

## **District Ownership of Staff-Created Work**

### **Purpose of these Procedures**

The following procedures have been established by the superintendent pursuant to Board Policy 2027 to determine whether original works of authorship created by district employees for use in the district's schools and programs is "work made for hire" owned by the district. These procedures will also provide a process for employees to request permission to retain ownership of such work created within the scope of their employment, and for appealing a decision by the district if that request is denied.

### **Original Works of Authorship**

Policy 2027 and this procedure apply to original works of authorship entitled to copyright protection under 17 U.S.C. § 102 that are fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

"Works of authorship" as used in Policy 2027 and this procedure includes, but is not limited to, any of the following:

- Literary works;
- Musical works, including lyrics;
- Dramatic works, including any accompanying music;
- Pantomimes and choreographic works;
- Pictorial, graphic, and sculptural works;
- Motion pictures and other audiovisual works;
- Sound recordings;
- Architectural works;
- Certain work specially ordered or commissioned from a contractor for use as a contribution to a collective work that is identified in a written agreement between the parties as work made for hire;
- Lesson plans; and
- Instructional materials (including Core, Alternative Core, Intervention, Supplemental, and Temporary Supplemental Materials as defined in Policy 2020, Course Design, Selection and Adoption of Instructional Materials).

### **Work Made for Hire**

Under the federal Copyright Act of 1976, 17 U.S.C. § 101 et seq., an employee's original works of authorship that are "work made for hire" are owned by the employer, who by law is the "author" of such works. The "academic exception" or "teacher exception" to "work made for hire" recognized by the common law for scholarly academic writing in the colleges or universities does not extend to the K-12 setting.

In determining whether original work created by district staff is "work made for hire" created within the scope of a staff member's employment, the district will consider the following:

- A. whether the work is of the kind the employee is employed to perform;
- B. whether the work occurred substantially within authorized time and space limits;
- C. whether the work was motivated, at least in part, by a purpose to serve the district; and
- D. Whether the employee prepared the materials on his/her own initiative without any prompting, direction, or supervision by superiors.

However, original works of authorship created by an employee that are not “work made for hire” created within the scope of employment and that do not violate copyright laws or the provisions of Policy 2025 are owned by the employee.

Original work created by an employee that would otherwise be “work made for hire” created within the scope of employment may still be owned by the employee if the materials do not violate copyright laws or the provisions of Policy 2025, Copyright Compliance, and if the employee and the district expressly agree in a signed, written statement that the employee may retain ownership in the original work of authorship.

### **Open Educational Resources**

Open Educational Resources (OER) are teaching, learning, and research resources that reside in the public domain or have been released under an intellectual property license that permits their free use and re-purposing by others. The purpose of OER participation is to positively impact both the teaching and learning process by providing teachers and administrators with cost-effective materials that are available for sharing, accessing, and collaborating for personalized learning.

Should the Board of Directors by policy or resolution agree to contribute materials to OER repositories or libraries in cooperation with other school districts, the State of Washington, and/or educational organizations, the Board may authorize that any such materials owned by the District be licensed or shared in the public domain to promote OER efforts. Staff will also be encouraged to contribute materials to OER repositories or libraries that they have created and which fall outside the “work made for hire” doctrine.

### **Requests to Retain Ownership in Original Works and Appealing a Denial**

An employee may file a request in writing with the superintendent or the Superintendent’s designee to retain ownership in an original work of authorship created within the scope of employment that does not otherwise violate copyright laws or the provisions of Policy 2025. The superintendent or the superintendent’s designee will consider all the facts and circumstances, as well as the District’s past practices and the best interests of the District, in determining whether to grant the employee’s request.

If the superintendent or the superintendent’s designee grants the employee’s request, the District and the employee shall enter into a signed written agreement that grants the employee ownership in an original work of authorship that would otherwise be “work made for hire.”

If the superintendent or the superintendent’s designee denies the employee’s request, the Superintendent or the superintendent’s designee shall notify the employee in writing that the request has been denied.

If the employee is notified by the superintendent or the superintendent's designee that such a request has been denied, the employee may request within five (5) days of receiving the written denial to have an informal meeting with the superintendent or the superintendent's designee regarding the decision.

Following the informal meeting with the employee, the Superintendent or the superintendent's designee will provide the employee written notice of the results of the meeting.

If, following the informal meeting, the employee's request is again denied, the employee may file a written request with the Board of Directors to reconsider the decision of the superintendent or the superintendent's designee.

Within ten (10) school business days of receiving the employee's written request, the Board of Directors will consider the matter in closed session, vote on the matter in an open public meeting, and notify the employee in writing whether the employee's request is granted or denied. If the request is denied, the Board's decision will include information regarding the employee's right to file an appeal with the Superior Court pursuant to Chapter 28A.645 RCW to determine strictly whether the decision was arbitrary or capricious.