

**PERSONNEL****Intellectual Property Rights**

The purpose of this policy is to establish provisions which define how intellectual property rights are recognized when employees develop materials and other forms of intellectual property and how equitable allocation of royalties, compensation, and other ownership rights are established for intellectual property valued in excess of twenty-five hundred dollars (\$2500.00).

It is the policy of the Board to encourage its employees to ethically create innovative and progressive materials and/or other forms of intellectual property. Intellectual property is defined as original and creative work manifested in a tangible form that can be legally protected, in a manner that may include but is not limited to a patent, trademark, or copyright.

The Board also recognizes the need for all employees to understand the circumstances where the District may have proprietary rights to intellectual property produced during paid time using public resources. Depending upon the situation, royalties or compensation for such materials and/or other forms of intellectual property may be paid to the District.

Prior to the development of new materials and/or other forms of intellectual property related to an employee's employment or an employee's sabbatical, the employee must meet with the Superintendent or 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 workday or will use some or no District resources.

Employees who receive approval for the development of materials and/or other forms of intellectual property that does involve full or partial use of District resources and/or partial use of the workday will seek to have the respective rights of ownership between the employee and the District addressed in a written agreement. If there is no such agreement, the rights of ownership shall belong to the District.

**Items Created Within the Employee's Scope of Responsibilities**

The Board retains the rights to all materials and/or other forms of intellectual property produced by employees during their workday, as part of their employment, and/or using District resources. In this situation, the District reserves the right to copyright or patent the intellectual property in its name and to otherwise exercise proprietary rights, including royalty or compensation rights. Employees will not be compensated for the materials and/or other forms of intellectual property produced by employees during the paid workday, or as part of their employment, or with the use of public resources.

*Items Created Outside the Employee's Scope of Responsibilities*

The Board does not inhibit employees, outside of their workday and apart from their employment with the District, from 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.

Employees who produce materials and/or other forms of intellectual property outside of their workday, apart from and not related to their employment, using their own resources, have the right to exercise total proprietary rights, including royalty rights and/or compensation, regarding the intellectual property.

However, if an employee uses District resources, equipment or facilities outside the workday to create intellectual property, the rights to such property belongs to the District unless an agreement is reached prior to the initiation of the work.

#### *Items Created Using a Combination of Paid and Personal Time*

Work that an employee does in a combination of both paid and personal time that contributes to the job for which the employee was hired, may be considered within the employee's scope of responsibilities as defined by this policy. When an employee creates items used to perform their job function and any portion of the work on the item occurred when the employee was being paid by the District and/or the employee was using District equipment, resources or facilities the items may belong to the District, the employee or a combination of the two.

Employees must receive prior approval for the development of materials and/or other forms of intellectual property that involves full or partial use of District resources and/or partial use of the workday. The written agreement will establish the respective rights of ownership between the employee and the District. If there is no such agreement, the rights of ownership shall belong to the District.

Should an employee develop intellectual property but not see to monetize or legally protect it, the District may make use of the property without additional compensation, but shall not distribute, copy, or monetize the property without the consent of the originating employee.

#### *District Purchase of Employee Developed Materials*

Materials and/or other forms of intellectual property authored or produced by employees may be purchased by the District if they are approved for purchase according to standard evaluation and selection procedures for those items in accordance with Board Policies, state statute and administrative procedures.

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.

An employee who receives royalties or compensation on the sale of materials and/or other forms of intellectual property to the District, must divide royalties and/or net pro rata profits as defined if:

1. The sale of the materials and/or other forms of intellectual property exceeds twenty-five hundred dollars (\$2,500.00) 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 that exceeds twenty-five hundred dollars (\$2,500.00) annually.
3. The amount that is to be donated in the royalties and/or net pro rata profits on any sales exceeds twenty-five hundred dollars (\$2,500.00).

If the royalties and/or net pro rata profits exceed twenty-five hundred dollars (\$2,500.00) annually the following distribution shall apply:

50% to employee

40% to District

10% to Helena Education Foundation

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 District. Such requests will be honored.

An employee may not use District 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.

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

Legal References: §2-2-121, MCA Rules of Conduct for Public Officers and Public Employees

§2-2-121, MCA School Officers Not to Act as Agents  
Copyright Act of 1976

Cross Reference: 5035 Staff Ethics and Political Activity

Policy History:

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