SECTION 1. Purpose

1.1. The primary purpose of this Administrative Procedure is to set forth the employee rights and guidelines for eligibility and applicability of the Federal Family and Medical Leave Act. In the event of any conflict between this procedure and the applicable law, employees will be afforded all rights required by law.

SECTION 2. Definitions.

2.1 Active Duty (Military). Military members who are currently serving full time in their military capacities are considered as being on “active duty.” Members of a reserve component are not generally considered active duty, although some will work full time occasionally during periods of training. “Reserve” units may be activated on occasion.

2.2 Continuing Treatment. Two or more treatments by a health care provider or someone other than a health care provider but on a referral by a health care provider or one treatment by a health care provider followed by a regiment of continuous treatment under the supervision of a health care provider; or general supervision from a health care provider for a serious long-term or chronic condition or disability which is incurable or for which treatment would not be effective.

2.3 Equivalent Position. One that has the same pay, benefits, and working conditions (including privileges, prerequisites, and status) as the position held by the employee prior to taking FMLA leave.

2.4 Essential Function. Fundamental job duties of the employment position.

2.5 Health Care Provider. Doctor of Medicine; Podiatrist; Dentist; Clinical psychologist; Optometrist, Chiropractor; Nurse Practitioner; Nurse-Midwife; Clinical social worker; Christian Science practitioner; any other provider accepted by the Blue Ridge CTC medical plan.

2.6 Intermittent. Not all at one time; not continuous.

2.7 Serious Health Condition. An illness, injury, impairment, or physical or mental condition that involves at least one of the following: Any period of incapacity or treatment in connection with or consequent to inpatient care in a hospital, hospice or residential medical care facility; any period of incapacity requiring absence from work, school, or other regular daily activities of more than three calendar days that also involves continuing treatment by, or the supervision of, a health care provider; or continuing treatment by or the supervision of, a health care provider for a chronic health condition that is so serious that, if not treated, it would likely result in a period of incapacity of more than three calendar days; or any period of incapacity due to pregnancy, or for prenatal care.

2.8 Child. A biological, adopted, stepchild, a legal ward, or a child of a person standing “in loco
parentis” who is under the age of 18 or a child who is 18 years or older and incapable of self-care because of a mental or physical disability.

2.9 Covered Service Member. A member of the Armed Forces, including a member of the National Guard or Reserves, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness.

SECTION 3. Administrative Procedure.

3.1 It is the intention of Blue Ridge CTC to comply with the Family and Medical Leave Act of 1993 and all subsequent applicable laws, regulations, rules and histories.

3.2 Eligibility

3.2.1 The employee must have worked for the College for 12 months or 52 weeks. The 12 months or 52 weeks need not have been consecutive. Separate periods of employment will be counted, provided that the break in service does not exceed seven years. Separate periods of employment will be counted if the break in service exceeds seven years due to National Guard or Reserve military service obligations or when there is a written agreement stating the College’s intention to rehire the employee after the service break. For eligibility purposes, an employee will be considered to have been employed for an entire week even if the employee was on the payroll for only part of a week or if the employee is on leave during the week.

3.2.2 The employee must have worked at least 1,250 hours during the 12-month period immediately before the date when the leave is requested to commence. The principles established under the Fair Labor Standards Act (FLSA) determine the number of hours worked by an employee. The FLSA does not include time spent on paid or unpaid leave as hours worked. Consequently, these hours of leave should not be counted in determining the 1,250 hours eligibility test for an employee under FMLA.

3.2.3 The employee must work in a worksite where 50 or more employees are employed by the company within 75 miles of that office or worksite. The distance is to be calculated by using available transportation by the most direct route.

3.3 Type of Leave Covered.

3.3.1 The birth of a child and in order to care for that child.

3.3.2 The placement of a child for adoption or foster care and to care for the newly placed child.

3.3.3 To care for a spouse, child or parent with a serious health condition (described below).

3.3.4 The serious health condition (described below) of the employee.

3.3.4.1 An employee may take leave because of a serious health condition that makes the employee unable to perform the functions of the employee’s position.

3.3.4.2 A serious health condition is defined as a condition that requires inpatient care at a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care or a condition that requires continuing care by a licensed health care provider.
3.3.4.3 This procedure covers illnesses of a serious and long-term nature, resulting in recurring or lengthy absences. Generally, a chronic or long-term health condition that would result in a period of three consecutive days of incapacity with the first visit to the health care provider within seven days of the onset of the incapacity and a second visit within 30 days of the incapacity would be considered a serious health condition. For chronic conditions requiring periodic health care visits for treatment, such visits must take place at least twice a year.

3.3.4.4 Employees with questions about what illnesses are covered under this FMLA procedure or under the College's sick leave guidelines are encouraged to consult with the Human Resource Department.

3.3.4.5 If an employee takes paid sick leave for a condition that progresses into a serious health condition and the employee requests unpaid leave as provided under this procedure, the College may designate all or some portion of related leave taken as leave under this procedure, to the extent that the earlier leave meets the necessary qualifications.

3.3.5 Qualifying exigency leave for families of members of the National Guard or Reserves or of a regular component of the Armed Forces when the covered military member is on covered active duty or called to covered active duty.

3.3.5.1 An employee whose spouse, son, daughter or parent either has been notified of an impending call or order to covered active military duty or who is already on covered active duty may take up to 12 weeks of leave for reasons related to or affected by the family member’s call-up or service. The qualifying exigency must be one of the following: 1) short-notice deployment, 2) military events and activities, 3) child care and school activities, 4) financial and legal arrangements, 5) counseling, 6) rest and recuperation, 7) post-deployment activities and 8) additional activities that arise out of active duty, provided that the College and employee agree, including agreement on timing and duration of the leave.

3.3.5.2 “Covered active duty” means: (a) in the case of a member of a regular component of the Armed Forces to a foreign country; and (b) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a call or order to active duty under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code.

3.3.5.3 The leave may commence as soon as the individual receives the call-up notice. (Son or daughter for this type of FMLA leave is defined the same as for child for other types of FMLA leave except that the person does not have to be a minor.) This type of leave would be counted toward the employee’s 12-week maximum of FMLA leave in a 12-month period.

3.3.6 Military caregiver leave (also known as covered servicemember leave) to care for an injured or ill service member or veteran.

3.3.6.1 An employee whose son, daughter, parent or next of kin is a covered servicemember may take up to 26 weeks in a single 12-month period to take care of leave to care for that service member. Next of kin is defined as the closest blood relative of the injured or recovering
3.3.6.2 The term “covered servicemember” means: (a) a member of the Armed Forces (including a member of the National Guard or Reserves) who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a serious injury or illness; or (b) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during the period of 5 years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.

3.3.6.3 The term “serious injury or illness”: (a) in the case of a member of the Armed Forces (including a member of the National Guard or Reserves), means an injury or illness that was incurred by the member in line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; and (b) in the case of a veteran who was a member of the Armed Forces (including a member of the National Guard or Reserves) at any time during a period when the person was a covered servicemember, means a qualifying (as defined by the Secretary of Labor) injury or illness that was incurred by the member in line of duty on an active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

3.4 Amount of Leave

3.4.1 An eligible employee can take up to 12 weeks for the FMLA circumstances 3.3.1 through 3.3.5 above under this procedure during any 12-month period. The College will measure the 12-month period as a rolling 12-month period measured backward from the date an employee uses any leave under this procedure. Each time an employee takes leave, the College will compute the amount of leave the employee has taken under this procedure in the last 12 months and subtract it from the 12 weeks of available leave, and the balance remaining is the amount the employee is entitled to take at that time.

3.4.2 An eligible employee can take up to 26 weeks for the FMLA circumstance (3.3.6) above (military caregiver leave) during a single 12-month period. For this military caregiver leave, the College will measure the 12-month period as a rolling 12-month period measured forward. FMLA leave already taken for other FMLA circumstances will be deducted from the total of 26 weeks available.

3.4.3 If both spouses work for the College and each wishes to take leave for the birth of a child, adoption or placement of a child in foster care, or to care for a parent (but not a parent "in-law") with a serious health condition, a combined total of 12 weeks is permitted. If both spouses work for the College and each wishes to take leave to care for a covered injured or ill servicemember, a combined total of 26 weeks of leave is permitted.

3.5 Employee Status and Benefits during Leave
3.5.1 While an employee is on leave, the College will continue the employee's health benefits during the leave period at the same level and under the same conditions as if the employee had continued to work.

3.5.2 If the employee chooses not to return to work for reasons other than a continued serious health condition of the employee or the employee's family member or a circumstance beyond the employee's control, the College will require the employee to reimburse the College the amount it paid for the employee's health insurance premium during the leave period.

3.5.3 Under current College guidelines, the employee pays a portion of the health care premium. While on paid leave, Blue Ridge CTC will continue to make payroll deductions to collect the employee's share of the premium. While on unpaid leave, the employee must continue to make this payment, either in person or by mail. The payment must be received by the Finance Department by the 15th day of each month. If the payment is more than 30 days late, the employee's health care coverage may be dropped for the duration of the leave. The College will provide 15 days' notification prior to the employee's loss of coverage.

3.5.4 If the employee contributes to a life insurance or disability plan, the College will continue making payroll deductions while the employee is on paid leave. While the employee is on unpaid leave, the employee may request continuation of such benefits and pay his or her portion of the premiums in alignment with 3.5.3. If the employee does not continue these payments, the College will discontinue coverage during the leave.

3.6 Employee Status after Leave
3.6.1 An employee who takes leave under this administrative procedure may be asked to provide a fitness-for-duty (FFD) clearance from the health care provider. This requirement will be included in the College's response (Designation Notice) to the FMLA request. In compliance with FMLA, the College will make every effort to return the employee to the same position or a position with equivalent status, pay, benefits and other employment terms. The position will be the same or one which is virtually identical in terms of pay, benefits and working conditions.

3.6.2 The College may choose to exempt certain "key employees" from this requirement and not return them to the same or similar position. The College will refuse restoration to employment when able to show cause of substantial and grievous economic injury to its operations. The College will notify the employee in writing of his/her status as a "key employee" (as defined by FMLA), the reasons for denying job restoration, and provide the employee a reasonable opportunity to return to work after so notifying the employee.

3.7 Use of Paid and Unpaid Leave
3.7.1 An employee who is taking FMLA leave because of the employee's own serious health condition or the serious health condition of a family member must use all paid sick and annual leave prior to being eligible for unpaid leave. Sick leave will only run concurrently with FMLA leave if the reason for the FMLA leave is covered by the established sick leave guidelines.

3.7.2 Disability leave for the birth of the child and for an employee's serious health condition, including workers' compensation leave (to the extent that it qualifies), will be designated as FMLA leave and will run concurrently with FMLA. For example, if the College provides six weeks of pregnancy disability leave for normal birth, the six weeks will be designated as FMLA leave and counted toward the employee's 12-week entitlement. The employee may then be required to
substitute accrued (or earned) annual leave as appropriate before being eligible for unpaid leave for what remains of the 12-week entitlement. An employee who is taking leave for the adoption or foster care of a child must use all paid annual leave prior to being eligible for unpaid leave.

3.7.3 An employee who is using military FMLA leave for a qualifying exigency must use all paid annual leave prior to being eligible for unpaid leave. An employee using FMLA military caregiver leave must also use all paid sick and annual leave (as long as the reason for the absence is covered by the College’s sick leave guidelines) prior to being eligible for unpaid leave.

3.8 Intermittent Leave or a Reduced Work Schedule

3.8.1 The employee may take FMLA leave in 12 consecutive weeks, may use the leave intermittently (take a day periodically when needed over the year as certified) or, under certain circumstances, may use the leave to reduce the workweek or workday, resulting in a reduced hour schedule. In all cases, the leave may not exceed a total of 12 workweeks (or 26 workweeks to care for an injured or ill servicemember) over a 12-month period.

3.8.2 The College may temporarily transfer an employee to an available alternative position with equivalent pay and benefits if the alternative position would better accommodate the intermittent or reduced schedule, in instances of when leave for the employee or employee’s family member is foreseeable and for planned medical treatment, including recovery from a serious health condition or to care for a child after birth, or placement for adoption or foster care.

3.8.3 Leave for birth, adoption or foster care of a child must be taken within one year of the birth or placement of the child. The use of intermittent leave for these purposes is not permitted by the College. All leave for birth, adoption or foster care of a child must be in a block schedule and within one year of the birth or placement of the child. However, if the newly born or newly placed child has a serious health condition, the employee has the right to take FMLA leave to care for the child intermittently, if medically necessary and such leave is not subject to the 12-month limitation.

3.8.4 If the employee is taking leave for a serious health condition or because of the serious health condition of a family member, the employee should make all efforts to reach agreement with the College before taking intermittent leave or working a reduced hour schedule. If this is not possible, then the employee must prove that the use of the leave is medically necessary.

3.9 Certification of the Employee’s Serious Health Condition

3.9.1 The College will require certification for the employee’s serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Employee’s Serious Health Condition (http://www.dol.gov/esa/whd/forms/WH-380-E.pdf).

3.9.2 The College may directly contact the employee’s health care provider for verification or clarification purposes using a health care professional or HR professional. The College will not use the employee’s direct supervisor for this contact. Before the College makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the College will obtain the employee’s permission for clarification of individually
identifiable health information and will only request the information that is required for completion of the Certification mentioned in 3.9.1.

3.9.3 The College has the right to ask for a second opinion if it has reason to doubt the certification. The College will pay for the employee to get a certification from a second health care provider, which the College will select. The College may deny FMLA leave to an employee who refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the College will require the opinion of a third health care provider. The College and the employee will mutually select the third health care professional, and the College will pay for the opinion. This third opinion will be considered final and binding. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

3.10 Certification for the Family Member’s Serious Health Condition
3.10.1 The College will require certification for the family member’s serious health condition. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. Medical certification will be provided using the DOL Certification of Health Care Provider for Family Member’s Serious Health Condition (http://www.dol.gov/esa/whd/forms/WH-380-F.pdf).

3.10.2 The College may directly contact the employee’s family member’s health care provider for verification or clarification purposes using a health care professional or HR professional. The College will not use the employee’s direct supervisor for this contact. Before the College makes this direct contact with the health care provider, the employee will be given an opportunity to resolve any deficiencies in the medical certification. In compliance with HIPAA Medical Privacy Rules, the College will obtain the employee’s family member’s permission for clarification of individually identifiable health information and will only request the information that is required for completion of the Certification mentioned in 3.10.1.

3.10.3 The College has the right to ask for a second opinion if it has reason to doubt the certification. The College will pay for the employee’s family member to get a certification from a second health care provider, which the College will select. The College may deny FMLA leave to an employee whose family member refuses to release relevant medical records to the health care provider designated to provide a second or third opinion. If necessary to resolve a conflict between the original certification and the second opinion, the College will require the opinion of a third health care provider. The College and the employee will mutually select the third health care provider, and the College will pay for the opinion. This third opinion will be considered final and binding. The employee will be provisionally entitled to leave and benefits under the FMLA pending the second and/or third opinion.

3.11 Certification of Qualifying Exigency for Military Family Leave
3.11.1 The College will require certification of the qualifying exigency for military family leave. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification of Qualifying Exigency for Military Family Leave (http://www.dol.gov/esa/whd/forms/WH-384.pdf).

3.12 Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave
3.12.1 The College will require certification for the serious injury or illness of the covered
servicemember. The employee must respond to such a request within 15 days of the request or provide a reasonable explanation for the delay. Failure to provide certification may result in a denial of continuation of leave. This certification will be provided using the DOL Certification for Serious Injury or Illness of Covered Servicemember (http://www.dol.gov/esa/whd/forms/WH-385.pdf).

3.13 Recertification
3.13.1 The College may request recertification for the serious health condition of the employee or the employee’s family member no more frequently than every 30 days and only when circumstances have changed significantly, or if the College receives information casting doubt on the reason given for the absence, or if the employee seeks an extension of his or her leave. Otherwise, the College may request recertification for the serious health condition of the employee or the employee’s family member every six months in connection with an FMLA absence. The College may provide the employee’s health care provider with the employee’s attendance records and ask whether need for leave is consistent with the employee’s serious health condition.

3.14 Procedure for Requesting FMLA Leave
3.14.1 All employees requesting FMLA leave must provide verbal or written notice of the need for the leave to the HR Department. Within five business days after the employee has provided this notice, the HR Department will complete and provide the employee with the DOL Notice of Eligibility and Rights (http://www.dol.gov/esa/whd/fmla/finalrule/WH381.pdf).

3.14.2 When the need for the leave is foreseeable, the employee must provide the College with at least 30 days' notice. When an employee becomes aware of a need for FMLA leave less than 30 days in advance, the employee must provide notice of the need for the leave either the same day or the next business day. When the need for FMLA leave is not foreseeable, the employee must comply with the College’s usual and customary notice and procedural requirements for requesting leave, absent unusual circumstances.

3.15 Designation of FMLA Leave
3.15.1 Within five business days after the employee has submitted the appropriate certification form, the HR Department will complete and provide the employee with a written response to the employee’s request for FMLA leave using the DOL Designation Notice (http://www.dol.gov/esa/whd/forms/WH-382.pdf). The Designation will provide for one of 3 outcomes: (a) approved; (b) additional information required within 7 calendar days or the College exercising the right to obtain a second or third opinion; (c) not approved.

Section 4. Exceptions
4.1 The President of the College, or his/her designee, may make exceptions to this administrative procedure for academic and other reasons as may be deemed appropriate.
VP of IT
Faculty Council Chair
Classified Staff Council Chair

_________________________    __________________________
President                        Date