a covered servicemember” means the biological, adopted, or foster child, stepchild, legal ward, or a child for whom the covered servicemember stood in loco parentis, and who is of any age. (29 CFR 825.127)

“Parent of a covered servicemember” means the covered servicemember's biological, adopted, step or foster parent, or any other individual who stood in loco parentis to the covered servicemember (except “parents in law”). (29 CFR 825.127)

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**FAMILY CARE AND MEDICAL LEAVE (continued)**

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“Next of kin” means the nearest blood relative to that individual, or as designated in writing by the covered servicemember. (29 USC 2611, 2612)

“Outpatient status” means the status of a member of the Armed Forces assigned to a military medical treatment facility as an outpatient or a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients. (29 USC 2611; 29 CFR 825.127)

“Serious injury or illness” means an injury or illness incurred by the member in the line of duty while on active duty in the Armed Forces that may render the member medically unfit to perform the duties of the member's office, grade, rank, or rating. (29 USC 2611; 29 CFR 825.127)

The employee shall provide reasonable and practicable notice of the need for the leave in accordance with the procedures in the section entitled "Request for Leave" above.

The leave may be taken intermittently or on a reduced schedule when medically necessary. An employee taking military caregiver leave in combination with other leaves pursuant to this administrative regulation shall be entitled to a combined total of 26 work weeks of leave during a single 12-month period. When both spouses work for the district and both wish to take such leave, the spouses are limited to a maximum combined total of 26 work weeks during a single 12-month period. (29 USC 2612)

During the period of military caregiver leave, the district's rule specified in "Terms of Leave" above, regarding an employee's use of his/her accrued vacation leave and other accrued paid or unpaid time off, shall apply.

**Military Family Leave Resulting from Qualifying Exigencies**

An eligible employee may take up to 12 work weeks of unpaid leave during the 12-month period established by the district while a covered military member is on active duty or call to active duty status for one or more qualifying exigencies. (29 CFR 825.126)

“Covered military member” means the employee's spouse, son, daughter, or parent on active duty or call to active duty status. *Active duty or call to active duty status* means a member of the National Guard or Reserves who is under a call or order to active duty, or has been

notified of an impending call or order to active duty, in support of a contingency operation. (29 CFR 825.126)

“Qualifying exigencies” include time needed to (1) address issues arising from short notice deployment (up to seven calendar days from the date of receipt of call or order of short notice

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**FAMILY CARE AND MEDICAL LEAVE** (continued)

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deployment); (2) attend military events and related activities, such as any official ceremony or family assistance program related to the active duty or call to active duty status; (3) arrange childcare or attend school activities arising from the active duty or call to active duty, such as arranging for alternative childcare, enrolling or transferring a child to a new school, or attending meetings; (4) make or update financial and legal arrangements to address a covered military member's absence; (5) attend counseling provided by someone other than a health care provider; (6) spend time (up to five days of leave per instance) with a covered military member who is on short-term temporary rest and recuperation leave during deployment; (7) attend to certain post-deployment activities, such as arrival ceremonies or reintegration briefings; and (8) address any other event that the employee and district agree is a qualifying exigency. (29 CFR 825.126)

The employee shall provide the Superintendent or designee with notice of the need for the qualifying exigency leave as soon as practicable, regardless of how far in advance such leave is foreseeable. (29 CFR 825.302)

The employee's qualifying exigency leave may be taken on an intermittent or reduced leave schedule basis. (29 CFR 825.302)

During the period of qualified exigency leave, the district's rule specified in "Terms of Leave" above, regarding an employee's use of his/her accrued vacation leave and any other accrued paid or unpaid time off, shall apply.

## **Notifications**

In accordance with law, the district shall notify employees of their right to request family care and medical leave. Separate notices about federal and state law related to family care and medical leave shall be posted in a conspicuous place. Information about employee rights and obligations related to such leaves shall be disseminated to employee. (29 USC 2619; 2 CCR 7297.9)

1. **General Notice:** Information shall be posted in a conspicuous place on district premises or electronically explaining the provisions of the FMLA/CFRA and information about employee rights and obligations shall be included in employee handbooks. (29 USC 2619; 2 CCR 7297.9)

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**FAMILY CARE AND MEDICAL LEAVE (continued)**

2. **Eligibility Notice:** When an employee requests leave or when the Superintendent or designee acquires knowledge that an employee's leave may be for an FMLA/CFRA qualifying reason, the Superintendent or designee shall provide notification, within five business days, to the employee of his/her eligibility to take such leave (i.e., whether the employee has met the months of employment, hours of service, and worksite requirements). (29 CFR 825.300)
  
3. **Rights and Responsibilities Notice:** Each time the eligibility notice is provided to an employee, the Superintendent or designee shall provide written notification explaining the specific expectations and obligations of the employee, including any consequences for a failure to meet those obligations. Such notice shall include, as appropriate: (29 CFR 825.300)
  - a. Notice that the leave will be counted against the employee's annual family care and medical leave entitlement.
  
  - b. Requirements for the employee to furnish medical certification of a serious health condition, serious injury or illness, or qualifying exigency arising out of active duty or call to active duty status and the consequences of failing to provide the certification
  
  - c. The employee's right to substitute paid leave, conditions related to any substitution, and whether the district requires this substitution of paid leave, conditions related to any substitution, and the employee's entitlement to take unpaid leave if the employee does not meet the conditions for paid leave.
  
  - d. Health benefit arrangements.
  
  - e. If applicable, the employee's status as a "key employee" and information related to restoration of that status.
  
  - f. The employee's right to maintenance of benefits during the leave and restoration to the same or an equivalent job upon return from leave.
  
  - g. The employee's potential liability for health benefits should the employee not return to service.

- h. The district's requirement that the employee, upon return, present medical certification to the effect that he/she is able to resume work.

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**FAMILY CARE AND MEDICAL LEAVE (continued)**

- 4. **Designation Notice:** When the Superintendent or designee has information (e.g., sufficient medical certification) to determine whether the leave qualifies as FMLA/CFRA leave, he/she shall provide written notification, within five business days, designating the leave as FMLA/CFRA qualifying or, if the leave will not be so designated, the reason for that determination. (29 CFR 825.300)

If the amount of leave needed is known, the notice shall include the number of hours, days, or weeks that will be counted against the employee's FMLA/CFRA entitlement. If it is not possible to provide that number at the time of the designation notice, notification shall be provided of the amount of leave counted against the employee's entitlement upon request by the employee and at least once in every 30-day period if leave was taken in that period. (29 CFR 825.300)

If the district requires paid leave to be substituted for unpaid family care and medical leave, the notice shall so specify. If the district requires an employee to present a fitness-for-duty certification that addresses the employee's ability to perform the essential functions of the job, the notice shall also specify.

Any time the information provided in the Designation Notice changes, the Superintendent or designee shall, within five business days, provide the employee with written notice referencing the prior notice and describing any changes to the notice. (29 CFR 825.300)

**Records**

The Superintendent or designee shall maintain records pertaining to an individual employee's use of family care and medical leave in accordance with law. (29 USC 2616; 29 CFR 825.500; Government Code 12946)

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## **FAMILY CARE AND MEDICAL LEAVE (continued)**

### *Legal Reference:*

#### FAMILY CODE

297-297.5 *Rights, protections and benefits under law; registered domestic partners*

300 *Validity of marriage*

#### GOVERNMENT CODE

12940 *Unlawful employment practices*

12945 *Pregnancy; childbirth or related medical condition; unlawful practice*

12945.1-12945.2 *California Family Rights Act*

#### CODE OF REGULATIONS, TITLE 2

7291.2-7291.16 *Sex discrimination: pregnancy and related medical conditions*

7297.0-7297.11 *Family care leave*

#### UNITED STATES CODE, TITLE 1

7 *Definition of marriage, spouse*

#### UNITED STATES CODE, TITLE 29

2601-2654 *Family and Medical Leave Act of 1993, as amended*

#### CODE OF FEDERAL REGULATIONS, TITLE 29

825.100-825.800 *Family and Medical Leave Act of 1993*

#### COURT DECISIONS

*Faust v. California Portland Cement Company*, (2007) 150 Cal.App. 4th 864

*Tellis v. Alaska Airlines*, (9th Cir., 2005) 414 F.3d 1045

### *Management Resources:*

#### FEDERAL REGISTER

*Final Rule and Supplementary Information, November 17, 2008. Vol. 73, No. 222, pages 67934-68133*

#### U.S. DEPARTMENT OF LABOR PUBLICATIONS

*Military Family Leave Provisions of the FMLA Frequently Asked Questions and Answers*

#### WEB SITES

California Department of Fair Employment and Housing: <http://www.dfeh.ca.gov>

U.S. Department of Labor, FMLA: <http://www.dol.gov/esa/whd/fmla>

Regulation  
approved: April 8, 1999  
revised: October 1, 2009

**PALERMO UNION SCHOOL DISTRICT**  
Palermo, California

**All Personnel**

BP 4161.9

4261.9

**CATASTROPHIC LEAVE PROGRAM**

4361.9

When a catastrophic illness or injury incapacitates an employee for an extended period of time and the employee has exhausted all paid leaves of absence, other employees may donate accrued vacation and/or sick leave credits to that employee under the specific requirements of the district's catastrophic leave program.

Donations made under the catastrophic leave program shall be strictly voluntary.

*(cf. 4161/4261 - Leaves)*

*(cf. 4161.1/4361.1 - Personal Illness/Injury Leave)*

*(cf. 4261.1 - Personal Illness/Injury Leave)*

*(cf. 4361 - Leaves)*

*Legal Reference:*

EDUCATION CODE

44043.5 *Catastrophic leave*

**All Personnel**

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**CATASTROPHIC LEAVE PROGRAM**

4361.9

When an employee experiences a catastrophic illness or injury which requires the employee to take time off from work for an extended period of time, and the employee has exhausted all available sick leave and other paid time off, he/she may request donations of accrued vacation or sick leave credits (up to 30 sick days). (Education Code 44043.5)

In making such a request, the employee shall provide verification of the catastrophic injury or illness. (Education Code 44043.5)

Verification shall be made by means of a letter, dated and signed by the sick or injured person's physician, indicating the incapacitating nature and probable duration of the illness or injury.

Upon determination that the employee is unable to work due to his/her own catastrophic illness or injury, any other employee, upon written notice to the Governing Board, may donate accrued vacation and/or sick leave credits to the requesting employee. Donations shall be at a minimum of eight hours, and in hour increments thereafter and may not exceed 30 days for recipient employee. (Education Code 44043.5)

All transfers of eligible leave credit shall be irrevocable. (Education Code 44043.5)

The Superintendent or designee shall ensure that all donations are confidential.

The employee who is the recipient of the donated leave credits shall use those credits within 12 consecutive months.

An employee who receives paid catastrophic leave shall use any leave credits that he/she continues to accrue on a monthly basis before receiving paid leave pursuant to this program. (Education Code 44043.5)