

General Personnel

Copyright¹

Works Made for Hire²

The Superintendent shall manage the development of instructional materials and computer programs by employees during the scope of their employment in accordance with State and federal laws and School Board policies. Whenever an employee is assigned to develop instructional materials and/or computer programs, or otherwise performs such work within the scope of his or her employment, it is assured the District shall be the owner of the copyright.

Copyright Compliance

While staff members may use appropriate supplementary materials, it is each staff member's responsibility to abide by the District's copyright compliance procedures and to obey the copyright laws. The District is not responsible for any violations of the copyright laws by its staff or students. A staff member should contact the Superintendent or designee whenever the staff member is uncertain about whether using or copying material complies with the District's procedures or is permissible under the law, or wants assistance on when and how to obtain proper authorization. No staff member shall, without first obtaining the permission of the Superintendent or designee, install or download any program on a District-owned computer. At no time shall it be necessary for a District staff member to violate copyright laws in order to properly perform his or her duties.

The footnotes are not intended to be part of the adopted policy; they should be removed before the policy is adopted.

¹ State or federal law controls this policy's content. Creators of original materials, including materials posted on the Internet, are granted exclusive rights, known as *copyrights* (17 U.S.C. §101 *et seq.*). These exclusive rights include reproducing and publicly performing the work. Congress granted some exceptions to exclusive rights for schools, including §107 on fair use, §108 on library reproduction and archiving, §109 on first sale, and §110 on classroom performance and display. If not covered by an exception, the copyright owner's permission must be sought before a work can be copied or performed. The fine for failing to comply with copyright law is steep making the cost of consulting with the board attorney a bargain. Fair use determinations are very fact specific. See 5:170-AP1, *Copyright Compliance*, for more information and resources, and consult the board attorney as needed for guidance.

² In evaluating a work made for hire claim, courts consider a non-exhaustive list of factors, including: (1) the hiring party's right to control the manner and means by which the product is accomplished; (2) the skill required to create the material; (3) the location of the work; (4) the duration of the relationship between the parties; (5) whether the hiring party has the right to assign additional projects to the hired party; and (6) the provision of employee benefits. Shanton v. St. Charles Community Unit Sch. Dist. 303, 2017 WL 4865536 (N.D.Ill. 2017)(citing Community for Creative Non-Violence v. Reid, 490 U.S. 730 (1989)). See also *Works Made for Hire (Circular 30)*, at: www.copyright.gov/circs/circ30.pdf.

Copyright Infringement: Designation of District Digital Millennium Copyright Act (DMCA) Agent³

The employee listed below receives complaints about copyright infringement within the use of the District's online services. The Superintendent or designee will register this information with the federal Copyright Office as required by federal law.

District DMCA Agent:

Name

Address

Email

Telephone

LEGAL REF.: 17 U.S.C. §101 *et seq.*, Federal Copyright Law of 1976.
105 ILCS 5/10-23.10.

CROSS REF.: 6:235 (Access to Electronic Networks)

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³ Optional. Before using this text, **consult the board attorney to first identify whether the District is an *online service provider (OSP)* under the DMCA.** The DMCA is an amendment to 17 U.S.C. §101 *et seq.* The amendment provides limitations on OSP liability for storage, at the direction of a user, of copyrighted material residing on a system or network controlled or operated by or for the OSP. This liability limitation is called the *Safe Harbor Provision (SHP)*. **If a district is an OSP, the SHP provision will only apply if the district designates, publicizes, and registers a DMCA Agent with the federal Copyright Office (at publication time, registration was \$6).**

Districts that may benefit from the SHP are those which operate or contract to operate the following types of websites: file and information sharing sites; blogs that allow guests to post content; social media sites; and other sites that accept, publish or host content created and submitted by other parties. For further steps to designate a DMCA agent, see 5:170-AP4, *Designation of District Digital Millennium Copyright Act (DMCA) Agent; Registration Process.*