



# Labor Department Confirms That Certain School Meetings Are FMLA-Protected

Insights

8.08.19

In an eye-opening opinion letter issued earlier today, the U.S. Department of Labor confirmed that parents attending certain school meetings for the benefit of their children are entitled to FMLA leave for their absences. The agency concluded that the need to attend school meetings to discuss individualized education programs for children with serious health conditions triggers intermittent FMLA leave protection. Employers should make note of this opinion and revise their family leave policies and practices as necessary in response.

## The Fact Pattern Presented: Employer Denies Leave Request

Today's [USDOL opinion letter](#) responded to an inquiry from a set of parents whose two children both have FMLA-qualifying serious health conditions. While one parent has received medical certification supporting the need to take intermittent leave to care for their children, and that parent's employer has approved her taking FMLA leave intermittently to bring the children to medical appointments, the employer has not approved her request to take intermittent FMLA leave to attend school meetings. It is this denial of leave that led the parents to seek the advice of the USDOL.

Four times a year, the children's school holds a Committee on Special Education (CSE) meeting to discuss the students' Individualized Education Programs (IEPs), where they review the children's educational and medical needs, well-being, and progress. For those unfamiliar, federal law – specifically the Individuals with Disabilities Education Act (IDEA) – requires public schools to develop an IEP for students who receive special education and related services with input from the child and the child's parents, teachers, school administrators, and related services personnel.

Because the children receive pediatrician-prescribed occupational, speech, and physical therapy provided by their school district, these meetings are attended by a speech pathologist, school psychologist, occupational therapist, and/or physical therapist employed or contracted by the district, as well as teachers and school administrators. The participants provide updates regarding the children's progress and areas of concern; review recommendations made by the children's doctors; review any new test results; and may make recommendations for additional therapy.

## Legal Standard: What Counts As FMLA Leave?

As most covered employers are aware, FMLA permits an eligible employee to take up to 12 weeks of job-protected, unpaid leave per year “to care for the spouse, or a son, daughter, or parent, of the employee, if such spouse, son, daughter, or parent has a serious health condition.” Care for a family

member includes “both physical and psychological care” and “making arrangements for changes in care.” And as most employers administering FMLA know, employees are permitted to use FMLA leave intermittently when medically necessary because of a family member’s serious health condition.

The question posed to the USDOL, then, was whether a parent’s need to attend IEP meetings counted as “caring” for a family member such that FMLA protection would be triggered. The USDOL emphatically responded to the inquiry today by confirming that such attendance falls within the purview of the FMLA and needs to be considered protected time.

### **Analysis: IEP Meetings Count As FMLA-Qualifying Events**

Based on the facts noted above, the USDOL’s opinion letter stated that a parent’s need to attend CSE/IEP meetings addressing the educational and special medical needs of their children — who both have serious health conditions as certified by a health care provider — is a qualifying reason for taking intermittent FMLA leave. The USDOL said that because “caring” for a family member includes making arrangements for changes in care, such IEP meetings fall squarely within the statutory definition.

The agency noted that this analysis was consistent with prior conclusions. It pointed to a 1998 opinion letter issued by the Clinton-era USDOL where an employee was found to be entitled to take FMLA leave to attend “care conferences related to her mother’s health condition,” because her attendance at these conferences was “clearly essential to the employee’s ability to provide appropriate physical or psychological care” to her mother. Similarly here, the USDOL concluded that the parent’s attendance at IEP meetings is essential to the ability to provide appropriate physical or psychological care” to the children.

Specifically, the agency noted that the parent attends these meetings to help participants make medical decisions concerning their children’s medically-prescribed speech, physical, and occupational therapy; to discuss their children’s wellbeing and progress with the providers of such services; and to ensure that the school environment is suitable to their medical, social, and academic needs.

Finally, the USDOL said that the children’s doctor need not be present at IEP meetings in order for the time to qualify for FMLA leave. Further, the agency specifically noted that the time employees spend making arrangements for changes in care will count as protected FMLA leave even if that care does not involve a facility that provides medical treatment.

### **What Does This Mean For Employers?**

You should immediately train your FMLA administrators about this opinion letter and instruct them on any changes in practice or policy this might require. Although USDOL opinion letters themselves are legally non-binding, they are a clear signal about how the agency will enforce such a situation were it to be placed in front of them in an investigation or adversarial process, and they are often

followed by courts. For all intents and purposes, you should treat this as a definitive instruction on how you should treat IEP meetings when it comes to FMLA leave.

While the fact pattern outlined in the opinion letter specifically references Committee on Special Education (CSE) meetings, the USDOL stated in the letter that “the analysis and conclusion in this opinion letter apply to any meetings held pursuant to the IDEA, and any applicable state or local law, regardless of the term used for such meetings.” Therefore, while you have a right to inquire about the purpose of any such meetings to determine whether they fall within the protection of the FMLA, you shouldn’t necessarily deny a leave request just because the school meeting doesn’t meet all of the parameters set forth in this specific fact pattern. You should consider whether any school meeting involving making arrangements for changes in care to a child’s serious health condition should be treated as FMLA leave, coordinating with your employment counsel as necessary.

## **Conclusion**

We will continue to monitor further developments at the USDOL and the courts regarding this issue, and we’ll provide updates regarding matters of interest. Make sure you are subscribed to [Fisher Phillips’ alert system](#) to gather the most up-to-date information. If you have questions, please contact your Fisher Phillips attorney.

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