

Office of School Board Attorney
Walter J. Harvey, School Board Attorney

SUBJECT: INITIAL READING: PROPOSED NEW POLICY 9701, *TRADEMARK LICENSING, PROTECTION AND USE*; AMENDMENTS TO POLICIES 9700.01, *ADVERTISING AND COMMERCIAL ACTIVITIES*; AND 2531, *COPYRIGHTED WORKS*, AND TO REQUEST AUTHORIZATION TO RETAIN COUNSEL FOR INTELLECTUAL PROPERTY MATTERS

COMMITTEE: INNOVATION, GOVERNMENTAL RELATIONS AND COMMUNITY ENGAGEMENT

LINK TO STRATEGIC BLUEPRINT: EFFECTIVE & SUSTAINABLE BUSINESS PRACTICES

In order to protect the Board's interests and to restrict the unauthorized use of names, trademarks, images, and logos that define and identify Miami-Dade County Public schools, the Superintendent and the Board Attorney have established a process to register Board logos, school mascots, trademarks and school names with the United States Patent Office and the Florida Department of State. New Policy 9701, *Trademark Licensing, Protection and Use*, is proposed in order to provide notice and guidance to school sites and vendors regarding authorized and unauthorized uses of these registered trademarks. The Policy allows Principals to permit students, student organizations, parent organizations, community groups, school-affiliated organizations, booster clubs and other M-DCPS affiliated school-support organizations to use Board trademarks in a non-commercial manner to promote a group of students, a school activity or event, a school or the District if the use is in connection with school-related activities. No fees will be charged and no licensing agreement is required.

For commercial uses, however, members of the general public, outside organizations, vendors, commercial manufacturers, commercial entities, wholesalers, and retailers are prohibited from using Board trademarks without a written license agreement with the Board in accordance with administrative procedures established by the Superintendent. These agreements are subject to the payment of royalties.

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The new policy lists specific unauthorized uses of these trademarks but also gives the Board the sole right to approve or reject, in any case, at any time, and at its discretion any and all licensing agreements, proposals, contracts and/or any organization's request. The policy also provides that Principals must properly account for revenues received from commercial licensing agreements and enforcement actions against unauthorized uses are detailed.

Policy 9700.01, *Advertising and Commercial Activities*, is proposed to be amended to clarify procedures related to advertising in schools to be consistent with current practices and to specifically authorize the District to make advertising decisions related to non-school site venues, facilities and properties. The policy also cross-references the new Policy 9701, *Trademark Licensing, Protection and Use*, and makes other technical changes.] Revised

Policy 2531, *Copyrighted Works*, is proposed to be amended to clarify existing law and make technical changes.

Authorization is also requested to retain the law firm of Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A., to assist the Board with virtual, copyright and intellectual property matters. The firm has extensive experience in K-12 education and virtual intellectual property and school issues and has provided legal assistance to other school districts, colleges and universities around the country. The firm will be retained for \$345 blended hourly rate for attorneys and \$75 per hour for paralegals. These rates are significantly less than the Board's current intellectual property law firm.

Attached is the Notice of Intended Action and the proposed new policy and policy amendments. Changes are indicated by underscoring words to be added and ~~striking through~~ words to be deleted.

Authorization of the Board is requested for the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to promulgate new Policy 9701, *Trademark Licensing, Protection and Use*, and amend Policies 9700.01, *Advertising and Commercial Activities*, and 2531, *Copyrighted Works*.

RECOMMENDED: That The School Board of Miami-Dade County, Florida:

- (1) authorize the Superintendent to initiate rulemaking proceedings in accordance with the Administrative Procedure Act to promulgate new Policy 9701, *Trademark Licensing, Protection and Use*, and to amend Policies 9700.01, *Advertising and Commercial Activities*, and 2531, *Copyrighted Works*; and
- (2) authorize the School Board Attorney to retain the law firm of Allen, Dyer, Doppelt, Milbrath & Gilchrist, P.A., to assist the Board with virtual, copyright and intellectual property matters at a blended rate of \$345 per hour for attorneys and \$75 per hour for paralegals.

NOTICE OF INTENDED ACTION

THE SCHOOL BOARD OF MIAMI-DADE COUNTY, FLORIDA, announced on February 3, 2016, its intention to promulgate new policy 9701, *Trademark Licensing, Protection and Use*, and to amend Policies 9700.01, *Advertising and Commercial Activities*, and 2531, *Copyrighted Works*, at its meeting of March 9, 2016.

PURPOSE AND EFFECT: New Policy 9701, *Trademark Licensing, Protection and Use*, is proposed in order to provide notice and guidance to school sites and vendors regarding authorized and unauthorized uses of these registered trademarks. The Policy allows Principals to permit students, student organizations, parent organizations, community groups, school-affiliated organizations, booster clubs and other M-DCPS affiliated school-support organizations to use Board trademarks in a non-commercial manner to promote a group of students, a school activity or event, a school or the District if the use is in connection with school-related activities. No fees will be charged and no licensing agreement is required. Members of the general public, outside organizations, vendors, commercial manufacturers, commercial entities, wholesalers, and retailers, however, will be prohibited from using Board trademarks without a written license agreement with the Board in accordance with administrative procedures established by the Superintendent. These agreements are subject to the payment of royalties.

The new policy lists specific unauthorized uses of these trademarks but also gives the Board the sole right to approve or reject, in any case, at any time, and at its discretion any and all licensing agreements, proposals, contracts and/or any organization's request. The policy also provides that Principals must properly account for revenues received from commercial licensing agreements and enforcement actions against unauthorized uses are detailed.

Policy 9700.01, *Advertising and Commercial Activities*, is proposed to be amended to clarify procedures related to advertising in schools to be consistent with current practices and to specifically authorize the District to make advertising decisions related to non-school site venues, facilities and properties. The policy also cross-references the new Policy 9701, *Trademark Licensing, Protection and Use*, and makes other technical changes.] Revised

Policy 2531, *Copyrighted Works*, is proposed to be amended to clarify existing law and make technical changes.

SUMMARY: In accordance with its statutory responsibilities, the School Board is required to review and update its policies as often as necessary to reflect statutory requirements and current practices. The proposed new policy 9701, *Trademark Licensing, Protection and Use*, provides notice and guidance to school sites and vendors regarding authorized and unauthorized uses of the School Board's registered trademarks. Policy 9700.01, *Advertising and Commercial Activities*, is proposed to be amended to clarify procedures related to advertising in schools to be consistent with current practices and to specifically authorize the District to make advertising decisions related to non-school site venues, facilities and properties. Policy 2531, *Copyrighted Works*, is proposed to be amended to clarify existing law and make technical changes.

SPECIFIC LEGAL AUTHORITY UNDER WHICH RULEMAKING IS AUTHORIZED: 1001.41 (1),(2),(4),(5), 1001.42 (6),(12)(d)(f),(15), 1001.43 (2),(4),(10), 1001.49 (1),(2),(3),(4), F.S.

LAWS IMPLEMENTED INTERPRETED OR MADE SPECIFIC: 15 U.S.C. 1127; 17 U.S.C..101, et seq., 119.084, 1001.41 (1), (2), (4), 1013.10, F.S.

IF REQUESTED, A HEARING WILL BE HELD DURING SCHOOL BOARD MEETING OF March 9, 2016, which begins at 1:00 p.m., in the School Board Auditorium, 1450 N.E. Second Avenue, Miami, Florida 33132. Persons requesting such a hearing or who wish to provide information regarding the statement of estimated regulatory costs, or to provide a proposal for a lower cost regulatory alternative as provided in Section 120.54(1), F.S., must do so in writing by March 1, 2016, to the Superintendent, Room 912, at the same address.

ANY PERSON WHO DECIDES TO APPEAL THE DECISION made by The School Board of Miami-Dade County, Florida, with respect to this action will need to ensure the preparation of a verbatim record of the proceedings, including the testimony and evidence upon which the appeal is to be based. Section 286.0105, F. S.

COPIES OF THE PROPOSED NEW AND AMENDED POLICIES are available at cost to the public for inspection and copying in the Citizen Information Center, Room 158, 1450 N.E. Second Avenue, Miami, Florida 33132.

NEW POLICY

9701- TRADEMARK LICENSING, PROTECTION AND USE

The Board (M-DCPS or District) seeks to protect its reputation, interest, and the public at large, by prohibiting the unauthorized use of trademarks, images, logos, mascots, names, phrases, symbols or other indicia that are associated with M-DCPS (Marks).

Many of the Board's Marks are officially registered trademarks with the United States Patent and Trademark Office and/or the Florida Department of State in order to provide notice to the public of the Board's ownership of the mark, create a legal presumption of ownership nationwide and/or statewide, and establish the exclusive right to use the Marks on or in connection with the goods or services set forth in the registration. The Board also possesses unregistered common law rights in other Marks.

Members of the public seeking to use Board Marks must enter into a Licensing Agreement with the Board in accordance with administrative procedures developed by the Superintendent to implement this policy. The Superintendent is authorized and responsible for informing the public on how to conduct business with the Board under this policy.

Definitions

License - a limited term contract between the School Board and an entity or individual granted permission to use Board Marks in connection with providing goods or services. A fee may be charged for licenses. All goods or services must be approved by the Board in a manner that allows it to control the nature and quality of the goods and services in accordance with the administrative procedures that implement this policy.

License Agreement - an agreement which may include royalties to the School Board if a vendor proposes to provide goods or services' using any of the Board's Marks and that provides the Board with control over the manner in which the Marks are used and the nature and quality of the goods or services offered under the Agreement.

District and School Non-Commercial Permitted Uses

The Board's Marks may be used as follows:

1. M-DCPS students, student organizations, and school groups may use M-DCPS Marks to promote a group of students, an activity or event, a school, or M-DCPS if the use is in connection with approved school-related activities and is for non-commercial, educational purposes. No charge, prior approval or license agreement is required under this provision for such use. This permission may be revoked if the use is improper or does not conform to this policy and the administrative procedures implementing this policy.

2. School principals may provide written permission to parent organizations, community groups, school affiliated organizations, booster clubs, and other M-DCPS affiliated school-support organizations, to use Board Marks to promote a group of students, an activity or event, a school, or the District, if the use is in connection with approved school-related activities. While written permission is required to allow the Board to retain full right to control the manner in which the Marks are used and to approve the nature and quality of any goods or services offered, no charge or fee is required under this provision for such non-commercial, educational use.
 - a. At any time, the Principal may give written permission on the Board's behalf for each fiscal year for these organizations to use the Board's marks for that school. At the Principal's discretion, this authorization may be revoked at any time if the Principal determines that the organization has failed to comply with the terms of this policy. If such a determination is made, the Principal will notify the organization in writing of the reason for the revocation. The organization may appeal the revocation to the Superintendent whose decision will be final. The appeal must be filed in writing with the Superintendent no later than five (5) business days from the date of the Principal's letter. In the event of a revocation, the organization shall no longer be authorized to use Board Marks.
3. Schools and departments that contract with any individual or entity for commercial use of the Board's Marks, must ensure that there is a written agreement in a form approved by School Board Attorney's Office that protects the Board Marks from unauthorized use. Further assistance with such agreements may be provided by the School Board Attorney's Office upon request.

Public and Commercial Permitted Uses- Licensing Agreements

1. Members of the general public, other groups not previously listed, outside organizations, vendors, commercial manufacturers, commercial entities, wholesalers, and retailers are prohibited from using Board Marks without a written license agreement with the Board in accordance with this policy and the administrative procedures implementing this policy.
2. Production of any merchandise with Board Marks for sale or distribution is prohibited unless the vendor has a written license agreement with the Board that may be subject to the payment of royalties.
3. The use of Board Marks to promote a commercial entity, or which states or implies an endorsement, or approval of a product, service, or company, is

prohibited unless the commercial entity has a license agreement with the Board.

Prohibited Uses

Mark(s) shall not be used in connection with the following products or in any other manner that would injure the reputation of the Board, M-DCPS or any school or cause the Board to lose the ability to enforce its exclusive rights in the Mark(s). Prohibited uses include, but are not limited to:

1. alcoholic beverages- distilled alcohol liquors, wines, beers, and malt liquors or the conveyance or distribution of these items,
2. tobacco, smoking and vapor products- all types,
3. controlled substances,
4. inherently dangerous products- firearms, weapons, explosives, knives, and fuels,
5. obscene or disparaging products- including, but not limited to, nude photographs, caricature poster art or designs,
6. religious products or designs,
7. political products or design,
8. gambling, or
9. products that promote sexual conduct or contain sexually explicit materials.

School Board Authority

The Board has the sole right to approve or reject, in all cases, at any time, and at its sole discretion, any and all future license agreements, proposals, contracts, and/or to approve or reject any organization's use of Board Marks.

Commercial licensees shall indemnify and hold the District harmless from any claims, including those for bodily injury and intellectual property right infringement, arising out of the use or licensing of Board Marks.

School Site Responsibilities

In accordance with administrative procedures implementing this policy, Principals shall:

1. ensure that Board marks are only used with authorization from M-DCPS and in a manner that provides the Board with control over the manner in which they are used and the goods or services that are offered in connection with the Marks;
2. account for all funds received by the school from license agreements or associated with the use of Board Marks;
3. prohibit the commercial use of any Board Marks unless the commercial entity has an approved and executed license agreement; and

4. report any known violations of this policy.

Revenue Distribution

1. Revenues generated from licensing agreements negotiated by the Principal will be shared with the District at a ratio of 60% to the school and 40% to the District, with the school's share retained for Internal Fund purposes.
2. One hundred per cent (100%) of revenues generated from licensing agreements negotiated by the District may be retained by the District or distributed equitably to schools as stipulated in the agreement.

Enforcement

Any unauthorized use of Board Marks, whether registered or common law is a violation of federal and/or state law governing trademark infringement and unfair competition. Violations are subject to injunctive relief restraining further infringement, money damages including profits derived from the wrongful sale or provision of trademarked goods or services and an order requiring destruction of any such counterfeit or imitations in the offender's possession.

The Board will take action to enforce its exclusive rights in Board Marks where necessary. Employees are subject to disciplinary action for violations of this policy.

15 U.S.C. 1051 *et seq.*

1 promote their products or services in the schools or on any
2 other District property;

3 3. school fundraising activities (e.g., short term sales of items) to
4 benefit a specific student population, club or activity where
5 the school receives a share of the profits.

6 B. Direct Advertising/Appropriation of Space:

7
8 To raise revenue to support interscholastic athletics and activities,
9 at the secondary level, special programs and activities at the
10 elementary level, and other school and District events and
11 programs, paid advertising and public service announcements
12 consistent with this policy are permitted to appear on or in school
13 and District property school facilities, District owned/leased athletic
14 facilities, Greater Miami Athletic Conference (GMAC), and Middle
15 School Athletic Program (MSAP) venues, or and as otherwise deemed
16 appropriate under this policy. specified.

17
18
19 1. District Advertising

20
21 a. Except as outlined below regarding school sites, decisions
22 allowing advertising on District Property, including but not
23 limited to athletic facilities, Greater Miami Athletic Conference
24 (GMAC), and Middle School Athletic Program (MSAP) venues,
25 shall be determined by the Superintendent and designated
26 administrators in accordance with this policy and the
27 administrative procedures implementing this policy.

} Added

28
29 b. The Superintendent is authorized to solicit advertising services to
30 manage District-sponsored advertising activities in accordance
31 with the Board's procurement policies.

32
33 2. School Site Advertising

34
35 The use of advertising materials Advertising on or within schools
36 and, District owned/leased athletic facilities, GMAC, and MSAP
37 venues school property, websites, social media sites, other
38 communications, newspapers and yearbooks shall be determined by
39 the principal in accordance with this policy and
40 administrative procedures, rules established by the school principal.

41 a.1. The Principal shall establish procedures by which
42 advertisements may be displayed in or school property,
43 school websites, social media sites, communications, school
44 newspapers and yearbooks. Principals have the right to

1 refuse advertising which is obscene or offends the morals
2 and/or conscience of the school or ~~site~~ community.

3 ~~b.2.~~ In considering the appropriateness of advertising, principals
4 shall adhere to Policies 1210, Standards of Ethical Conduct,
5 1210.01, Code of Ethics, and 1129, Conflicts of Interest, and
6 1210. the Code of Ethics for Public Officers and Employees
7 prohibiting the misuse of a public position and limiting the
8 use of information which is not available to members of the
9 general public and used for a person's personal gain or
10 benefit or that of any other person or business entity.

11 ~~3c.~~ ~~In those instances w~~When advertising is permitted, the
12 principal shall consider community input, and local
13 ordinances, rules and regulations governing outdoor
14 advertising, where appropriate and/or applicable.

15
16 ~~d.a.~~—School officials may cooperate with governmental agencies
17 provided that such cooperation does not restrict or interfere
18 with the school's educational program and of the school
19 provided thatthe school facilities are not used for partisan
20 political activity.
21

22 b. Advertisements may appear:
23

24 ~~1) _____ on school property, if deemed appropriate by the~~
25 ~~Principal, and/or, for example, on billboards, vending machines,~~
26 ~~vending enclosures, marquees, and scoreboards located on school site~~
27 ~~property or District-owned/leased athletic facilities~~
28

29 ~~2) _____ in publications, including but not limited to school site~~
30 ~~web sites, GMAC and MSAP websites, newsletters, newspapers, and~~
31 ~~yearbooks.~~

32 34. Third party advertisers are defined as agencies that enter into
33 contracts whose business it is to secure advertisements to be
34 placed on various types of displays, such as but not limited
35 to, portable indoor scrolling displays, school parking lot
36 bumpers, broadcasting, web sites, and billboards.

- 1 | a. ~~The advertising agencies will enter into contracts with~~
2 | ~~School site and District~~ administrators ~~may contract~~
3 | ~~with these agencies~~ to secure the advertisements,
4 | maintain the displays, etc. Compensation may be
5 | based on a set fee, commission, percentage, or other
6 | financial arrangement that is in the best interest of the
7 | District.
- 8 | b. The Principal may sign one (1) year agreements for
9 | advertising at their school which are not anticipated to
10 | exceed \$215,000 in revenue per year. Agreements
11 | exceeding \$215,000 in revenue must be ~~approved by~~
12 | ~~District/School Operations~~ negotiated by the
13 | designated District administrator.
- 14 | c. Agreements for advertising that involve ~~ten (10) or more~~
15 | ~~than one~~ District schools ~~and/or are over \$25,000~~ will
16 | be negotiated by ~~District/School Operations~~ the
17 | designated District administrator. All funds from these
18 | District-negotiated agreements will be distributed
19 | equitably to schools.
- 20 | d. ~~Agreements exceeding \$25,000 will be reported to the~~
21 | ~~Board quarterly.~~
- 22 | e. Agreements for wallsapes and billboards on
23 | non-school ~~District property facilities, school facilities,~~
24 | ~~District owned/leased athletic facilities, GMAC and~~
25 | ~~MSAP venues~~ will be negotiated by the designated
26 | District administrator. Wallsapes and billboard
27 | advertisements may require a multi-year lease
28 | agreement. The lease agreements will be developed in
29 | conjunction with the affected site, District/School
30 | Operations designated District administrator, the Board
31 | Attorney, and the Office of Facilities.
- 32 | C. Indirect Advertising:
- 33 | 1. corporate-sponsored instructional or educational materials,
34 | teacher training, contests, conferences, meetings, incentives,
35 | grants or gifts;
- 36 | 2. instructional materials developed by commercial
37 | organizations such as films and videos may be used only if
38 | the educational value of the materials outweighs
39 | their commercial nature in accordance with Policy 2531,
40 | Copyrighted Works.
41 |

1 The films or material shall be carefully evaluated by the
2 school principal for classroom use to determine whether the
3 films or materials contain undesirable propaganda and are in
4 compliance with these guidelines.

5 | The Board's name, students, staff members and District ~~facilities~~property shall not
6 | be used for any commercial advertising or otherwise promoting the interests of any
7 | commercial, political, nonprofit or other non-school agency or organization, public or
8 | private, unless approved in accordance with this policy and the administrative
9 | procedures without the approval of the Board or its designee. Use of trademarks,
10 | school names and mascots shall only be allowed in accordance with Policy 9701,
11 | Trademark Licensing, Protection and Use.

12 **General Advertising Guidelines**

13 | The following guidelines shall be followed ~~with respect to~~for any form of advertising
14 | on school grounds:

15 A. All commercial or corporate involvement should be consistent with
16 the District's educational standards and goals.

17 B. No advertisement shall promote or contain references to alcohol,
18 tobacco, drugs, drug paraphernalia, weapons, or lewd, vulgar,
19 obscene, pornographic or illegal materials or activities, gambling,
20 violence, hatred, sexual conduct or sexually explicit material, X, R,
21 or PG rated movies, or gambling aids.

22 C. All advertising of food products must be consistent with the
23 | ~~guidelines of the District Board's~~ Wellness Policy (~~Policy~~ 8510). Food
24 | products that are prohibited from being sold to students on school
25 | campuses by Board policy shall not be advertised on Board
26 | property.

27 D. No advertisement shall promote any specific religion or religious,
28 | ethnic or racial group and shall be non-proselytizing.

29 E. Advertisements containing a campaign or other political message
30 supporting or opposing a political candidate for public office, a
31 political platform, or a political issue, are prohibited. Consistent
32 with this prohibition, no organization or political candidate may
33 sponsor an advertisement (including public service announcement)
34 if the name of that organization or candidate indicates, reflects, or in
35 any way suggests its political message or candidacy.

36 F. No advertisement may contain libelous material.

**THE SCHOOL BOARD OF
MIAMI-DADE COUNTY**

COMMUNITY RELATIONS
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- 1 G. No advertisement may be approved which would tend to create a
2 substantial disruption in the school environment or inhibit the
3 functioning of any school.
- 4 H. No advertisement shall include content from which State law
5 permits students or parents to "opt out" if that content were to be
6 presented in a classroom curriculum context, or on school campus.
- 7 I. No advertisement shall be false, misleading or deceptive.
- 8 J. Each advertisement must be reviewed in advance by the Principal or
9 District administrator for age appropriateness. ~~The Superintendent~~
10 ~~shall screen all advertising.~~
- 11 K. Advertisements may be rejected by the principal or District
12 administrator by the School District if determined to be inconsistent
13 with the educational objectives of the School District, inappropriate,
14 or inconsistent with this policy or the administrative procedures,
15 ~~the guidelines set forth in this policy.~~
- 16 L. All corporate support or activity must be consistent with the Board's
17 policies prohibiting discrimination.
- 18 M. The Superintendent may require that samples of advertising be
19 made available for inspection.
- 20 N. The inclusion of advertisements ~~in~~ non school sites or District
21 property School District publications, in School District facilities, or
22 on School District property does not constitute or imply approval
23 and/or endorsement of any product, service, organization, or
24 activity.

25 **Accounting**

26 Advertising revenues must be properly reported and accounted for.

- 27 A. Collection and accounting for advertising revenue shall comply with
28 All appropriate Board accounting procedures shall be followed.
29 Policy 6610 which requires that all monies collected or disbursed by
30 school personnel or by students within a school, in connection with
31 the school program, for the benefit of that school, a class, or
32 department shall be recorded in the school's ~~i~~Internal ~~f~~unds
33 Account.
- 34 B. Funds raised through advertising on school- property and facilities
35 up to \$15,000 shall be used to support school site activities,
36 programs and events that support the educational mission of the
37 school. ~~District-owned/leased athletic facilities, GMAC and MSAP~~

~~venues should be used to support student athletics and activities programs and competitions. Schools shall retain 100% of the revenue raised through school advertising for Internal Fund purposes.~~

C. Revenues generated from advertising and related activities at schools exceeding \$15,000 annually per contract, or negotiated by the District on behalf of the school(s), will be shared with the District at a ratio of 75% to the school and 25% to the District, with the school's share retained for Internal Fund purposes.

C. Funds generated from non-school site advertising will be used for District programs at the discretion of the Superintendent and will be reported to the Board. The District will retain 100% of any revenues through non-school site advertising.

~~D. With respect to advertising, School District employees shall not give written or oral endorsement to any company representative for any periodical, book, or product which may be offered for sale to students, parents, or schools. (see also Policy 9700)~~

Naming Rights and Donor Recognition Miscellaneous Displays

} Revised

~~The acceptance of a gift may justify the display of the~~An advertiser's or donor's name may be displayed on school site or District property, District-owned/leased athletic facilities, GMAC and MSAP venue, as deemed appropriate or any other medium as otherwise determined by the Principal or designated District administrator in accordance with the administrative procedures and in compliance with Policy 7250, Commemoration of Facilities, if applicable.~~designated site administrator.~~

~~For donations or gifts in excess of \$15,000 acknowledgements or advertisements of the donation or gift must be made according to District guidelines established by the Superintendent.~~

F.S. 1013.10

1

COPYRIGHTED WORKS

2 Copyrighted works shall only be used to the extent that copyright and fair use
3 guidelines permit. The Superintendent shall provide administrative procedures
4 regarding the copying and distribution of copyrighted materials for instructional
5 purposes and for the appropriate use of copyrighted material on the School Board's
6 web site and other locations.

7 Because the Board (District) hosts a web site and stores information on it at the
8 direction of users, it is classified as an on-line service provider for copyright
9 purposes. ~~In order to~~ To limit the Board's liability relating to ~~material/information~~
10 ~~residing, at the direction of a user, material placed~~ on its system or network by
11 others, the Superintendent shall ~~annually~~ appoint an individual as the agent to
12 receive notification of claimed infringement. A link to the agent's name, mailing
13 address, telephone number, fax number, and e-mail address shall appear on the
14 home page of the Board's web site. Such contact information, along with the
15 appropriate filing fee, shall also be provided to the Copyright Office of the Library of
16 Congress. The agent shall be responsible for investigating and responding to any
17 complaints.

18 **Copyright Laws and “Fair Use” Guidelines**

19 Employees and students shall comply with all pertinent copyright laws and “fair
20 use” guidelines whenever ~~School~~ District employees and students are using
21 copyrighted materials.

22 This applies to all types of materials or media that may be covered by the Copyright
23 Act, including, but not limited to, original works of authorship fixed in any tangible
24 medium of expression, now known or later developed, from which they can be
25 perceived, reproduced, or otherwise communicated. It also applies to copyrighted
26 computer software and materials that are copied, recorded, or transmitted via
27 electronic means, such as the Internet or e-mail.

28 Employees may reproduce and utilize copyrighted materials in accordance with the
29 provisions of the Copyright Act, Title 17 U.S.C. 101, et seq.

30 Any reproduction or use of copyrighted materials by employees and students in the
31 course of school-related activities will be done, either with the written permission of
32 the copyright holder or in conformity with the “fair use” guidelines under Title 17
33 U.S.C. 107 or other applicable law. Employees who reproduce or use copyrighted
34 materials and fail to obtain prior written permission from the copyright holder or fail
35 to abide by the “fair use” guidelines may be liable for copyright infringement.

1 | Willful or intentional copyright infringement, or repeated acts of unintentional
2 | infringement, may result in disciplinary action pursuant to Board policies and
3 | applicable collective bargaining or employment agreements.

4 | Students who disregard copyright laws or who willfully and intentionally violate the
5 | copyright laws in the course of school-related activities are subject to discipline
6 | pursuant to the *Code of Student Conduct*.

7 | **Educational Media**

8 | The Superintendent is authorized to assign employees to develop educational
9 | materials, schedules, data processing programs, curriculum bulletins, and other
10 | products of creative effort which assist the basic instructional program or the
11 | various systems supporting that instructional program.

12 | Products of creative effort are works within the subject matter of copyright or patent
13 | laws, such as books, dramas, magazine articles, architecture, computer generated
14 | slides, motion pictures, video tapes, educational software, radio scripts, television
15 | productions, lectures, printed lessons, bulletins, guides, art work, machinery, and
16 | apparatus, now known or later developed, and others not mentioned but not to be
17 | construed as omitted.

18 | Employees engaged in creative efforts are recognized as being in one (1) or more of
19 | four (4) categories. The first two (2) are applicable to this section.

20 | A. Category 1

21 |
22 | Employees employed to accomplish a certain creative effort with
23 | employment time of specific duration indicated by contract. These
24 | employees are often legally termed "workers for hire," and the
25 | product is termed "work made for hire."

26 | B. Category 2

27 |
28 | Employees under Board contract assigned in a capacity which leads
29 | to creative accomplishments, with the creative effort not necessarily
30 | stipulated by name or description in the original employment or
31 | assignment arrangement.

1 All products developed by personnel in Categories 1 and 2 in the normal course of
2 regularly prescribed duties and within the period that the Board requires such
3 persons to be on duty should remain the property of the Board, and the Board shall
4 retain all rights, privileges, and responsibilities pertaining to ownership. In "works
5 made for hire," the Board is the author, and owns all rights comprised in the
6 copyright, unless the parties have expressly agreed otherwise in a written
7 instrument signed by them. This applies to either individual or joint "works made
8 for hire" and includes the rights of renewal of copyright as defined within copyright
9 law.

10 While certain employees in Categories 1 or 2 may have addenda to their regular
11 employment contracts which permit additional remuneration for residual rights to
12 certain creative works, it shall not be a requirement for the District to initiate such
13 contracts in all instances, nor shall the lack of such contracts affect any claim of
14 ownership or copyright retained by the Board.

15 **Sale, Lease, Rental or Reproduction by Commercial Agencies of Products**
16 **Owned, Copyrighted, or Patented by the Board**

17 If any of the products of Categories 1 and 2 have commercial appeal, the
18 Superintendent or an appointed deputy may negotiate with the appropriate persons
19 and agencies. If the Board enters into any contract for payment of royalties or other
20 compensation to the owner or to the holder of a copyright or patent, compensations
21 may be paid to the general fund of the Board, or, at the discretion of the
22 Superintendent, be rebudgeted to the department producing the materials to offset
23 costs attributable to the sale, lease, rental, or production of the materials.

24 If a publisher or other agency requests revisions or additions to the product, the
25 Superintendent may arrange to have the additional work completed. If it is in the
26 best interest of the District, the Superintendent may assign personnel to perform
27 this task as a part of their regular employment. If revisions are not essential to the
28 District but the producers or publishers desire to have a revision made, the
29 Superintendent may afford the opportunity for such works to be performed by an
30 employee outside regular employment hours. No Board funds shall be used to
31 remunerate an employee for this additional work, but the Superintendent is
32 authorized to assign to an employee by contract with the producer or publisher a fee
33 to be paid out of royalties or a percentage of royalties depending upon the extent of
34 revisions to be made.

35 If an edition of which the copyright is held by the Board becomes obsolete or is
36 otherwise unnecessary for use by the District and the Superintendent does not
37 recommend revision by the Board, the Superintendent may recommend transfer of
38 copyright to the authors. The District should generally retain the right to use the
39 material for educational, non-commercial purposes with no royalty payments or

1 | ~~other obligations to the purchasing entity. , retaining only the privilege of District~~
2 | ~~purchase for school use without royalty payment.~~

3 | **Development of Products Outside of Regular Employment Time but with Board**
4 | **Resources**

5 | Category 3

6 | Employees who accomplish a creative effort on their own, outside of regular hours of
7 | employment, but whose creative efforts require Board resources, such as duty time,
8 | classrooms, teacher, or students. Employees in this category should follow these
9 | procedures:

10 | A. Prepare and submit to the appropriate region, assistant, or associate
11 | superintendent a brief report containing the following information:

12 | 1. description of creative product;

13 | 2. Board resources which will be involved, with estimate of time-
14 | use (if involvement is sufficient, employees should work
15 | through the District's Educational Research Review
16 | Committee);

17 | 3. percentage of duty time of one's normal job responsibility
18 | which was devoted or will be devoted to development of the
19 | product and file notice to publish or manufacture, and dates,
20 | with the appropriate region, assistant, associate, or deputy
21 | superintendent.

22 | B. A committee composed of a representative from the staff of the
23 | Superintendent, the Deputy Superintendent for Education, the
24 | region superintendent or assistant/associate superintendent
25 | involved, and the Board Attorney shall make a final recommendation
26 | to the Superintendent as to the legal interest of the Board in such
27 | copyright ~~or patent~~.

28 | The Superintendent, upon request of the employee, may recommend release of all
29 | | claims to copyright or patent rights, retaining the privilege of systemwide ~~purchase~~
30 | | use of such material without royalty payment or other obligations; or the
31 | | Superintendent will indicate in writing to the creator of the product acceptable terms
32 | | that follow reasonable and customary practices.

1 **Products Developed Without Board Property or Time**

2 Category 4

3 Employees whose creative effort is accomplished without Board property or time,
4 whose creative effort is accomplished outside of the period considered to be the time
5 that the Board requires the employee to be on duty, and whose created product is
6 not a portion of normal job responsibility. The Board makes no claim to ownership
7 of products developed by employees in this category.

8 No employees in any of the four (4) categories shall participate in State or local
9 textbook-adoption committees evaluating for either purchase or recommendation
10 that apparatus, book, product, or other instructional material on which the Board or
11 the employee holds ~~copyright, royalty, or patent ownership~~ rights.

12 The Superintendent is authorized to develop regulations and procedures for the sale,
13 lease, or rental of educational media. These regulations and procedures shall also
14 clearly define the preparation, production, distribution, and/or provisions for
15 copyright or patent of instructional materials (such as audio-visual media, video
16 tapes, apparatus, computer generated products, and publications) developed as part
17 of officially assigned duties or job responsibilities. The Board may, under certain
18 specified conditions, authorize the distribution of a portion of any royalties earned
19 by the Board to the creator or author of the materials.

20 **Student Created Works**

21
22 The Superintendent shall develop administrative procedures and related forms,
23 including but not limited to releases, waivers and authorizations governing student
24 created work.

25
26 **Electronic Media**

27 The expanding use of technology provides extensive opportunities for improvement
28 of instructional and operational procedures and systems, through the development
29 by the District of ~~data processing electronic educational material,~~ software
30 ~~applications programs,~~ web pages, and materials not available commercially.

31 ~~Data processing software includes programs and routines used to employ and~~
32 ~~control the capabilities of data processing hardware, including but not limited to,~~
33 ~~operating systems, compilers, assemblers, utilities, library routines, maintenance~~
34 ~~routines, applications, and computer networking programs. These programs and~~
35 ~~routines may function independently, in conjunction with other software developed~~
36 ~~by the District, or in conjunction with commercially available software.~~

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PROGRAM
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1 Web pages include the District's home page and all other pages making up the
2 District's web site, pages making up individual school web sites, and any other
3 pages stored on the District's or an individual school's Internet server.

4 These programs, web pages, or materials may be developed by employees in
5 accordance with Board policy, or may be developed for the Board by individuals,
6 companies, or agencies under contract with the Board. Unless otherwise specified
7 and agreed in such contracts, the Board shall be the author for purposes of
8 ownership and copyright, owning all rights comprised in the copyright including
9 renewal rights.

10 Many of the programs, web pages, and materials developed by employees are wholly
11 owned by the Board, and/or are eligible for copyright, and may be in demand by
12 individuals or agencies outside of the Board. The following policies shall apply in
13 these cases:

14 A. The Superintendent shall, when appropriate, take whatever action is
15 | necessary to obtain copyrights registration for ~~data-processing~~
16 | software and web pages developed by or for the District.

17 B. The Superintendent shall establish, and the Board shall approve, all
18 | fees for any public or private entity to purchase or obtain a license
19 | for use of ~~data-processing~~ software or web pages copyrighted by the
20 | District.

21 | C. Fees for the sale or licensing of ~~copyrighted data-processing~~ software
22 | or web pages may be based upon market considerations. However,
23 | fees shall be pursuant to F.S. 119.07(1), as provided in Board policy
24 | for an individual or entity that ~~uses~~ accesses the Board's
25 | copyrighted data processing software solely in conjunction with the
26 | examination of public records maintained by the Board.

27 D. The Board shall determine how any proceeds of the sale or licensing
28 | of copyrighted data processing software are to be used.

29 | F.S. 119.0843
30 | 17 U.S.C. 101 *et seq.*