

**SUBJECT: CODE OF ETHICS FOR BOARD MEMBERS AND ALL DISTRICT  
PERSONNEL**

**General Provisions**

Officers and employees of the District hold their positions to serve and benefit the public, and not to obtain unwarranted personal or private gain in the exercise of their official powers and duties. The Board recognizes that, in furtherance of this fundamental principle, there is a need for clear and reasonable standards of ethical conduct. This policy establishes those standards.

The provisions of this policy are intended to supplement Article 18 of General Municipal Law Sections and any other law relating to ethical conduct of District officers and employees, and should not be construed to conflict with those authorities.

**Standards of Conduct**

The following rules and standards of conduct apply to all officers, including Board members, and employees of the District.

Gifts

No person may directly or indirectly solicit, accept, or receive any gift having a value of \$75 or more under circumstances in which it could reasonably be inferred that the gift was intended or expected to influence the individual in the performance of his or her official duties or was intended as a reward for any official action on the part of the individual. This prohibition applies to any gift, including money, services, loan, travel, entertainment, hospitality, thing or promise, or any other form.

Confidential Information

No person may disclose confidential information acquired by him/her in the course of his/her official duties or use such information to further his/her personal interest.

Conflicts of Interest

Except as permitted by law, no person may have an interest in any contract with the District when he or she, individually, or as a member of the Board, has the power or duty to: negotiate, prepare, authorize, or approve the contract or authorize or approve payment under the contract; audit bills or claims under the contract; or appoint an officer or employee who has any of these powers or duties.

Likewise, unless permitted by law, no chief fiscal officer, treasurer, or his or her deputy or employee, may have an interest in a bank or trust company designated as a depository, paying agent, registration agent, or for investment of funds of the District.

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## Personnel

### **SUBJECT: CODE OF ETHICS FOR BOARD MEMBERS AND ALL DISTRICT PERSONNEL (Con't)**

No employee, officer, or agent will participate in selecting, awarding, or administering a contract supported by a federal award if he or she has a real or apparent conflict of interest. These conflicts could arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization that employs or is about to employ any of these parties has a financial or other interest in or a tangible personal interest benefit from a firm considered for a contract. The employees, officers, and agents must neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. The District may, however, set standards for situations where the financial interest is not substantial or the gift is an unsolicited item of nominal value.

"Interest," as used in this policy, means a direct or indirect pecuniary or material benefit accruing to a District officer or employee as the result of a contract with the District. A District officer or employee will be considered to have an interest in the contract of: his or her spouse, minor children and dependents, except a contract of employment with the District; a firm, partnership or association of which he or she is a member or employee; a corporation of which he or she is an officer, director or employee; and a corporation any stock of which is owned or controlled directly or indirectly by him or her.

The provisions of the preceding four paragraphs should not be construed to preclude the payment of lawful compensation and necessary expenses of any District officer or employee in one or more positions of public employment, the holding of which is not prohibited by law.

#### Representing Others in Matters Before the District

No person may receive, or enter into any agreement, express or implied, for compensation for services rendered in relation to any matter before the District. Likewise, no one may receive, or enter into any agreement, express or implied, for compensation for services rendered in relation to any matter before the District, where the individual's compensation is contingent upon any action by the District with respect to the matter.

#### Disclosure of Interest in Contracts and Resolutions

Any District officer or employee who has, will have, or later acquires an interest in or whose spouse has, will have or later acquires an interest in any actual or proposed contract, purchase agreement, lease agreement, or other agreement, including oral agreements, with the District must publicly disclose the nature and extent of that interest in writing. The disclosure must be made when the officer or employee first acquires knowledge of the actual or prospective interest, and must be filed with the person's immediate supervisor and the Board. Any written disclosure will be made part of and included in the official minutes of the relevant Board meeting.

#### Investments in Conflict with Official Duties

No person may invest or hold any investment directly or indirectly in any financial, business, commercial, or other private transaction, that creates a conflict with his or her official duties, or that would otherwise impair his or her independence of judgment in the exercise or performance of his or her official powers or duties.

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**SUBJECT: CODE OF ETHICS FOR BOARD MEMBERS AND ALL DISTRICT  
PERSONNEL (Con't)**

Private Employment

No person may engage in, solicit, negotiate for or promise to accept private employment or render services for private interests when such employment or service creates a conflict with or impairs the proper discharge of his/her official duties.

Future Employment

No person may, after the termination of service or employment with the District, appear before the District on behalf of his or her employer in relation to any case, proceeding, or application in which he or she personally participated during the period of his or her service or employment with the District or which was under his or her active consideration while he or she was with the District.

Notice of Code of Ethics and General Municipal Law Sections 800-809

The Superintendent will ensure that a copy of this code of ethics is distributed to every District officer and employee, and that a copy of General Municipal Law Sections 800-809 is posted conspicuously in each District building. The failure to distribute this code of ethics or to post General Municipal Law Sections 800-809 will have no effect on either the duty of District officers and employees to comply with their provisions, or the ability of the District or other relevant authorities to enforce them.

**Penalties**

Any person who shall knowingly and intentionally violates any of the provisions of this code may be fined, suspended or removed from office or employment, or subject to additional or other penalties as provided by law.

**Effective Date**            This policy shall take effect immediately.

Education Law Section 410  
General Municipal Law Article 18 and Sections 800-809  
2 CFR § 200.318(c)(1)

Adoption Date    08/09/2004  
Revised:            02/26/2015  
Revised:            10/05/2016

**SUBJECT:** When committed by an employee of the School District in a position for which a teaching or school leader certificate is required, such actions or inactions will be deemed to raise a reasonable question of moral character under Part 83 of the Commissioner's Regulations. A School District employee in a position for which a teaching or school leader certificate is not required who commits an unlawful act in respect to examination and records will be subject to disciplinary action by the Board of Education in a manner consistent with New York State law and regulation.

School District employees will report to the State Education Department any known incident of testing misconduct by a certified educator or any known conduct by a non-certified individual involved in the handling, administration or scoring of state assessments in violation of New York State law. Such report will be made in accordance with directions and procedures established by the Commissioner for the purpose of maintaining the security and confidential integrity of State assessments.

The School District will not dismiss or take other disciplinary or adverse action against an employee because he/she submitted a report regarding testing misconduct to the State Education Department. Any such adverse action by an individual holding a teaching or school leader certificate will be deemed to raise a reasonable question of moral character under Part 83 of the Commissioner's Regulations and may be referred to the Office of School Personnel Review and Accountability at the State Education Department.

8 NYCRR Section 102.4

Adopted: 07/01/2014

## **SUBJECT: EQUAL EMPLOYMENT OPPORTUNITY**

The Elmira Heights Central School District is an equal opportunity employer and does not discriminate against any employee or applicant for employment in its programs and activities on the basis of race, color, national origin, sex, disability, or age. Further, the District does not discriminate on the basis of religion or creed, sexual orientation, military status, genetic status, marital status, domestic violence victim status, criminal arrest or conviction record, or any other basis prohibited by state or federal non-discrimination laws.

### **Investigation of Complaints and Grievances**

The School District will act to promptly, thoroughly, and equitably investigate all complaints, whether verbal or written, of discrimination, and will promptly take appropriate action to protect individuals from further discrimination. All such complaints will be handled in a manner consistent with the District's policies, procedures, and/or regulations regarding the investigation of discrimination and harassment complaints, including Policy #3420 -- Non-Discrimination and Anti-Harassment in the School District; Policy #6121 -- Sexual Harassment of District Personnel; Policy #6122 -- Employee Grievances; and Administrative Regulation #3420R -- Non-Discrimination and Anti-Harassment in the School District.

Additional information regarding the District's discrimination and harassment complaint and grievance procedures, including but not limited to the designation of the Civil Rights Compliance Officer, knowingly making false accusations, and possible corrective actions, can be found in Policy #3420 -- Non-Discrimination and Anti-Harassment in the School District and Administrative Regulation #3420R -- Non-Discrimination and Anti-Harassment in the School District.

### **Prohibition of Retaliatory Behavior**

The Board prohibits any retaliatory behavior directed against complainants, victims, witnesses, and/or any other individuals who participated in the investigation of a complaint of discrimination. Complaints of retaliation may be directed to the Civil Rights Compliance Officer. In the event the Civil Rights Compliance Officer is the alleged offender, the report will be directed to another Civil Rights Compliance Officer, if the District has designated another individual to serve in such a capacity, or to the Superintendent.

Where appropriate, follow-up inquiries will be made to ensure that discrimination has not resumed and that all those involved in the investigation of the discrimination have not suffered retaliation.

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## **SUBJECT: EQUAL EMPLOYMENT OPPORTUNITY (Cont'd.)**

Age Discrimination in Employment Act, 29 USC Section 621  
Americans With Disabilities Act, 42 USC Section 12101 et seq.  
Genetic Information Non-Discrimination Act of 2008 (GINA) Public Law 110-233  
Section 504 of the Rehabilitation Act of 1973, 29 USC Section 794 et seq.  
Title VI of the Civil Rights Act of 1964, 42 USC Section 2000d et seq.  
Title VII of the Civil Rights Act of 1964, 42 USC Section 2000e et seq.  
Title IX of the Education Amendments of 1972, 20 USC Section 1681 et seq.  
Civil Rights Law Section 40-c  
Civil Service Law Section 75-B  
Executive Law Section 290 et seq.  
Military Law Sections 242 and 243

Adoption Date 08/09/2004  
Revised: 06/13/2011  
Revised 02/26/2015

## **SUBJECT: SEXUAL HARASSMENT POLICY**

It is the policy of the District that all employees and students have a right to work or study in an environment free of discrimination on the basis of sex, sexual orientation, or gender identity which encompasses freedom from sexual harassment. The District has zero tolerance policy against sexual harassment of its employees or students in any form, and states that all employees as well as students at all levels of the District must avoid offensive or inappropriate sexual or sexually harassing behavior at school, on school grounds, school functions, and on school transportation and will be held responsible for ensuring that such workplace is free from sexual harassment. Specifically, the District prohibits the following:

- Unwelcome sexual advances;
- Requests for sexual favors, whether or not accompanied by promises or threats with regard to the student-teacher, student-student or employment relationship;
- Other verbal or physical conduct of a sexual nature made to any employee or student that may threaten or insinuate either explicitly or implicitly that any person's submission to or rejection of sexual advances will in any way influence any decision regarding that person's employment, evaluation, wages, advancement, assigned duties, shifts, academic performance, or any other condition of employment, academic or career development;
- Any verbal or physical conduct of a sexual nature or regarding orientation or that has the purpose or effect of substantially interfering with a person's ability to perform the individual's duties;
- Any verbal or physical conduct of a sexual nature that has the purpose or effect of creating an intimidating, hostile or offensive working or academic environment.
- Any verbal or physical conduct regarding gender or sexual orientation that has the purpose of creating a hostile or offensive working or academic environment.

Such conduct may result in disciplinary action up to and including dismissal or suspension upon instruction. Employees who are found to have engaged in sexual harassment, and supervisors who knowingly permit such behavior to continue, will be subject to discipline.

Other sexually harassing conduct in the workplace, whether physical or verbal, committed by supervisors or non-supervisory personnel or students is also prohibited. This behavior includes but is not limited to commentary about an individual's body, sexually degrading words to describe an individual, offensive comments, off color language or jokes, innuendos, and displaying sexually suggestive objects, books, magazines, photographs, cartoons or pictures.

Employees or students who have complaints of sexual harassment by anyone in the school environment, including any supervisors, co employees, students, or visitors are urged to report such conduct to the compliance officer so that the District may investigate and resolve the problem. If the complaint involves the compliance officer, or if the person for any reason is uncomfortable in dealing with the compliance officer, the employee or student may go to the Superintendent or a person appointed by the Superintendent to handle the complaint.

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## **SUBJECT: SEXUAL HARASSMENT POLICY (cont'd)**

The District will endeavor to investigate all complaints as expeditiously and as professionally as possible. Where investigations confirm the allegations, appropriate corrective action will be taken.

The District will endeavor to maintain the information provided to it in the complaint and investigation process as confidentially as possible, consistent with the laws of the State and, if applicable, the collective bargaining agreement.

Managers and supervisors are required to report any complaint that they receive, or any harassment that they observe to the Compliance Officer.

There will be no retaliation against employees or students for reporting sexual harassment or assisting the District in the investigation of a complaint.

Consistent with the Anti-Discrimination Policy the procedures for investigating a complaint of sexual harassment are as follows:

### **Section 1**

All complaints or information about suspected sexual harassment will be investigated in a timely manner. The investigation will be confidential to the extent possible, and all persons involved will be accorded due process to protect their right to a fair and impartial investigation.

The Compliance Officer will then investigate the substance of the complaint in a thorough and impartial manner. The Complainant may provide evidence or witnesses to the Compliance Office as part of the investigation. If a determination is found that sexual harassment occurred, the District will take appropriate steps to prevent further harassment from occurring and to correct the effects of said harassment if appropriate.

Further, the District prohibits retaliation against any individual filing a complaint under this policy or participating in any resulting investigation. If you believe you are being retaliated against, you should contact the District's Compliance Officer or the United States Office for Civil Rights as noted above.

The District's Compliance Officers are appointed at the annual reorganization meeting.

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**SUBJECT: SEXUAL HARASSMENT POLICY (cont'd)****Section 2****Step (a):**

The Complainant shall discuss the complaint informally with the Compliance Officer, or may file a written complaint with the Compliance Officer. The Compliance Officer will then investigate in an impartial and thorough manner the substance of the complaint in a thorough and impartial manner. The Complainant and the Respondent shall receive written notice in advance of any interview or hearing. The Complainant or Respondent may provide evidence or witnesses to the Compliance Office as part of the investigation. The Compliance Officer will take necessary steps during the investigation to ensure the Complainant's safety. The Compliance Officer will reply to the complainant and person alleged to be engaged in the harassment in writing within seven business days of the initiation of the complaint. If a determination is found that harassment occurred, the District will take appropriate steps to prevent further harassment from occurring and to correct the effects of said harassment if appropriate. If a determination is found that disciplinary action will be taken against a responding party, written notice will be provided to the Respondent containing the allegations constituting a violation.

**Step (b):**

If either party wishes to appeal the decision of the Compliance Officer, that party may submit a signed statement of appeal to the Superintendent within seven business days after receipt of the Compliance Officer's response. The Superintendent shall meet with the complainant or the respondent and any representative and make such other inquiries which the Superintendent deems appropriate. The Superintendent will consider the appeal in an impartial manner. Thereafter, the Superintendent shall set forth a conclusion and respond in writing to the Complainant and the Respondent within 14 business days.

**Step (c):**

If the party is not satisfied with the conclusion of the Superintendent, the party may appeal through a signed, written statement to the Board within seven business days of receipt of the Superintendent's response in Step (b). In an attempt to resolve the appeal, the Board shall meet with the Complainant or Respondent and any representative within 30 calendar days of receipt of such an appeal. The Board's written disposition of the appeal shall be sent to appealing party within ten business days of this meeting.

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## **SUBJECT: SEXUAL HARASSMENT POLICY (cont'd)**

### **Step (d):**

If the appeal has not been satisfactorily settled at Step (c), employees and students may seek further legal remedies. Specifically, the New York State Human Rights Law protects employees, students and non-employees from sexual harassment. Complaints may be filed with the Division of Human Rights or in New York State Supreme Court. Further, the United States Equal Employment Opportunity Commission enforces federal discrimination laws, including Title VII of the Federal Civil Rights Act. Contact information is provided below.

New York State Division of Human Rights  
1 Fordham Plaza, Fourth Floor  
Bronx, NY 10458  
(888) 392-3644

United States Equal Employment Opportunity Commission (EEOC)  
1-800-669-4000  
[www.eeoc.gov](http://www.eeoc.gov)

in addition to the above, local laws, including criminal laws, may also apply.

Refer: 3420 Notice of Non-Discrimination Section 504 of The Rehabilitation Act  
Title IX and Title VII Sexual Harassment

Adopted: 08/09/2004  
Revised: 04/10/2006  
Revised: 09/11/2014  
Revised: 02/26/2015  
Revised: 12/06/2017  
Revised: 10/17/2018

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## **SUBJECT: EMPLOYEE GRIEVANCES**

In accordance with Article 15-C of the General Municipal Law, all District employees shall have the opportunity to present grievances free from interference, coercion, restraint, discrimination or reprisal. The District shall provide at least two (2) procedural stages and an appellate stage for the settlement of any such grievance.

General Municipal Law Sections 681-685

Adoption Date: 08/09/2004  
Revised: 06/13/2011  
Revised: 02/26/2015

## **SUBJECT: EVALUATION OF PERSONNEL: PURPOSES**

The administration shall undertake a continuous program of supervision and evaluation of all personnel in the School District in order to promote improved performance and to make decisions about the occupancy of positions. Evaluation of teachers providing instructional services or pupil personnel services as defined pursuant to Commissioner's Regulations will be conducted in accordance with the District's Annual Professional Performance Review (APPR).

The primary purposes of this evaluation are:

- a) To encourage and promote self-evaluation by personnel;
- b) To provide a basis for evaluative judgments by school administrators.
- c) To comply with the current Education Transformation Act, Teacher and Principal evaluation laws.

8 New York Code of Rules and Regulations  
(NYCRR) Sections 80 30-3.4, 30-3.5  
Education Law 8 3012-c, 3012-d

Adopted: 8/9/04  
Revised: 09/10/2015

## **SUBJECT: EMPLOYEE MEDICAL EXAMINATIONS**

### **Pre-Employment Medical Examinations**

In accordance with the Americans with Disabilities Act, as amended, the School District shall not require applicants for positions to undergo a medical examination prior to an offer of employment. Further, the District will shall not make inquiries of a job applicant as to whether the applicant is an individual with a disability or as to the nature or severity of a disability.

However, the District may make pre-employment inquiries into the ability of an applicant to perform job-related functions.

### **Employment Entrance Examinations**

All entering employees are required to obtain a medical examination after an offer of employment has been made and prior to the commencement of the employment duties of such applicant. Further, the District may condition an offer of employment on the results of the examination in accordance with law.

When such examination is made by the school physician/nurse practitioner the cost of such examination shall be borne by the District. A staff member, however, may elect to have a medical examination at his/her own expense by a physician of his/her own choice.

The Board reserves the right to request a medical examination at any time during employment, at School District expense, in order to determine whether any employee can perform the essential functions of the position with or without reasonable accommodation.

Annual or more frequent examinations of any employee may be required, when, in the judgment of the school physician/nurse practitioner and the Superintendent, such procedure is deemed necessary.

All bus drivers and substitute bus drivers shall have yearly physical examinations. Each bus driver initially employed by the School District shall have a physical examination within the four (4) weeks prior to the beginning of service. In no case shall the interval between physical examinations exceed a thirteen-month period.

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**SUBJECT: EMPLOYEE MEDICAL EXAMINATIONS (Cont'd.)**

The final acceptance or rejection of a medical report with reference to the health of an employee lies within the discretion of the Board. The decision of the physician designated by the Board as the determining physician shall take precedence over all other medical advice.

All medical and health related information will be kept in accordance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

**Examinations and Inquiries**

Acceptable

The District may conduct voluntary medical examinations, including voluntary medical histories, which are part of an employee health program available to employees at that work site. The district may make inquiries into the ability of an employee to perform job-related functions.

Prohibited

The District shall not require a medical examination and shall not make inquiries as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless the examination or inquiry is shown to be job related and consistent with business necessity.

Americans with Disabilities Act Amendments Act (ADAAA) of 2008, Public Law 110-325)  
Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191  
45 Code of Federal Regulations (CFR) Parts 160 and 164  
Education Law Sections 913 and 3624  
8 New York Code of Rules and Regulations (NYCRR) Section 156.3(2)  
10 New York Code of Rules and Regulations (NYCRR) Part 14  
15 New York Code of Rules and Regulations (NYCRR) Part 6

Adopted: 08/09/04  
Revised: 12/14/09

**SUBJECT: ALCOHOL, DRUGS AND OTHER SUBSTANCES (SCHOOL PERSONNEL)**

The Board of Education, recognizing that students are often influenced by teachers and other members of a school's staff, impresses upon staff members the importance of maintaining a high level of professionalism appropriate to their position, which, in turn, shall set a positive example for students.

The Board, therefore, prohibits the consumption, sharing and/or selling, use and/or possession of illegal drugs, counterfeit and designer drugs or alcoholic beverages in the workplace, or when the effects of such drugs and/or alcohol use may impair an employee's job performance.

Information about any drug and alcohol counseling and/or rehabilitation programs shall be made available to employees. Data will also include the range of penalties, (consistent with local, state and federal law), up to and including termination of employment and referral for prosecution that will be imposed on employees who have transgressed the terms of this policy. All actions taken shall be in accordance with collective bargaining agreements.

Additionally, confidentiality shall be ensured as required by state and federal law.

The Superintendent/designee shall periodically review the drug and alcohol abuse prevention program to determine its effectiveness and support appropriate modifications, as needed.

Education Law Sections 913, 1711(2)(e), and 3020-a  
Civil Service Law Section 75  
Safe and Drug-Free Schools and Communities Act, as  
reauthorized by the No Child Left Behind Act of 2001  
20 United States Code (USC) Section 7101 et seq.

NOTE: Refer also to Policies #6560 -- Employee Assistance Program  
#7320 -- Alcohol, Tobacco, Drugs and Other Substances (Students)  
*District Code of Conduct on School Property*

Adopted: 8/9/04

**SUBJECT: DRUG-FREE WORKPLACE**

It shall be the general policy of the Board of Education to affirm that all programs in the District that receive Federal funds shall guarantee that their workplaces are free of controlled substances. "Controlled substance" means a controlled substance in schedules I through V of Section 202 of the Controlled Substances Act (21 USC 812) and as further defined in regulation at 21 Code of Federal Regulations (CFR) 1308.11-1308.15. An acknowledgment form shall be signed by the Superintendent indicating that the District is in full compliance with the Drug-Free Workplace Act. This policy shall guarantee that not only Federally funded programs, but the entire District is free of controlled substances.

"Workplace" is defined as a school building or other school premises; any school-owned vehicle or any other school-approved vehicle used to transport students to and from school or school activities; off school property during any school-sponsored or school-approved activity, event or function, such as a field trip or athletic event, where students are under the jurisdiction of the School District.

The Board of Education directs the administration to develop regulations to comply with this policy, and further supports such actions and activities of the administration as shall be required to maintain a drug-free workplace.

Drug-Free Workplace Act  
20 United State Code (USC) Section 7101 et seq.  
21 United State Code (USC) Section 812  
21 Code of Federal Regulations (CFR)  
1308.11-.15  
34 Code of Federal Regulations (CFR) Part 85

NOTE: Refer also to Policies #6150 -- Alcohol, Drugs and Other Substances (School Personnel)  
#6560 -- Employee Assistance Program (EAP)  
#7320 -- Alcohol, Tobacco, Drugs and Other Substances (Students)  
*District Code of Conduct on School Property*

Adopted: 8/9/04



**SUBJECT: PROFESSIONAL GROWTH/STAFF DEVELOPMENT**

It is the policy of the District that attention be given to in-service, pre-service, and other staff development programs which are believed to be of benefit to the School District and its students. The Superintendent, in consultation with the appropriate administrative staff and/or teacher committees, is directed to arrange in-service programs and other staff development opportunities which will provide for the selection of subjects pertinent to the curriculum in the schools, to build from these subjects those topics or courses for in-service or staff development which will help employees acquire new methods of performing their job responsibilities or help staff improve on those techniques which are already being used in the schools, with the objective of improving professional competencies.

It is recommended that administration develop meaningful in-service and/or staff development programs which will achieve the following:

- a) Contribute to the instructional program of the schools;
- b) Contribute to improved education for students;
- c) Achieve state mandates;
- d) Enhance the professional competencies and/or instructional abilities of staff members.

The Board of Education, therefore, encourages all employees to improve their competencies beyond that which they may obtain through the regular performance of their assigned duties. Opportunities should be provided for:

- a) Planned in-service programs, courses, seminars, and workshops offered both within the School System and outside the District.
- b) Visits to other classrooms and schools, as well as attendance at professional meetings, for the purpose of improving instruction and/or educational services.
- c) Orientation/re-orientation of staff members to program and/or organizational changes as well as District expectations.

Attendance at such professional development programs must be directly linked to the duties and responsibilities comprising the job description of the employee. Consequently, employees are encouraged to participate in the planning of staff development programs designed to meet their specific needs.

Members of the staff are also encouraged to continue their formal education as well as to attend their respective work-related workshops, conferences and meetings.

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**SUBJECT:** PROFESSIONAL GROWTH/STAFF DEVELOPMENT (Cont'd.)

Funds for participating at such conferences, conventions, and other similar professional development programs will be budgeted for by the Board of Education on an annual basis. Reimbursement to District staff for all actual and necessary registration fees, expenses of travel, meals and lodging, and all necessary tuition fees incurred in connection with attendance at conferences and the like will be in accordance with established regulations for conference attendance and expense reimbursement. Staff that receive pre-approval to attend conferences outside of the budgeting process will be responsible for all expenses incurred.

The Superintendent of Schools or his/her designee has authority to approve release time and expenses for staff members' attendance at professional training conferences, study councils, in-service courses, workshops, summer study grants, school visitations, professional organizations and the like within budgetary constraints.

A conference request form/course approval form must be submitted by the employee and approved by the designated administrator prior to the employee's attendance at such conference or other professional development program.

**Mentoring Programs for First Year Teachers**

Effective February 2, 2004, first year teachers must participate in a mentoring program as a component of the School District's Professional Development Plan. The purpose of the mentoring program is to increase the retention of new teachers and improve their ability to assist students to achieve consistent with the State learning standards. The mentor's role is to provide guidance and support to a new teacher. However, additional mentor responsibilities may be negotiated and reflected in a collective bargaining agreement.

Education Law Sections 1604(27), 3004 and 3006  
General Municipal Law Sections 77-b and 77-c  
8 New York Code of Rules and Regulations (NYCRR)  
Sections 52.21(b)(3)(xvi), 52.21(b)(3)(xvii), 80  
3.4(b)(2), 80-5.13, 80-5.14 and Part 100.2(dd)

**SUBJECT: SAFETY OF STUDENTS (FINGERPRINTING CLEARANCE OF NEW HIRES)**

Unless otherwise authorized, the District will not employ or utilize a prospective school employee unless the prospective school employee has been granted "full" clearance for employment by the State Education Department (SED). The District will require a prospective school employee who is not in the SED criminal history file database to undergo a fingerprint supported criminal history record background check. "Criminal history record" means a record of all criminal convictions and any pending criminal charges maintained on an individual by the Division of Criminal Justice Services (DCJS) and the Federal Bureau of Investigation (FBI). The District will obtain the applicant's consent to the criminal history records search.

The SED joined the Statewide Vendor Management System (SVMS) operated by MorphoTrust in conjunction with DCJS for the capture and transmission of the fingerprint application, fee, and digital fingerprint images. The District will use the SVMS as directed by SED. The District will still request clearance for employment, view information regarding an applicant's status, and enter hire/termination dates through SED's Web-based application known as TEACH.

**Safety of Students**

The District will develop internal building and/or program procedures to help ensure the safety of students who have contact with an employee holding conditional appointment or emergency conditional appointment. These procedures will address the safety of students in the classroom, students attending off-campus activities under the supervision of the District, and students participating in extracurricular and/or co-curricular activities (including sports and athletic activities).

Safety procedures to be addressed include, but are not limited to supervision of the employee holding conditional appointment/emergency conditional appointment as determined appropriate by the applicable building/program administrator and periodic visitations by the building/program administrator to the classroom, program, and/or activity assigned to the employee holding conditional appointment/emergency conditional appointment.

Correction Law Article 23-A

Education Law §§ 305(30), 305(33), 1604, 1709, 1804, 1950, 2503, 2554, 2590-h, 2854, 3004-b, 3004-c and 3035

Executive Law § 296(16)

Social Services Law Article 5, Title 9-B

8 NYCRR § 80-1.11 and Part 87

Adopted: 08/09/2004

Revised: 01/08/2007

Revised: 08/24/2009

Revised: 02/25/2016

**SUBJECT: DETERMINATION OF EMPLOYMENT STATUS: EMPLOYEE OR INDEPENDENT CONTRACTOR**

Regulations recently promulgated by the Office of the State Comptroller provide guidance to school districts to help them determine whether an individual is an employee, and therefore eligible for membership in the New York State and Local Retirement System (NYSLRS) and for service credit, or an independent contractor who is not eligible for membership.

A certification of the determination that an individual is an employee will now be required when the School District initially reports to the NYSLRS certain covered professionals -- those persons providing services as an attorney, physician, engineer, architect, accountant or auditor.

Employee shall mean an individual performing services for the School District for which the District has the right to control the means and methods of what work will be done and how the work will be done. Independent contractor shall mean a consultant or other individual engaged to achieve a certain result who is not subject to the direction of the employer as to the means and methods of accomplishing the result.

**Employees to be Reported to NYSLRS**

Only persons who are active members of NYSLRS and who have been assigned a registration number shall be included in the reporting requirements. In the case of employees who are in the process of being registered to membership, all service, salary and deductions data and mandatory contributions shall be accumulated by the District and such accumulation shall be included with the first monthly report which is due after the employee's registration number has been assigned.

An individual serving the District as an independent contractor or consultant is not an employee and should not be reported to the retirement system.

The District has the primary responsibility for determining whether an individual is rendering services as an employee or as an independent contractor. When making such a determination the District must consider the factors enumerated in State Regulations.

The District shall also complete, as necessary, a Certification Form for Individuals Engaged in Certain Professions (Form RS2414) as promulgated by the Office of the New York State Comptroller. As noted on the Certification Form instructions, when making a determination as to an individual's status as an employee or independent contractor, no single factor should be considered to be conclusive of the issue. All factors should be considered in making an assessment of an individual's status when engaged to perform services.

(Continued)

# POLICY

2008

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1 of 2

Personnel

**SUBJECT: DETERMINATION OF EMPLOYMENT STATUS: EMPLOYEE OR  
INDEPENDENT CONTRACTOR (Cont'd.)**

**Written Explanation by District: Certain Professions**

In the case of an individual whose service has been engaged by the School District in the capacity of attorney, physician, engineer, architect, accountant or auditor and the District has determined that the individual is rendering service as an employee and, therefore, may be eligible for credit with a retirement system, the District shall submit to the retirement system, in a form prescribed by the Comptroller and certified by the Chief Fiscal Officer of the District, an explanation of the factors that led to the conclusion that the individual is an employee and not an independent contractor or consultant.

Retirement and Social Security Law Sections 11, 34, 311, and 334  
2 New York Code of Rules and Regulations (NYCRR) Sections 315.2 and 315.3

Approved: 07/14/2008

# POLICY

2004

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1 of 1

Personnel

## **SUBJECT: CERTIFIED PERSONNEL**

The Board of Education shall, upon the recommendation of the Superintendent, create, abolish, maintain and/or consolidate positions involving certified persons as necessary for the proper and efficient achievement of its goals.

All assignments and transfers shall be made in accordance with the provisions of law, Board of Education policies, and the employee's negotiated agreement.

8 New York Code of Rules and Regulations  
(NYCRR) Part 30  
Education Law Sections 2510 and 3013

Adopted: 8/9/04

**SUBJECT: RECRUITMENT**

The District will attempt to employ the best qualified personnel for any position.

Professional personnel shall be recruited and selected by, or at the direction of, the Superintendent of Schools, who shall recommend appointment to the Board of Education.

The District shall provide equal opportunity in employment for all qualified persons in accordance with Federal and State legislation.

The American With Disabilities Act,  
42 United States Code (USC) Section 12101 et seq.

Age Discrimination in Employment Act,  
29 United States Code (USC) Section 621

Section 504 of the Rehabilitation Act of 1973,  
29 United States Code (USC) Section 794 et seq.

Title VI of the Civil Rights Act of 1964,  
42 United States Code (USC) Section 2000-d et seq.

Title VII of the Civil Rights Act of 1964,  
42 United States Code (USC) Section 2000-e et seq.

Title IX of the Education Amendments of 1972,  
20 United States Code (USC) Section 1681 et seq.

Civil Rights Law Section 40-c  
Education Law Section 3012  
Executive Law Section 290 et seq.  
Military Law Sections 242 and 243

Adopted: 8/9/04

## **SUBJECT: CERTIFICATION**

- a) In accordance with applicable statutes, Rules of the Board of Regents, and Regulations of the Commissioner of Education, each employee whose employment requires certification or other licensure shall inform the Superintendent of Schools immediately of any change in the status of his/her certification or licensure. The changes shall include, but not be limited to, the granting, revocation, upgrading, expiration, conversion and/or extension of these documents as to their periods of validity or their titles.
- b) The original certificates and/or licenses must be presented for examination and copying in the office of the Superintendent of Schools as soon as they are available to the employee. The copies will be maintained in the Superintendent's files in support of the legitimate employment of each affected employee. The failure of any such employee to possess the required certification or other licensure may result in the discharge of that employee.
- c) Whether or not the District verifies an individual's certification or licensure does not waive the responsibility of the employee to maintain what is required for his/her assignment.

Education Law Sections 3001 and -a, 3004, 3006,  
and 3008  
8 New York Code of Rules and Regulations  
(NYCRR) Subparts 80-1, -2 and -3

Adopted: 8/9/04



**SUBJECT: INCIDENTAL TEACHING**

The Superintendent may assign a teacher to teach a subject not covered by such teacher's certificate or license for a period not to exceed five (5) classroom hours a week, when no certified or qualified teacher is available after extensive and documented recruitment efforts, and provided that approval of the Commissioner of Education is obtained in accordance with the requirements as enumerated in Commissioner's Regulations.

Not later than twenty (20) business days after such an assignment, the Superintendent shall submit for approval an application, in a form satisfactory to the Commissioner, containing the following information:

- a) Evidence of extensive recruitment of a teacher certified in the appropriate area;
- b) The name and certification status of the teacher given such assignment;
- c) The subject which the teacher is being assigned to teach on an incidental basis and the total number of classes in the subject being taught on an incidental basis;
- d) The qualifications of the teacher to teach such subject on an incidental basis;
- e) The specific reasons why an incidental assignment is necessary;
- f) The anticipated duration of the incidental teaching assignment; and
- g) The number of applications, approved or pending, for authorization to make incidental teaching assignments in the same certification area for which the current authorization is being sought.

To be approved, the application shall demonstrate to the satisfaction of the Commissioner that an incidental teaching assignment is necessary, that the teacher assigned is the best qualified to teach the subject on an incidental basis, and that the requirements of Commissioner's Regulations have been met.

The Commissioner will issue a determination within twenty (20) business days of receipt of the District's application.

In the event that the application is disapproved, the Superintendent, within seven (7) business days of receipt of the notice of disapproval, shall terminate the incidental assignment. In the event that the application is approved, such approval shall be deemed to have commenced on the date of the incidental teaching assignment and shall terminate on the last day of the school year for which it is granted.

(Continued)

# POLICY

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Personnel

## **SUBJECT: INCIDENTAL TEACHING (Cont'd.)**

The Superintendent may renew an incidental teaching assignment, in accordance with the requirements of Commissioner's Regulations, for any subsequent school year. In addition to submitting to the Commissioner the information noted above for initial approval of an incidental teaching assignment, a renewal application must provide a number of assurances, including that the teacher assigned a course on an incidental basis has completed, or has agreed to complete, within the prescribed time period, at least three (3) semester hours of credit or the equivalent leading to certification in the subject area of the incidental assignment.

8 New York Code of Rules and Regulations  
(NYCRR) Section 80-5.3

Adopted: 8/9/04

## **SUBJECT: PROBATION AND TENURE**

### **Probation**

Certified staff members shall be appointed to a probationary period by a majority vote of the Board of Education upon recommendation of the Superintendent of Schools.

Full-time certified staff members shall be appointed to a probationary period of three (3) years. However, the probationary period shall not exceed two (2) years for teachers previously appointed to tenure in this or another school district or BOCES within the state, provided the teacher was not dismissed from the former district. Additionally, up to two (2) years of service as a regular substitute teacher may be applied towards probationary service. This is sometimes referred to as Jarema Credit.

During the probationary period, a staff member shall be given assistance in adjusting to the new position, but the essential qualifications for acceptable performance shall be assumed because of the possession by the staff member of the required certification or license.

### **Tenure**

Certified staff members successfully completing a probationary period in the Elmira Heights Central School District may be recommended (by the Superintendent of Schools) to the Board of Education for tenure appointment.

The Board will follow all applicable statutes regarding tenure.

Education Law Sections 3012 and 3031

# POLICY

2004

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Personnel

## **SUBJECT: DISCIPLINING OF A TENURED TEACHER OR CERTIFIED PERSONNEL**

Tenured teachers and certain certified personnel may be subject to disciplinary charges that are set forth in Section 3012 of the Education Law.

Procedures for a hearing regarding these disciplinary measures will be in accordance with Section 3020-a of the Education Law and/or in accordance with applicable contractual provisions.

Education Law Sections 3012 and 3020-a  
8 New York Code of Rules and Regulations  
(NYCRR) Subpart 82-1

Adopted: 8/9/04

**SUBJECT: PROFESSIONAL STAFF: SEPARATION**

A professional staff member may be dismissed upon provision of at least sixty (60) days notice and pay during the probationary period only upon the recommendation of the Superintendent and majority vote of the Board in accordance with the Education Law.

The Board shall expect any professional staff member desiring to terminate his/her services to provide the Board with a minimum of thirty (30) days notice before the effective termination date.

When possible, a professional staff member shall make every effort to terminate employment at the end of the school year. Resignations must be in writing and include the effective date.

Education Law Sections 3012, 3019-a, and 3031

Adopted: 8/9/04

**SUBJECT: EMPLOYMENT OF RELATIVES OF BOARD OF EDUCATION MEMBERS**

The appointment of a teacher who is related by bloodline or legal process (including marriage) to any member of the Board of Education shall be subject to the consent of two-thirds (2/3) of the members of the Board of Education to be determined at a Board meeting and to be entered upon the proceedings of the Board.

The Board shall take the same stance in the hiring of professional staff other than teachers.

Education Law Section 3016  
General Municipal Law Sections 800-809

Adopted: 8/9/04

**SUBJECT: Part Time and Certified Substitute Teacher Employment**

All certified substitute teachers are employed as certified substitute teachers and are paid per diem rates or as provided by this policy and the salary schedule for certified substitute teachers. Certified substitute teachers are expected to serve a usual day that follows the same schedule of as the regular classroom teacher they are replacing. Any variations shall be approved by the Building Principal.

On the twenty-sixth (26<sup>th</sup>) day of any continuous long-term substitute teaching for the same teacher, a certified substitute will be placed, retroactively, on the annual salary he/she would have received as a regular teacher. The Superintendent in his/her discretion, may waive the twenty-five (25) day waiting period if it is known up front that the teacher being replaced shall be out more than twenty-five days and less than ninety (90) days. In the event that the certified substitute teacher is exceeded in June and is subsequently hired as a long-term substitute in September of the following year, in the same position, the twenty-five 25 day per diem rate may be waived and such certified substitute teacher will commence with his/her long-term substituting at the appropriate salary. In the event that a long-term certified substitute teacher subsequently is hired the following school year, in the same position, the twenty-five (25) day itinerant per diem rate will be waived and such certified substitute teacher will commence his/her long term certified substitute position at the appropriate rate.

Long term certified substitute teachers who continue in the same position as described above, beyond the twenty-five (25) days will also, on the twenty-sixth (26<sup>th</sup>) day, be granted one (1) sick leave day for each thirty (30) substitute days. Such sick leave days are cumulative within any single position and may be used as long as the certified substitute remains in the same position. At the time that such specific position is terminated for the certified substitute teacher, any accumulated sick leave days are void, and may not be carried over to a different position.

There are no other fringe benefits available to long-term certified substitute teachers.

Long-term certified substitute teachers who will be teaching ninety or more days in the same position will be entitled to a waiver of the twenty-five (25) day per diem rate and will be entitled to a single health insurance plan.

In the event that a long-term certified substitute teacher is subsequently hired as a regular teacher in the district, such teacher shall be entitled to one year of experience credit for each long-term substitute position that was held at least seven (7) months of the ten (10) month school year. Such experience credit will be granted only for certified long-term substituting, not through the accumulation of seven (7) months of per diem substituting. The final decision governing the granting of experience credit shall rest with the Superintendent.

Adopted: July 24, 2006  
Revised: 02/01/2017

# POLICY

2004

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Personnel

## **SUBJECT: APPOINTMENT - SUPPORT STAFF**

The probationary period for all new civil service employees shall be for the maximum period established by the local Civil Service Commission.

The time, place and conditions of employment shall be assigned by the Superintendent of Schools. The duties for each Civil Service employee shall be clearly defined.

Civil Service Law Section 63

Adopted: 8/9/04



**SUBJECT: EMPLOYMENT OF TEACHER AIDES**

In accordance with Regulations of the Commissioner, the Board of Education may employ aides to assist in the daily operation of the school through non-teaching duties or in accordance with highly qualified staff as outlined in NCLB.

The duties and responsibilities to be assumed by aides shall be outlined by the Superintendent of Schools.

Persons employed as aides shall be responsible to the building principal and/or his/her designated representatives.

8 New York Code of Rules and Regulations  
(NYCRR) Section 80-5.6

Adopted: 8/9/04

# POLICY

2010

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1 of 1

Personnel

## **SUBJECT: EMPLOYMENT OF TEACHING ASSISTANTS**

In accordance with the Rules of the Board of Regents and the Regulations of the Commissioner of Education, the Board of Education may employ teaching assistants to assist with instruction and in the daily operation of the school through non-teaching duties.

The duties and responsibilities to be assumed by the teaching assistants shall be outlined by the Superintendent of Schools.

Persons employed as teaching assistants shall be responsible to the building principal and/or his/her designated representatives.

NOTE: Refer also to Policies

6210 Certified Personnel  
6211 Recruitment  
6212 Certification

8 NYCRR Section 80-5.6

Adopted: 01/25/2010

# POLICY

2004

6410

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Personnel

## **SUBJECT: MAINTAINING DISCIPLINE AND CONDUCT**

All personnel employed by the District are responsible for maintaining student discipline and appropriate conduct during school hours or at extracurricular events.

Adopted: 8/9/04

## **SUBJECT: EMPLOYEE PERSONNEL RECORDS AND RELEASE OF INFORMATION**

### **Personnel Records**

Administrative regulations will be developed to implement the terms of this policy to maintain a personnel file for each teacher, administrator and support staff member employed by the District.

Regulations and procedures will be developed addressing the inspection by District employees of their personnel files.

### **Release of Personnel Information**

All steps should be taken to protect the privacy of the employees of the Board of Education. To ensure the individual's privacy, directory or confidential information should not be shared with a third party except in the following situations:

- a) When members of the Board of Education need information from the employee's personnel record to aid them in performing their legal responsibilities in such matters as appointments, assignments, promotions, demotions, remuneration, discipline, dismissal or to aid in the development and implementation of personnel policies.
- b) When the employee grants permission.

Procedures for obtaining consent for release of records to third parties shall be developed by the administration.

### **Release of Information Concerning Former Employees**

The District shall not release information concerning the employment records, personnel file or past performance of a former employee, unless such information is required to be disclosed by law. Only the initial and final dates of employment and the position held shall be provided through a written response to a written request. The former employee may authorize the release of any additional information.

8 New York Code of Rules and Regulations  
(NYCRR) Part 84  
Public Officers Law Section 87

Adopted: 8/9/04

**SUBJECT: EMPLOYEE ACTIVITIES****Political Activities**

The Board of Education recognizes the right of its employees, as citizens, to engage in political activities and to exercise their constitutionally-protected rights to address matters of public concern.

However, a District employee's constitutional rights to raise matters of public concern are limited when the speech or action occurs on school grounds and/or during school times. When such speech or action occurs on school grounds and/or during school time, the Board of Education can impose reasonable restrictions on the time, place and manner of the speech or action, and can further regulate the content of such speech when it materially imperils the efficient operation of the school.

Teachers may not use their classrooms or school surroundings as a means to promote their personal political views and beliefs. However, teachers are encouraged to address issues of current events for their instructional and informational value to students, to invite public and/or political figures to visit the classroom as a community resource, and to motivate students to participate in the political process.

**Solicitations by Staff**

Staff members shall not be engaged in advertising or commercial solicitations on school time, except as authorized by the Superintendent and/or designee.

NOTE: Refer also to Policy #5560 -- Use of Federal Funds for Political Expenditures

Adopted: 8/9/04

## **SUBJECT: NEGOTIATIONS**

### **Legal Status**

The legal status for negotiations is the Public Employees' Fair Employment Law (Taylor Law), Article 14 of the Civil Service Law.

Organizations recognized for the purposes of collective bargaining include:

- a) Elmira Heights Central School District Teachers' Association;
- b) Chemung Chapter of the Civil Service Employees' Association;
- c) Elmira Heights Central School District Administrators' Association;
- d) Elmira Heights Educational Support Staff Association.

Adopted: 8/9/04

# POLICY

2004

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1 of 1

Personnel

## **SUBJECT: THEFT OF SERVICES OR PROPERTY**

The theft of services or property from the District by an employee will result in immediate disciplinary action that can lead to dismissal or other penalty, and shall not preclude the filing of criminal or civil charges by the District.

Adopted: 8/9/04

# POLICY

2014

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1 of 1

Personnel

## **SUBJECT: JURY DUTY**

As provided by law, any employee who is summoned to serve as a juror and who notifies the District to that effect prior to his/her term of service will not, on account of absence by reason of jury service, be subject to discharge or penalty. The District will ensure that all such absences are granted in accordance with law and the terms of any applicable collective bargaining agreement.

Judiciary Law Sections 519 and 521

Adopted: 08/09/04  
Revised: 09/11/2014



## **SUBJECT: COMPUTER NETWORK FOR EDUCATION**

The Board considers a computer network to be a valuable tool for both student learning and staff use, and therefore encourages the use of computers and computer-related technology in district classrooms and offices.

The Board encourages computer network use as an integral part of the curriculum. Through software applications, online databases, bulletin boards, and electronic mail, the network will significantly enhance educational experiences and provide statewide, national, and global communications opportunities for staff and students.

The Board also requires that all networked computers employ Internet filtering software, per the requirements of the Children's Internet Protection Act.

The district does not guarantee nor imply that access to the Internet will always be available when a user wants access or that the content filtering software provided will always work as intended. The District is not responsible for failures in the operation or technical filtering of the Internet, the computers, or software used to access the Internet.

The Superintendent will establish rules and regulations governing the use and security of the district's computer network. Failure to comply with policy and regulations for the use of the network may result in suspension and/or revocation of computer access privileges.

### **Privacy Rights**

Staff data files and electronic storage areas shall remain District property, subject to District control and inspection. The computer coordinator may access all such files and communications to ensure system integrity and that users are complying with requirements of this policy and accompanying regulations. Staff should **NOT** expect that information stored on the DCS will be private.

NOTE: Refer also to Policy #8271 -- [The Children's Internet Protection Act: Internet Content Filtering/Safety Policy](#)

Adopted: 8/9/04

**SUBJECT: HEALTH INSURANCE**

All staff that qualify for health insurance shall be provided health insurance in accordance with their respective negotiated agreements.

**Continuation of Medical Insurance Coverage at Termination of Employment**

Under the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), employees and their dependents are eligible to continue their insurance coverage for up to eighteen (18) months when termination of their insurance is due to a reduction in their hours worked, or upon termination of their employment.

Dependents of employees are eligible to continue their insurance for up to thirty-six (36) months upon occurrence of one (1) of the following events:

- a) Death of the covered employee; or
- b) Divorce or legal separation from the covered employee; or
- c) An employee becomes eligible for Medicare and ceases to participate in the employer-sponsored plan; or
- d) The dependents of a covered employee reach the maximum age for dependent coverage.

Those who are eligible to continue coverage have up to sixty (60) days to complete the Continuation of Coverage Election Form. They must pay the full cost of their premium plus administrative costs incurred by the District.

Consolidated Omnibus Budget Reconciliation Act  
of 1985

Adopted: 8/9/04

# POLICY

2004

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1 of 1

Personnel

## **SUBJECT: WORKERS' COMPENSATION**

Employees injured in the performance of their duties are covered by Workers' Compensation Insurance. Employees shall report work-related injuries immediately to their immediate supervisor. Delay in reporting, if necessary, must be justified to the satisfaction of the Board of Education and/or the insurance agency.

Reimbursement for Workers' Compensation Insurance benefits shall be in accordance with their respective negotiated agreements.

Education Law Sections 1604(31), 1709(34),  
and 2503(10)

Adopted: 8/9/04

# POLICY

2004

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1 of 1

Personnel

## **SUBJECT: PAYROLL DEDUCTIONS**

Payroll deductions may be made when authorized by employees or when required by law or negotiated agreements.

Education Law Sections 1604 and 1709

Adopted: 8/9/04

## **SUBJECT: DEFENSE AND INDEMNIFICATION OF BOARD MEMBERS AND EMPLOYEES**

### **Liability Protection Pursuant to Education Law**

The Board of Education recognizes its statutory obligation to indemnify School District employees (and in certain circumstances, Board of Education members and volunteers) pursuant to the provisions of Sections 3023, 3028 and 3811 of the Education Law. For the purposes of this policy, the term "employee" shall be as defined in the applicable statute(s).

The District shall not be subject to the duty to defend unless the employee, within the time prescribed by statute, delivers appropriate notice of the claim to the Board of Education.

- a) For purposes of Education Law Section 3811, the employee must give written notice within five (5) days after service of process upon him/her. The statute mandates only written notice of the claim to the Board of Education; however, submission of relevant legal documents by the employee to the Board is also encouraged.
- b) For purposes of Education Law Sections 3023 and 3028, the employee must deliver the original or a copy of the relevant legal documents to the Board within ten (10) days after service of process upon him/her.

The District will provide legal defense and/or indemnification for all damages, costs, and reasonable expenses incurred in the defense of an action or proceeding if authorized pursuant to statute and provided that the alleged action or omission which occurred or allegedly occurred is covered by the appropriate statute(s). Furthermore, the District will not be required to provide indemnification protection and/or legal defense unless the employee was, at the time of the alleged incident, acting in the discharge of his/her duties within the scope of his/her employment or authorized volunteer duties and/or under the direction of the Board of Education.

### **Public Officers Law Section 18**

The Board of Education hereby also confers the benefits of Section 18 of the New York State Public Officers Law upon the "employees" of the District, as defined in Section 18 of the Public Officers Law; and the District assumes the liability for the costs incurred in accordance with the provisions of Section 18. The benefits accorded to District employees under Section 18 of the Public Officers Law shall supplement and be available in addition to defense or indemnification protection conferred by other enactment or provisions of law.

(Continued)

## **SUBJECT: DEFENSE AND INDEMNIFICATION OF BOARD MEMBERS AND EMPLOYEES (Cont'd.)**

The term "employees" shall include members of the Board of Education; the Superintendent; District officers; District employees; volunteers expressly authorized to participate in a District sponsored volunteer program; or any other person holding a position by election, appointment or employment in the service of the District, whether or not compensated. The term "employee" shall also include a former employee, his/her estate or judicially appointed representative.

Pursuant to the provisions of Section 18 of the Public Officers Law, and upon compliance by the employee with the requirements of this statute, the District shall provide for the defense of the employee in any civil action or proceeding, state or federal, arising out of any alleged act or omission which occurred or allegedly occurred while the employee was acting within the scope of his/her public employment or duties. Furthermore, the District shall indemnify and save harmless its employees in the amount of any judgment obtained against such employees in a state or federal court, or in the amount of any settlement of a claim, provided that the act or omission from which such judgment or claim arose occurred while the employee was acting within the scope of his/her public employment or duties. However, in the case of a settlement, the duty to indemnify and save harmless shall be conditioned upon the approval of the amount of the settlement by the Board of Education.

The duty to defend and/or indemnify and save harmless, in accordance with Section 18 of the Public Officers Law, shall be conditioned upon the delivery by the employee to the School District attorney or to the Superintendent a written request to provide for his/her defense, together with the original or a copy of any summons, complaint, process, notice, demand or pleading within ten (10) days after he/she is served with such document. Pursuant to Section 18, the full cooperation of the employee in the defense of such action or proceeding and in the defense of any action or proceeding against the District based upon the same act or omission, and in the prosecution of any appeal, shall also be required as a condition for the District's duty to defend and/or indemnify and save harmless to exist.

### **Exceptions to Liability Coverage**

Indemnification coverage and/or provision of legal defense by the District will not apply unless the actionable claim is of the type covered by the statute(s) and/or is not otherwise exempt from coverage pursuant to law. Additionally, indemnification coverage and/or the duty to provide a defense shall not arise where such action or proceeding is brought by or on behalf of the School District.

Paul D. Coverell Teacher Protection Act of 2001, as authorized by the No Child Left Behind Act of 2001, 20 United State Code (USC) Section 6731 et seq.  
Public Officers Law Section 18  
Education Law Sections 1604(25) and (31-b), 1709(26) and (34-b), 2560, 3023, 3028, and 3811  
General Municipal Law Sections 6-n and 52

Adopted: 8/9/04

## **SUBJECT: LEAVES OF ABSENCE**

- a) In general, leaves of absence:
1. Shall be in accordance with negotiable contractual agreements administered by the Superintendent.
  2. The Board reserves the right to grant leaves of absence for purposes or under conditions not contemplated or considered in the policy statement.
  3. Under laws and rules governing such action, the Board may undertake appropriate disciplinary action where a leave of absence is falsely requested or improperly used.
  4. Except by permission of the Superintendent, as expressed in writing, the purpose or conditions of a leave of absence may not be altered.

### [Military Leave](#)

The District will comply with state and federal laws regarding military leave and re-employment.

The Uniformed Services Employment and  
Reemployment Rights Act of 1994 (USERRA)  
38 United States Code (USC) Sections 4301-4333  
Civil Service Law Sections 71-73  
Education Law Sections 1709(16), 3005, -a and -b  
Military Law Section 242 and 243

Adopted: 8/9/04

**SUBJECT: FAMILY AND MEDICAL LEAVE ACT**

The Board of Education, in accordance with the Family and Medical Leave Act of 1993 (as amended) (FMLA), gives "eligible" employees of the District the right to take unpaid leave for a period of up to twelve (12) workweeks in a twelve-month period as determined by the District.

\*The District will compute the twelve-month period according to the following time frame: a "rolling" twelve-month period will be used that is measured backward from the date an employee uses any FMLA leave.

Employees are "eligible" if they have been employed by the District for at least twelve (12) months and for at least 1,250 hours of service during the previous twelve-month period. Full-time teachers are deemed to meet the 1,250 hour test. However, a break in employment for military service (i.e., call to active duty) should not interrupt the twelve (12) month/1,250 hours of employment requirement and should be counted toward fulfilling this prerequisite. The law covers both full-time and part-time employees.

Qualified employees may be granted leave for one (1) or more of the following reasons:

- a) The birth of a child and care for the infant;
- b) Adoption of a child and care for the infant;
- c) The placement with the employee of a child in foster care;
- d) To care for a spouse, child or parent who has a "serious health condition" as defined by the FMLA; and/or
- e) A "serious health condition" of the employee, as defined by the FMLA, that prevents the employee from performing his/her job. A "serious health condition" is defined as an illness, injury, impairment or physical or mental condition that involves inpatient care or continuing treatment by a health care provider that renders the employee incapacitated for more than three (3) consecutive calendar days and where the employee is required to see the health care provider at least twice. A "serious health condition" is also defined as any period of incapacity related to pregnancy or for prenatal care.

(Continued)



**SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd)****Military Family Leave Entitlements**Military Caregiver Leave

An eligible employee who is the spouse, son, daughter, parent, or next of kin (defined as the nearest blood relative of that individual) of a "covered service member" who is recovering from a serious illness or injury sustained in the line of duty while on active duty is entitled to up to 26 weeks of leave in a single 12-month period to care for the service member. This military caregiver leave is available during a single 12-month period during which an eligible employee is entitled to a combined total of 26 weeks of all types of FMLA leave. Military Caregiver Leave may be combined with other forms of FMLA-related leave providing a combined total of twenty-six (26) weeks of possible leave for any single twelve (12) month period; however, the other form of FMLA leave when combined can not exceed twelve (12) of the twenty-six (26) weeks of combined leave.

Military Caregiver Leave has a set "clock" for calculating the twelve (12) month period for when FMLA leave begins and tolling starts at the first day of leave taken.

The term "covered service member" means a member of the Armed Forces, including a member of the National Guard or Reserves.

"Qualifying Exigency" Leave/Call to Active Duty

An "eligible" employee is entitled to FMLA leave because of "a qualifying exigency" arising out of circumstances where the spouse, son, daughter, or parent of the employee is serving in either the National Guard or the Reserves and is on active duty during a war or national emergency called for by the President of the United States or Congress, or has been notified of an impending call to active duty status, in support of a contingency operation.

A "qualifying exigency" related to families of the Army National Guard of the United States, Army Reserve, Navy Reserve, Marine Corps Reserve, Air National Guard of the United States, Air Force Reserve and Coast Guard Reserve personnel on (or called to) active duty to take FMLA protected leave to manage their affairs is defined as any one of the following reasons:

- a) Short-notice deployment;

(Continued)

**SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)**

- b) Military events and related activities;
- c) Childcare and school activities;
- d) Financial and legal arrangements;
- e) Counseling;
- f) Rest and recuperation;
- g) Post-deployment activities; and
- h) Any additional activities where the employer and employee agree to the leave.

In any case in which the necessity for leave due to a qualifying exigency is foreseeable, the employee shall provide such notice to the employer as is reasonable and practicable. This military-related leave is for up to twelve (12) weeks during a single 12-month period.

**Medical Treatment for Serious Health Conditions**

The first visit to a health care provider for an employee claiming a "serious health condition" under FMLA must occur within seven (7) days of the aforementioned incapacity with the second required visit occurring within thirty (30) of the incapacitating event.

If the employee claiming FMLA under the "serious health condition" rationale is sustaining continuous treatment, their first visit to a health care provider must take place within seven (7) days of the claimed incapacitating event.

Chronic "serious health conditions" require periodic visits; the employee must see a health care provider a minimum of two (2) times per year.

**Implementation/Benefits/Medical Certification**

At the Board of Education's or employee's option, certain types of paid leave may be substituted for unpaid leave.

An employee on FMLA leave is also entitled to have health benefits maintained while on leave. If an employee was paying all or part of the premium payments prior to leave, the employee will continue to pay his/her share during the leave period.

In most instances, an employee has a right to return to the same position or an equivalent position with equivalent pay, benefits and working conditions at the conclusion of the leave.

(Continued)

**SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)**

The Board of Education has a right to thirty (30) days advance notice from the employee where practicable. In addition, the Board may require an employee to submit certification from a health care provider to substantiate that the leave is due to the "serious health condition" of the employee or the employee's immediate family member. Under no circumstance should the employee's direct supervisor contact any health care provider regarding the employee's condition; all contact in this manner must be made by a health care provider (employed at the employer), a human resource professional, a leave administrator or a management official. If the medical certification requested by the employer is found to be deficient, the employer must indicate where the errors are, in writing, and give the employee seven (7) days to provide corrected materials to cure any deficiency prior to any action being taken.

**Special Provisions for School District Employees**

An instructional employee is an employee whose principal function is to teach and instruct students in a class, a small group, or an individual setting (e.g., teachers, coaches, driving instructors, special education assistants, etc.). Teaching assistants and aides who do not have instruction as the principal function of their job are not considered an "instructional employee."

**Intermittent Leave Taken By Instructional Employees**

FMLA leave that is taken at the end of the school year and resumes at the beginning of the next school year is not regarded as intermittent leave but rather continuous leave. The period in the interim (i.e., summer vacation) is not counted against an employee and the employee must continue to receive any benefits that are customarily given over the summer break.

Intermittent leave may be taken but must meet certain criteria. If the instructional employee requesting intermittent leave will be on that leave for more than twenty percent (20%) of the number of working days during the period for which the leave would extend, the following criteria may be required by the employer:

- 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.

Appropriate notice for foreseeable FMLA leave still applies and all employees must be returned to an equivalent position within the school district. Additional work-related certifications, requirements and/or training may not be required of the employee as a contingent of their return to work

(Continued)

**SUBJECT: FAMILY AND MEDICAL LEAVE ACT (Cont'd.)****Leave Taken by Instructional Employees Near the End of the Instructional Year**

There are also special requirements for instructional employees taking leave and the leave's relation to the end of the term. If the instructional employee is taking leave more than five (5) weeks prior to the end of the term, the District may require that the employee take the leave until the end of the term if the leave lasts more than three (3) weeks and the employee was scheduled to return prior to three (3) weeks before the end of the term.

If the instructional employee is taking leave less than five (5) weeks prior to the end of the term for any of the following FMLA-related reasons except qualifying exigency, the District may require that the employee remain out for the rest of the term if the leave lasts more than two (2) weeks and the employee would return to work during that two (2) week period at the end of the instructional term.

If the instructional employee begins taking leave during the three (3) weeks prior to the end of the term for any reason except qualifying exigency, the District may require that the employee continue leave until the end of the term if the leave is scheduled to last more than five (5) working days.

Any additional time that is required by the employer due to the timing of the end of the school year, will not be charged against the employee as FMLA leave because it was the employer who requested that the leave extend until the end of the term.

**FMLA Notice**

A notice which explains the FMLA's provisions and provides information concerning the procedures for filing complaints of violations of the FMLA shall be posted in each school building and a notice of an employee's FMLA rights and responsibilities shall be either placed in the employee handbook of the employer or furnished to each new employee upon hire. The employer has five (5) days to supply such notice from the date of hire.

Administration is directed to develop regulations to implement this policy, informing employees of their rights and responsibilities under the FMLA.

Family and Medical Leave Act of 1993 (as amended), Public Law 103-3  
National Defense Authorization Act of 2008, Public Law 110-181  
10 United States Code (USC) 101(a) (13)  
29 Code of Federal Regulations (CFR) Part 825

NOTE: Refer also to Policy #6552 - Uniformed Services Employment and Reemployment Rights Act USERRA/Military Leaves of Absence

Adopted: 08/09/04  
Revised: 04/06/09

**SUBJECT: UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)/MILITARY LEAVES OF ABSENCE**

In accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 ([USERRA](#)) and State Law, the School District, upon advance notice by the employee, shall grant leaves of absence for service in the uniformed services and/or military duty (hereinafter referred to as "military service" or "military duty") to its employees who are ordered to duty or volunteer for qualifying military service. The employee's notice may be either verbal or written. No advance notice is required if military necessity prevents the giving of notice, or the giving of notice is otherwise impossible or unreasonable under all the circumstances.

### **Employment Rights**

Time during which an employee is absent pursuant to military leave shall not constitute an interruption of continuous employment in the School District and no such employee shall be subjected, directly or indirectly, to any loss or diminution of time service, increment, vacation or holiday privileges, or any other right or privilege, by reason of such absence; nor shall any employee be prejudiced by reason of such absence with reference to continuance in employment, reemployment, reinstatement, transfer or promotion.

### **Salary/Compensation**

Every employee shall be paid his/her salary or other compensation for any and all periods of absence while engaged in the performance of ordered military duty, and while going to and returning from such duty. This payment of salary/compensation shall not exceed a total of 30 days or 22 working days, whichever is greater, in any one calendar year; and shall not exceed 30 days or 22 working days, whichever is greater, in any one continuous period of such absence.

The employee must be permitted, upon request, to use any accrued vacation, annual, or similar leave with pay during the period of military service in order to continue his/her civilian pay. The School District may not require the employee to use accrued leave.

The employee is not entitled to use accrued sick leave during the period of military service, unless the District allows employees to use sick leave for any reason or allows other similarly situated employees on comparable furlough or leave of absence to use accrued paid sick leave.

### **Employee Benefits**

#### Health Plan Coverage

If the employee has coverage under a health plan in connection with his/her employment with the District, the employee must be permitted to elect to continue the coverage for a certain period of time as designated in law.

(Continued)

**SUBJECT: UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)/MILITARY LEAVES OF ABSENCE**

When the employee is performing military service, he/she is entitled to continuing coverage for himself/herself (and dependents if the plan offers dependent coverage) under a health plan in connection with the employment. The plan must allow the employee an opportunity to continue coverage for a period of time that is the lesser of:

- a) The 24-month period beginning on the date on which the employee's absence for the purpose of performing military service begins; or
- b) The period beginning on the date on which the employee's absence for the purpose of performing military service begins, and ending on the date on which the employee fails to return from service or apply for a position of reemployment.

Health plan administrators may develop reasonable requirements addressing how continuing coverage may be elected, consistent with the terms of the plan and [USERRA's](#) exceptions to the requirement that the employee give advance notice of military service. Further, health plan administrators may develop reasonable procedures for employee payment to continue coverage, consistent with [USERRA](#) and the terms of the plan.

### Pension/Retirement Plans

While on military duty, any School District employee who is a member of any pension or retirement system may elect to contribute to such pension or retirement system the amount which he/she would have contributed had such employment been continuous. Upon making such contribution, the employee shall have the same rights in respect to membership in the retirement system as he/she would have had if the employee had been present and continuously engaged in the performance of his/her position. To the extent that such contributions are paid, absence while engaged in the performance of military duty shall be counted in determining the length of total service under such pension or retirement system.

Alternatively, employees will have an opportunity to make up contributions to the pension or retirement system upon return to employment in the District in accordance with law and the individual employee's pension/retirement system.

Time during which an employee is absent on military duty shall not constitute an interruption of continuous employment, but such time shall not be counted or included in determining the length of total service in the pension or retirement system unless the employee contributes to the pension or retirement system the amount he/she would have been required to contribute if the employee had been continuously employed during the period of military duty.

(Continued)

## **SUBJECT: UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)/MILITARY LEAVES OF ABSENCE**

### **Reemployment/Restoration Rights ("Escalator Principle")**

Per [USERRA](#), as a general rule, the employee is entitled to reemployment in the job position that he/she would have attained with reasonable certainty if not for the absence due to military service. The position to which the returning service member should be restored has become known as the "escalator position." The escalator principle requires that the employee be reemployed in a position that reflects with reasonable certainty the pay, benefits, seniority, and other job benefits that he/she would have attained if not for the period of military service.

Depending on the circumstances/intervening events, the escalator principle may cause an employee to be reemployed in a higher or lower position, transferred, laid off, or even terminated.

The employee must be qualified for the reemployment position. The District shall make reasonable efforts to help the employee become qualified to perform the duties of this position. The District is not required to reemploy the employee on his/her return from military service if the employee cannot, after reasonable efforts by the District, qualify for the appropriate reemployment position.

Per State law, an employee restored to his/her position after the termination of military duty shall be entitled to the rate of compensation he/she would have received had the employee remained in his/her position continuously during the period of military duty; and the employee shall be deemed to have rendered satisfactory and efficient service in the job position during the period of military leave of absence. Further, the employee shall not be subjected directly or indirectly to any loss of time service, increment, or any other right or privilege; nor shall an employee be prejudiced in any way with reference to promotion, transfer, reinstatement or continuance in employment.

All other rights, benefits, and responsibilities of a District employee serving in the military shall be in accordance with law, regulations, and/or the applicable contract/collective bargaining agreement.

### **Probationary Service**

#### Public Employees in General

If a public employee (with the exception of the probationary service of "teachers" as described below) enters military duty before the expiration of the probationary period in any position to which he/she may have been appointed, or to which he/she may thereafter be appointed or promoted, the time such employee is absent on military duty shall be credited as satisfactory service during this probationary period.

(Continued)

**SUBJECT: UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT (USERRA)/MILITARY LEAVES OF ABSENCE**

Teachers/Supervisory Staff

In any case where a "teacher" (as defined in [State Education Law Section 3101](#), the term "teacher" encompasses a broad category of full-time members of the teaching and supervisory staff of the District, and is not limited to "instructional" employees) enters military duty before the expiration of the probationary period to which he/she may have been appointed, the time the "teacher" is absent on military duty shall be credited as satisfactory service during this probationary period. If the end of such probationary service occurs while the "teacher" is on military duty or within one year following the termination of military duty, the period of the probationary service may be extended by the Board of Education for a period not to exceed one year from the date of termination of military duty. However, in no event shall the period of probationary service in the actual performance of teaching services extend beyond that required by the School District at the time of the "teacher's" entry into military service.

**Collective Bargaining Agreements/Contracts/Plans/Practices**

In accordance with [USERRA](#), any State or local law, contract, agreement, policy, plan, or practice that establishes an employment right or benefit that is more beneficial than, or is in addition to, a right or benefit under USERRA, such greater employment right or benefit will supersede this Federal Law.

**Notice of Rights and Duties**

The District shall provide a notice of the rights, benefits and obligations of employees and the District under [USERRA](#). The District may provide the notice by posting it where employee notices are customarily placed. The District may also provide such notice to its employees in other ways that will minimize costs while ensuring that the full text of the notice is provided (e.g., by handing or mailing out the notice, or distributing the notice via electronic mail).

The U.S. Department of Labor has developed and made available on its web site <http://www.dol.gov/vets/programs/userra/poster.htm> a poster for use by private and State employers (including school districts) that can be posted in order to comply with the notification mandate.

The Uniformed Services Employment and Reemployment Rights Act of 1994 ([USERRA](#))  
[38 United States Code \(USC\) Sections 4301-4333](#)  
[Public Law 108-454](#)  
[20 Code of Federal Regulations \(CFR\) Part 1002](#)  
Military Law Sections 242 and 243  
Education Law Section 3101

Adopted: 05/08/06



**SUBJECT: SUBJECT: EMPLOYEE ASSISTANCE PROGRAM (EAP)**

The District will provide an Employee Assistance Program for employees who are experiencing personal difficulties. The purpose of the program is to assist employees in obtaining help to resolve such problems in an effective and confidential manner. This program recognizes that the primary obligation to seek assistance and to resolve the problem rests with the employee.

The Board recognizes that a wide range of problems that are not directly associated with an employee's job function may have an effect on an employee's job performance. The problems may involve physical illness, mental or emotional illness, alcohol abuse or alcoholism, drug abuse or dependency, tobacco abuse or personal problems such as those of a marital, family, or financial nature.

NOTE: Refer also to Policies #6150 -- Alcohol, Drugs and Other Substances (School Personnel)  
#6151 -- Drug-Free Workplace

Adopted: 8/9/04

