

Policy Outline

- I. Policy Value Statement
- II. Purpose
- III. Standards
- IV. Responsibilities
- V. Delegation of Authority
- VI. Definitions
- VII. References
- VIII. History

I. Policy Value Statement

The Board of Education recognizes the right of and encourages Howard County Public School System (HCPSS) employees to ethically produce materials and/or other forms of intellectual property. The Board also recognizes the need for all employees to understand the circumstances where HCPSS may have proprietary rights to intellectual property produced. Depending upon the situation, royalties for such materials and/or other forms of intellectual property may be paid to the employee or to an approved charity.

II. Purpose

The purpose of this policy is to establish provisions which define how proprietary rights are recognized when employees develop materials and other forms of intellectual property and how equitable allocation of royalties and other ownership rights is established.

III. Standards

- A. The Board does not inhibit employees, outside of their work duty day and apart from their employment with the HCPSS, using their own resources, to research, author, or produce materials and/or other forms of intellectual property. The Board also recognizes the right of employees to own business interests in companies which produce such intellectual property.
- B. Employees who produce materials and/or other forms of intellectual property outside of their work duty day, apart from their employment, using their own resources, have the right to exercise total proprietary rights, including royalty rights, regarding the intellectual property, subject to the provisions of the Board of Educations' Policy 2070 Ethics and the HCPSS Ethics Regulations.

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- C. The Board retains the rights to all materials and/or other forms of intellectual property produced by HCPSS employees during their work duty day, as part of their employment, or with the use of HCPSS resources. In this situation, the Board reserves the right to copyright or patent the intellectual property in its name and to otherwise exercise proprietary rights, including royalty rights. Employees will not be compensated for the materials and/or other forms of intellectual property produced by HCPSS employees during their work duty day, or as part of their employment, or with the use of HCPSS resources without the written agreement established in Standard E.
- D. Prior to the development of new materials and/or other forms of intellectual property related to their employment, employees must meet with the Superintendent/designee to obtain permission to create the material and/or other forms of intellectual property and to gain an understanding of any ethical considerations. The meeting should occur regardless of whether the materials and/or other forms of intellectual property will be developed outside or during the work duty day or will use some or no HCPSS resources.
- E. Employees who receive approval for the development of materials and/or other forms of intellectual property that does involve full or partial use of HCSS resources and/or partial use of the work duty day will seek to have the respective rights of ownership between the employee and the Board addressed in a written agreement. If there is no such agreement, the rights of ownership shall belong to the Board.
- F. Materials and/or other forms of intellectual property authored or produced by employees may be purchased by the HCPSS if they are approved for purchase according to standard evaluation and selection procedures for those items in accordance with Policy 2070 Ethics and HCPSS Ethic Regulations, Policy 4050 Procurement of Goods and/or Services, and Policy 8040 Selection of Instructional Materials.
- G. An employee may not participate in the evaluation or procurement of materials and/or other forms of intellectual property wholly or partially produced by the employee and/or immediate family member.
- H. An employee who receives royalties or compensation on the sale of materials and/or other forms of intellectual property to the HCPSS, must donate royalties and/or net *pro rata* profits to an approved charity if
1. The sale of the materials and/or other forms of intellectual property exceeds \$25,000 annually, or
 2. The employee receives a *pro rata* share of payment of account on sales of materials and/or other forms of intellectual property in excess of \$25,000 annually.

The amount that is to be donated is the royalties and/or net *pro rata* profits on any sales in excess of \$25,000.

- I. Any employee who chooses not to comply with the foregoing requirements may request of the Superintendent/designee that his or her materials and/or other forms of intellectual property not be purchased by the HCPSS. Such requests will be honored.
- J. An employee may not use HCPSS Board property, student work (without prior documented written permission obtained from parents), or personnel, in preparing materials for private use or for use unrelated to the school system.
- K. Any employee found in violation of this policy will be subject to employee discipline as outlined in Policy 7030 Employee Conduct and Discipline.

IV. Responsibilities

- A. The Superintendent/designee will provide a report on employees royalties to the Board annually.
- B. Employees will obtain prior permission from the Superintendent/designee to develop materials and/or other forms of intellectual property related to their employment.
- C. Employees who receive approval for the development of materials and/or other forms of intellectual property that does involve full or partial use of HCPSS resources and/or partial use of the work duty day will seek to have the respective rights of ownership between the employee and the Board addressed in a written agreement.

V. Delegation of Authority

The Superintendent is authorized to develop appropriate procedures to implement this policy.

VI. Definitions

Within the context of this policy, the following definitions apply:

- A. Approved Charity – Any charity recognized as legitimate for federal tax purposes by the U.S. Internal Revenue Service.
- B. Employee – An individual whose compensation is paid in whole or part by the Board and/or an individual who is a student teacher, an intern, or an independent contractor for the school system.
- C. Immediate Family Member – The spouse, domestic partner, brother, sister, parent, step-parent, child, stepchild, father-in-law, mother-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, grandmother, grandfather, grandchild, adopted child of an employee or of the spouse of an employee, or anyone who lives in an employee's household.

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- D. Intellectual Property – Creations of the mind, including but not limited to materials, social media and website content, inventions, processes (a way of doing or making things), and other creative works and ideas embodied in a form that can be shared or can enable others to recreate, emulate, or manufacture them. Intellectual property can be protected by patents, trademarks, copyrights or trade secrets.
- E. Materials – Resources used which may include the following:
1. Book – A written work that has been published in a variety of formats, such as print, digital, and audio recordings.
 2. Digital Tool – Any website, application (app), or software that requires an account.
 3. Instructional Materials – Resources used in educational lessons, which include active learning, digital tools, and reference materials for parents and students.
 4. Software – Any application or script that can be executed on a computer system, server, or other electronic device.
 5. Supplemental Instructional Materials – Teacher-selected resources, other than approved course specific resources, used to support or reinforce instruction.
- F. Payment of Account (*pro rata*) – An HCPSS employee’s share of net profits on sales of materials and/or other forms of intellectual property to the HCPSS by a company in which the employee has a 3% or more ownership interest.
- G. Proprietary – Relating or pertaining to ownership.
- H. Royalty – A percentage payment on gross sales or fixed amount per sale to an author or producer by a company or producer of materials and/or other forms of intellectual property.

VII. References

- A. Legal
35 U.S. Code Section 100
- B. Other Board Policies
Policy 2070 Ethics
Policy 4050 Procurement of Goods and/or Services
Policy 8040 Selection of Instructional Materials
Policy 7020 Nepotism
Policy 7030 Employee Conduct and Discipline
- C. Relevant Data Sources

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- D. Other
Howard County Public School System Ethics Regulations

VIII. History¹

APPROVED: May 5, 1970
REVIEWED:
MODIFIED:
REVISED: November 20, 1990
April 16, 2009
February 14, 2019
EFFECTIVE: November 19, 2020

¹ Key: *Adopted*-Original date the Board took action to approve a policy; *Reviewed*-The date the status of a policy was assessed by the Superintendent's Standing Policy Group; *Modified*-The date the Board took action to alter a policy that based on the recommendation of the Superintendent/designee did not require a comprehensive examination; *Revised*-The date the Board took action on a policy that based on the recommendation of the Superintendent/designee needed a comprehensive examination; *Effective*-The date a policy is implemented throughout the HCPSS, typically July 1 following Board action.

INTELLECTUAL PROPERTY AND ROYALTIES

Effective: November 19, 2020

I. Recognizing Proprietary Rights

- A. Employees may produce materials and/or intellectual property outside of their work duty day, apart from their employment with the Howard County Public School System (HCPSS), using their own resources, and therefore have the ability to exercise total proprietary rights, including royalty rights, regarding the materials and/or other forms of intellectual property.
- B. Employees will seek a meeting for guidance from the Superintendent/designee when developing materials and/or other forms of intellectual property that may be related to their employment. The meeting should occur regardless of whether the materials and/or other forms of intellectual property will be developed outside or during the work duty day or will use some or no HCPSS resources.
- C. The Board retains the rights to all materials and/or other forms of intellectual property, produced by HCPSS employees during their work duty day, or as part of their employment, or with the use of HCPSS resources. In this situation, the Board reserves the right to copyright or patent these materials and/or other forms of intellectual property in its name and to otherwise exercise proprietary rights, including royalty rights, regarding these materials and/or other forms of intellectual property.
- D. Employees who obtain approval to develop materials and/or other forms of intellectual property that does involve full or partial use of HCPSS resources and/or partial use of the work duty day will seek to have the respective rights of ownership between the employee and the Board addressed in a written agreement. If there is no such agreement, the rights of ownership shall belong to the Board.

II. Equitable Allocation of Royalties on the Sale of Intellectual Property to HCPSS

- A. It is the responsibility of the employee who received royalties on the sale of materials and/or other forms of intellectual property to HCPSS to consult annually with the Purchasing Office to determine if the materials and/or other forms of intellectual property purchases may have exceeded the \$25,000 threshold.
- B. An employee who receives royalties on the sale of materials and/or other forms of intellectual property to the HCPSS in excess of \$25,000 gross sales annually, or who receives a *pro rata* share of payments of account for materials and/or other forms of intellectual property purchased by the HCPSS in excess of \$25,000 gross sales annually, must report such sales in an annual report using the Royalties

Reporting Form to the Office of the General Counsel and the Purchasing Office, submitted in July of each year. This annual report must contain the following:

1. The employee's best estimate of gross sales and royalties, and/or *pro rata* net profits, based on such information as may be available from the publisher, company, or the HCPSS Purchasing Office;
 2. A brief description of the method used to estimate gross sales;
 3. The amount of gross sales (if they exceed \$25,000); and
 4. The name of the approved charity to which net profits and/or royalties earned on the amount in excess of \$25,000 were donated.
- C. An HCPSS employee who prefers not to sell his or her materials and/or other forms of intellectual property to the HCPSS may petition the Superintendent in written request using the Royalties Reporting Form listing all such materials and/or other forms of intellectual property. This request will be honored.

III. HCPSS Obligations

- A. The Office of the General Counsel will maintain a file of the reports of employees on royalties, payments of account, and charitable donations, and will make this file available to the Board of Education on request.
- B. Should employees request that their materials and/or other forms of intellectual property not be purchased by the HCPSS, the Office of the General Counsel will provide the Royalties Reporting Form to notify the Purchasing Office.
- C. The Superintendent/designee will notify employees annually of the expectations included in Policy 7060 and these implementation procedures.

IV. References

Other
Royalties Reporting Form

V. History¹

ADOPTED: November 20, 1990

REVIEWED:

MODIFIED:

REVISED: April 16, 2009

February 14, 2019

EFFECTIVE: November 19, 2020

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