

BOARD POLICY
San Mateo County Community College District

Subject: 6.32 ~~Educational Materials~~ Intellectual Property
Revision Date: ~~9/08~~ xx/xx
Policy References: 17 US Code Sections 101 et seq; 35 US Code Sections 101 et. seq.; 37 Code of Federal Regulations Section 1.1 et. seq.

1. The District has an interest in establishing an environment that fosters and encourages the creativity of individual employees. In accordance with that goal, the purpose of this policy is to identify the owners of the Intellectual Property-rights to certain works that may be created by District employees, and to identify the uses that may be made of those works by employees and the District.
2. Intellectual Property means anything that is eligible for copyright, trademark, patent or other similar protection including, but not limited to, books, articles, dramatic and musical works, poetry, instructional materials (e.g., syllabi, lectures, student exercises, distance education materials, multimedia programs, and tests), fictional and non-fictional narratives, analyses (e.g., scientific, logical, opinion or criticism), works of art and design, photographs, films, video and audio recordings, computer software, architectural and engineering works, and choreography.
3. All Intellectual Property is the property of the San Mateo County Community College District if it is created with substantial support from the District. As used in this policy, “substantial support” means financial support over and above the cost of the employee’s normal compensation and including, but not limited to, the use of office space, computers, telephones, minimal office supplies and copy services, etc. Substantial support above the employee’s normal scope of employment includes extra compensation or the provision of reassigned time to create a work; the cost of providing secretarial, technical, legal or creative services specifically for the creation of a work; as well as the cost or value of the use of specialized and expensive District equipment or facilities (such as professional film or recording studios).
4. If the intellectual property is to be the property of the District in accordance with this policy, the employee and the District shall sign an agreement that contains the following:

“The work to which this Agreement pertains is one that is created by employee with substantial support from the District, or is a work that will be formally reviewed by the District and will become part of its curriculum, policies, or administrative or promotional literature. Employee and District agree that the work identified below shall be a work made for hire whose copyright shall be owned by the District. If the work is not a ‘work made for hire’ as a matter of copyright law, then employee hereby assigns his or her copyright in the work to the District. “. The work is titled or described as follows:
_____.”
5. The Chancellor may waive the District’s interest in its Intellectual Property by executing a written waiver. An employee who created the Intellectual Property shall have an option to acquire the rights to the Intellectual Property by paying the District an amount of money agreed upon in writing at the time the District provides (or agrees to provide) substantial support. To exercise this option, the

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employee shall pay the District the agreed-upon amount; and the District shall immediately assign the rights to the Intellectual Property copyright to the employee.

6. Intellectual Property that is the property of the District shall be made available for use by all three Colleges of the District.
7. Intellectual Property owned by the District can be sold to students without royalty or profit to the employee and at a price to be determined by the Bookstore. The price of these materials shall be set in such a manner as to cover the cost of reproduction and normal handling costs of the Bookstore.
8. A District employee who is the creator of Intellectual Property owns that Intellectual Property even when such work was developed during a professional development, retraining or other paid leave unless other specific agreements have been made with the District. Except in the case of Intellectual Property created during unit banked leaves or the employee's own personal time, the District will have the unlimited right to use this intellectual property for educational purposes within the District with no additional compensation to the employee. The District will give credit to the employee who created the Intellectual Property for as long as the work continues to be used by the District.
9. District students who created a work are owners of and have intellectual property rights in that work. Intellectual property works created by students while acting as District employees shall be governed under provisions for employees.
10. In cases of externally funded projects, ownership of the intellectual property will be defined in the contract.
11. Employees may use Intellectual Property they own in any and all ways they may wish, including, for example, authorizing the for-profit publication of such works in return for royalties paid solely to faculty members, without any further authorization from the District. Employees may accept royalties for Intellectual Property they own.
12. Intellectual Property prepared and owned by employees may be reproduced in the District and sold to students provided:
 - a. copyrighted materials have proper authorization for reproduction,
 - b. the materials have the prior approval of the appropriate Dean, and
 - c. the materials are sold to students by the Bookstore.
13. Instructional materials reproduced outside the District for sale to students by the Bookstore shall require bids which meet the printing and reproduction specifications determined by the author. The Bookstore shall obtain such bids from established firms.
14. In the event the provisions of these procedures and the provisions of any operative collective bargaining agreement conflict, the collective bargaining agreement shall prevail. For employees represented by a collective bargaining agreement, disputes between employees and the District concerning this policy shall be resolved pursuant to the grievance procedures contained in the respective collective bargaining agreement, except that an arbitrator who is expert in copyright law shall be chosen by the parties, or, if the parties are unable to agree on an arbitrator, chosen in accordance with the commercial arbitration rules of the American Arbitration Association. Disputes between non-represented employees and the District concerning this policy shall be resolved through the Vice Chancellor, Human Resources and Employee Relations.

6.32 Intellectual Property (continued)

~~A. Non-broadcast Educational Materials Produced in SMCCCD~~

- ~~1. “Non-broadcast educational and related products” refers to textbooks, manuals, and other assorted printed materials. It also refers to computer software and to non-broadcast audio, visual, audio-visual, motion picture, and television products.~~
- ~~2. All locally developed educational materials are the property of the San Mateo County Community College District if they are:
 - ~~a. Produced as part of the employee’s assigned duties;~~
 - ~~b. Produced as part of a District-funded project; or~~
 - ~~c. Produced with the use of specialized facilities, specialized equipment, or with the use of support services belonging to the District. (“Specialized facilities” refer to rooms and/or areas built for a single purpose, e.g., a photographic darkroom, a recording studio, a film editing room, a TV production room, a science laboratory, or similar facility. “Specialized equipment” refers to equipment not routinely made available to employees. Sophisticated audio-recording equipment such as that found only in the recording studios of the media centers, or a computer, or a kiln, or a video camera are examples of “specialized equipment”.)~~~~
- ~~3. In the event a District employee wishes to obtain rights to any non-broadcast educational materials developed by that individual in the course of a clearly identifiable District project, he/she may do so, at the option of the District, by making arrangements, before undertaking the project, to enter into a contractual agreement with the District.~~
- ~~4. Locally developed educational materials that do not fall in the above three categories are the property of the employee(s) who developed them.~~
- ~~5. In cases of externally funded projects (e.g., VEA), neither the employee nor the District retains any rights in the sale of such materials.~~
- ~~6. Educational materials that are the property of the District shall be made available for use by all three Colleges of the District. If educational materials are produced from external grant projects which designate that the products are to be in the public domain, the materials shall be made available to all three Colleges of the District.~~

~~B. Reproduction and Sale to Students of District-Financed, Staff-Produced Instructional Materials~~

- ~~1. Instructional materials prepared by staff members may be reproduced and sold to students provided (1) they have the prior approval of the appropriate Dean, and (2) they are sold to students by the Bookstore.~~
- ~~2. Materials shall be sold to students without royalty or profit to the teacher and at a price to be determined by the Bookstore.~~
- ~~3. The price of these materials shall be set in such a manner as to cover the cost of reproduction and normal handling costs of the Bookstore.~~

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- ~~4. All staff produced instructional materials reproduced outside the District for sale to students by the Bookstore shall require bids which meet the educational specifications determined by the author. The Bookstore shall obtain such bids from established firms.~~