

PRINCE GEORGE'S COUNTY PUBLIC SCHOOLS
Board of Education
Upper Marlboro, Maryland

0128
Policy No.

BOARD OF EDUCATION POLICY

BASIC COMMITMENTS

Intellectual Property

I. POLICY STATEMENT

The Prince George's County Board of Education (Board) acknowledges the importance of protecting the rights of creators of intellectual property, The Board recognizes its responsibility to ensure that copyrighted materials are used in compliance with federal copyright laws.

II. PURPOSE

The purpose of this policy is to ensure the appropriate use of copyrighted materials, including audio, digital, print, online, and video materials and internet-based software and outline expectations for Prince George's County Public Schools (PGCPS) employees and students.

III. DEFINITIONS

- A. *Copyright* - Copyright is a form of protection grounded in the U.S. Constitution and granted by law for original works of authorship fixed in a tangible medium of expression. Copyright covers both published and unpublished works. It is a form of intellectual property law.
- B. *Copyright law* - A law that protects the intellectual property rights of authors or other creators of original works by granting them exclusive rights to control how their works may be used, including the rights to reproduce, distribute, publicly perform, and publicly display their work.
- C. *Employee* – For the purposes of this policy, shall include an individual employed by the Board, including tenured and non-tenured teachers and certificated and non-certificated individuals, whether full-time, part-time, temporary permanent or substitute and independent contractors, vendors, and contractors'/vendors'
- D. *Intellectual property* – Intellectual property refers to any creation of the human mind that the law protects from unauthorized use by others. The ownership of intellectual property creates a limited monopoly in the protected property.

1. One form or category of intellectual property law is copyright. Examples of copyright protected intellectual property are original literary, artistic, dramatic and musical works, such as novels, songs, movies, poetry, computer software, sculpture, and architecture.
2. Another form or category of protected intellectual property is trademark. Examples of trademark are a word, phrase, symbol, design, or expression (or any combination of these) that identifies and distinguishes the source of the goods of one party from those of others. High school logos and athletic teams' mascots and mascot names are trademarks of PGCPSS.

E. Student work product – The work created by an individual while enrolled as a PGCPSS student. Student work product includes:

1. written reports, essays, tests, and homework;
2. personal class notes;
3. art projects; and
4. computer software.

F. Work made for hire – A work made for hire is:

1. a work prepared by an employee within the scope of their employment; or
2. a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work, as a compilation, as an instructional text, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument signed by them that the work shall be considered a work made for hire.

IV. STANDARDS

A. Copyright

1. PGCPSS may have procured different licenses to use copyrighted materials. Absent knowledge of a copyright license, employees and students should assume that copyright restrictions apply unless they have determined that materials are not copyrighted or they have received the copyright holder's permission to use the copyrighted materials. A license or a copyright holder's permission to utilize the materials will often have restrictions, such as use for educational purposes only. It is the responsibility of employees and students to understand any such limitations.
2. Employees are expected to be knowledgeable about the standards set forth in this policy, which reflect the requirements of copyright law, and acknowledge that

these standards shall not be adjusted simply because the materials are being used for instruction.

B. Fair Use

1. Fair use is a judicial doctrine that acts as a limitation on the exclusive rights of copyright owners and provides that the reproduction of a copyrighted work may be deemed “fair use,” when the purpose is criticism, comment, news reporting, teaching (including making multiple copies for classroom use), scholarship, or research. While each situation must be determined based on specific facts, a reproduction of a copyrighted work qualifies as “fair use” based on the evaluation of the following factors:
 - a. the purpose and character of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes;
 - b. the nature of the copyrighted work;
 - c. the amount and substantiality of the portion used in relation to the copyrighted work as a whole; and
 - d. the effect of the use upon the potential market for or value of the copyrighted work.
2. The four factors are weighed in each situation, and all four are, in theory, equally important, although the first and fourth factors have been historically focused on by courts.

C. Technology, Education, and Copyright Harmonization (TEACH) Act

1. The TEACH Act is a federal law that aims to balance the needs of educators and students engaged in distance, remote, or online learning with the rights of copyright owners. It provides an expansion of an educator’s rights, in addition to fair use, to use copyrighted works in digital teaching materials without first necessitating permission from the copyright holder. Other copyright exemptions, such as fair use, only apply to face-to-face classroom settings.
2. The TEACH Act covers materials made ready for remote or online use by students enrolled in classes taught in a traditional classroom and also distance learning courses. In order for the TEACH Act to apply, the performance or display must be a part of the regular classroom instruction and be accessible only to PGCPs students who are enrolled in the online/hybrid course, whether or not the students are present on school grounds or off. The other numerous criteria required by the TEACH Act may be found in this policy’s administrative procedure.

D. Works Made for Hire

1. When a PGCPS employee creates a work within the scope of the employee's employment (a work made for hire), the Board is the owner of any and all rights to such works, including any and all derivative works, unless there is a written agreement to the contrary.
2. Supplies, equipment, or materials created alone by a PGCPS employee, or created in association with other employees, for which time, facilities, materials, or resources of PGCPS have been used or which were created as part of the employee's job responsibilities, are the property of the Board. In a situation in which the activity is partially private and partially public, specific arrangements must be approved in advance by the Superintendent/designee, regardless of whether royalties are paid.

E. Student Work Product

Under Maryland law, the Board may not claim ownership rights, property rights, or the copyright to the student work product of a student enrolled in PGCPS. If a student's intellectual property is published or produced, the notice of copyright shall be used. Additionally, parents of PGCPS students as well as eligible students (e.g., students 18 years of age and older) are to be provided with an annual notice in which they may choose to disallow the use of the student's intellectual property in any PGCPS or external media publications, reproductions and/or displays.

F. Agreements with Contractors and/or Vendors

In order to appropriately safeguard intellectual property rights, provisions for intellectual property shall be included in agreements, contracts, and memoranda of understanding with contractors, vendors, and other entities that provide services or products to PGCPS students, offices, and schools.

V. IMPLEMENTATION RESPONSIBILITIES

- A. The Superintendent is authorized to develop an administrative procedure to address this policy.

VI. REFERENCES

- A. Legal
Copyright Act of 1976, Title 17 of the United States Code, as amended
Digital Millennium Copyright Act, Pub. L. No. 105-304, 112 Stat. 2860 (Oct. 28, 1998)
Technology, Education, and Copyright Harmonization (TEACH) Act of 2002, P.L. 107-273 § 13301, and now Section 110(2) of the Copyright Act (Nov.2, 2002)
Md. Code Annotated, Education Article, § 4-130

- B. Other Policies and Administrative Procedures
 - Board Policy 0107 – Ethics Regulation
 - Board Policy 3323 – Purchasing
 - Administrative Procedure 3323 - Purchasing
 - Administrative Procedure 6160 – Copyright Guidelines

VII. HISTORY

Policy Adopted
04/25/2024