

Chapter 495D-180 WAC

COPYRIGHT AND PATENT POLICIES

WAC

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WAC 495D-180-005 General statement. (1) The board of trustees of College District No. 26 recognizes that, as part of the institutional educational mission, the publication of certain materials may enhance educational processes. The board also recognizes and encourages the right of faculty, staff, and students to exercise individual initiative in creating materials which meet copyright specifications and which may generate royalty income when marketed.

(2) The generation of materials which may be copyrighted often extends beyond the initiative of individuals and may include the use of equipment, facilities, and financial support either from the institution or from outside sources. Accordingly, the college will maintain a policy which clarifies and protects the respective rights of faculty, staff, student employees, and the college by defining the types of materials which should be designated as "college-supported" or "college-sponsored," by establishing procedures for administering policy concerning these materials and by stating policy governing their ownership and use and the rights to income produced therefrom.

(3) It should be emphasized that this policy does not affect the personal ownership rights of faculty, staff, or student employees to books or other materials not specifically commissioned by the college or the preparation of which were not assisted in any significant way by a third party sponsor or the college. The creator is free to use his or her own name, and receive royalties resulting from sales, providing the initiative for the work came solely from the creator and the college, including grants or contracts administered by the college, did not provide a significant portion of the resources utilized in production of materials.

[Statutory Authority: RCW 28B.50.140. 93-01-084, § 495D-180-005, filed 12/15/92, effective 1/15/93.]

WAC 495D-180-010 Scope and definitions. (1) This statement of policy shall apply to all faculty, staff, and student employees of the college and any group or groups of faculty or staff or student employees of the college or any combination thereof.

(2) As used in this chapter:

(a) "Copyright administrator" means the college president or his or her designee;

(b) "Creator" means the author or producer of a creative work;

(12/15/92)

(c) "Individual" means any faculty, staff, or student employee or employees of the college or any group or groups of faculty, staff, or student employees of the college.

[Statutory Authority: RCW 28B.50.140. 93-01-084, § 495D-180-010, filed 12/15/92, effective 1/15/93.]

WAC 495D-180-015 Materials subject to copyright.

(1) The following original creations, among others, ordinarily are classed as copyright-eligible:

(a) Books, journal articles, texts, glossaries, bibliographies, study guides, laboratory manuals, syllabi, tests, and proposals.

(b) Lectures, musical or dramatic compositions, and unpublished scripts.

(c) Films, film strips, charts, transparencies, and other visual aids.

(d) Video and audio tapes and cassettes.

(e) Live video or audio broadcasts.

(f) Programmed instruction materials.

(g) Computer programs.

(2) This policy does not apply to the following types of materials:

(a) Articles submitted to or published by scholarly and professional journals.

(b) Class notes produced in connection with a regularly-scheduled course of instruction.

[Statutory Authority: RCW 28B.50.140. 93-01-084, § 495D-180-015, filed 12/15/92, effective 1/15/93.]

WAC 495D-180-020 Rights to copyrightable materials.

(1) Individual effort: Any individual who produces copyright-eligible material as the result of individual initiative and effort and without the significant assistance, support, or sponsorship of the college or a college-administered grant or contract shall retain full right of ownership, control, use, and disposition over the material. The individual shall be solely responsible under such circumstances for determining whether to copyright the material.

(2)(a) College-supported individual effort: If the college provides significant support or assistance for an individual in producing materials eligible for copyright such as, but not limited to, the creator's use of college funds, equipment, facilities, materials, staff services, or other resources without full and prompt reimbursement by the individual, ownership of rights in the material shall be vested in the college subject to the conditions set forth in this policy. The college may copyright such materials when it appears that copyrighting will be in the best interest of the college and individual.

(b) Any individual who is preparing, or is planning to prepare copyright-eligible material under circumstances which may be considered college-supported, college-assisted, or college-sponsored, shall initiate an inquiry as to their status. A descriptive statement of the relevant facts shall

be forwarded to the college copyright administrator. Thereafter, the college copyright administrator shall advise the individual as promptly as possible as to whether the materials should be regarded as college-supported or college-sponsored within the meaning of this policy. The college copyright administrator's decision in such cases will be considered as a preliminary draft opinion subject to clarification and final action when the work is completed. The final decision will be rendered in accordance with WAC 495D-180-025.

(3) College-sponsored effort: Ownership rights in college-sponsored materials shall be vested in the college subject to the conditions set forth in this statement of policy. Materials are college-sponsored if the individual has been commissioned in writing by the college or otherwise assigned to develop the materials or, in their production, has been authorized released time for which the individual will receive compensation from college funds, including grant and contract funds administered by the college. The college copyright administrator may, at his or her sole discretion, elect to share with the individual royalties resulting from sales of such materials: Provided, that the individual shall have no right to the sharing of such royalties in the absence of an express written agreement with the college copyright administrator.

(4)(a) Efforts supported by outside agencies: Copyright-eligible materials produced under the sponsorship of agencies outside the college must contain specific provisions regarding the disposition of any royalties or materials generated through grants or contracts furnished by such agencies. Any individual accepting support from outside agencies must verify the content of these provisions. No college employee may enter into a contract with an outside agency which requires a college employee's participation unless royalty rights and the disposition of copyright-eligible materials are specified clearly, and such provisions are acceptable to the college copyright administrator and consistent with college policies covering such activities.

(b) Where the college is a party to sponsored projects resulting in production of copyrightable materials, the following conditions will apply:

- (i) Title to all materials will remain with the college.
- (ii) The sponsor of the project may retain rights to royalty-exempt use of materials.
- (iii) With the college copyright administrator's written concurrence, parties to a sponsored grant or contract may agree to assignment of rights which may vary from (b)(i) and (ii) of this subsection.
- (iv) Any sharing of, or individual participation in any royalty income, must be specified under the terms of the contract with the sponsoring agency and approved in writing by the college copyright administrator.

(v) As copyright administrator, the president of the college or his or her designee will retain final responsibility and authority for all decisions on royalty sharing and other copyright matters involving the college.

[Statutory Authority: RCW 28B.50.140. 93-01-084, § 495D-180-020, filed 12/15/92, effective 1/15/93.]

WAC 495D-180-025 Procedures. (1) In any instance where copyrightable materials are generated other than by individual efforts, i.e., partially or fully supported or spon-

sored by the college or by an outside agency but involving college participation, the college copyright administrator will confer with the individual creator and other concerned parties to reach a copyright agreement which is acceptable to all parties and consistent with the college copyright policy.

(2) The college copyright administrator may appoint a copyright committee of up to three persons to advise on matters related to ownership, disposition, and royalty distribution from copyrightable materials.

(3) All programs expected to generate copyrightable materials by other than individual effort must undergo prior review by the copyright administrator in order that a preliminary determination can be made regarding rights, disposition of materials, and distribution of income.

(4) Records of advance arrangements and copies of all agreements must be part of all project files; the creator must provide copies of all agreements to the copyright administrator.

(5) Any agreement made with individual creators may be reviewed and revised subsequently at the option of the college copyright administrator.

(6) All contracts or agreements made with individuals or sponsoring agencies must contain reference to the college copyright policy as a basis for the agreement.

(7) In all instances, copyright agreements and decisions affecting those agreements will be formulated on the assumption that protection of the rights of individuals is important and that agreements should be designated to stimulate individual initiative.

(8) All agreements made under the college copyright policy and these procedures should be designed to assure adequate controls and to fulfill college accountability for allocated public resources and the reimbursement of those resources where appropriate.

[Statutory Authority: RCW 28B.50.140. 93-01-084, § 495D-180-025, filed 12/15/92, effective 1/15/93.]

WAC 495D-180-030 Use of materials. (1) Two categories of use are differentiated for purposes of this policy:

(a) Internal use: Use by any unit of the college for instruction or other educational purposes.

(b) External use: Use by educational institutions other than the college, use by government agencies and other non-profit institutions, and use resulting from lease or other contractual arrangements for commercial distribution of the materials.

(2) Use of college-supported or college-sponsored materials under this policy shall be subject to the following conditions:

(a) Internal use:
(i) Use within the college does not require the approval of either the individual creator or the college unless advance approval is required by a prior written agreement.

(ii) As long as the individual creator of college-supported or college-sponsored materials remains employed by the college, he or she may request reasonable revision of the materials prior to any instance of internal use and may ask that the materials be withdrawn from internal use if necessary revisions are not feasible. The final decision regarding appropriate revision or withdrawal of materials will be made by the copyright administrator.

(iii) If the individual creator terminates employment with the college, then the college retains the right to continue internal use of the college-supported or college-sponsored materials except as the individual and the college agree in writing on special conditions for subsequent internal use of the materials and the procedures for their revision.

(b) External use: Licensing or sale of college-supported or college-sponsored materials for external use shall be preceded by written agreement between the college and the individual creator specifying the conditions of use, including provisions concerning the right of the individual creator to revise materials periodically or to withdraw them from use, subject to existing agreement, in the event revisions are not feasible.

[Statutory Authority: RCW 28B.50.140. 93-01-084, § 495D-180-030, filed 12/15/92, effective 1/15/93.]

WAC 495D-180-035 Payments to the individual creator. (1) Compensation for production activity: In general the regular assignments of the individual should be adjusted to take into account the extra time required to develop or produce college-supported or college-sponsored materials. In these circumstances, additive compensation will not be paid to the individual creator. If recorded material is reused, it may be appropriate to adjust the regular assignments of the individual where he or she makes some continuing input or contribution to the repeated program.

(2) Income from sales or rentals:

(a) Both the college and the individual are entitled to a share of income from the licensing or sale of college-supported or college-sponsored materials; the college on the basis of salary, facilities, administrative support, or other resources devoted to the project, and the individual for creative activity which contributes to an enriched educational program. Where sponsored grant or contract funds are involved, the division of income will be subject to approval by the sponsoring agency. In some cases, the sponsor may require that all income be credited to the project account.

(b) Where college-supported or college-sponsored materials are to be sold or rented, and subject to any limitations specified by granting agencies, the following guidelines pertaining to financial arrangements shall be observed:

(i) All incremental expenses related to the production and distribution of additional copies will be recovered from each sale or rental.

(ii) An appropriate fraction of the college's original production costs, as agreed upon between the individual and the college copyright administrator, also will be recovered from each sale or rental.

(iii) Subject to any limitations specified by outside granting agencies, a royalty of not more than ten percent of (b)(i) and (ii) of this subsection may be included in the sale or rental price. After production costs are fully recovered and after required distribution to a sponsoring agency, if any, the resultant royalty income will be divided equally between the individual and the college.

[Statutory Authority: RCW 28B.50.140. 93-01-084, § 495D-180-035, filed 12/15/92, effective 1/15/93.]

WAC 495D-180-040 Protection and liability. (1) The college copyright administrator shall investigate allegations of unauthorized use or copyright infringement of college-sup-

ported or college-sponsored materials and shall recommend appropriate action. If legal remedies are pursued by the college, all costs of such remedies shall be borne by the college. All proceeds in excess of such costs shall be shared equally by the college and the individual creator, subject to sponsoring agency limitations, if any, when a grant or contract is involved.

(2) Before any use is made of college-supported or college-sponsored materials, the individual creator shall certify in writing to the copyright administrator that, to the best of the individual creator's knowledge, the materials do not infringe on any existing copyright or other legal right. When there are allegations of violations of personal or property rights by the college or by the individual creator in college-supported or college-sponsored materials copyrighted by the college, the college shall assume responsibility for the defense on any action. However, the individual creator may indemnify the college against any damages, charges, costs, expenses (including counsel fees), judgments, penalties, liabilities, or losses of any other kind or nature whatsoever, which are sustained or suffered by or imposed on the college as a result of the finding of any court or other decision-making tribunal that such a violation, caused by the creator, has occurred.

[Statutory Authority: RCW 28B.50.140. 93-01-084, § 495D-180-040, filed 12/15/92, effective 1/15/93.]