

## **INTELLECTUAL PROPERTY OWNERSHIP AND REVENUE**

This Policy applies to Intellectual Property created, in whole or in part, by employees with the use of School Corporation Resources, or in the scope of employment.

### **Definitions**

- A. “Creators” are employees who create Intellectual Property using School Resources.
- B. “School” is the School Corporation whose School Board has adopted this Policy.
- C. “School Resources” includes, but is not limited to, licenses, materials, supplies, equipment, devices, computers, property, and other such School-owned resources.
- D. “Externally Funded Works” are any works resulting from funds given to School by external sources.
- E. “Invention” shall mean any discovery or creation of a process, plant, machine, article of manufacture, or composition of matter that represents a significant improvement relative to the state of the art.
- F. Intellectual Property” includes, but is not limited to works or materials that could be subject to patents, copyrights, trademarks and service marks, and includes materials produced for in-person learning and materials produced for online instruction/remote learning/e-learning.
- G. Net Revenue” is that revenue remaining after deducting all fees, costs, and expenses incurred by School and necessary for obtaining and maintaining protection for, and licensing, applicable Intellectual Property.

The School retains all ownership of its trademarks but, in the School’s discretion, may grant an Employee a non-exclusive license to use School trademarks. The School otherwise retains ownership of all its Intellectual Property in accordance with this policy.

A Creator who leaves School employment, whether voluntarily or involuntarily, shall, unless otherwise agreed in writing in advance by the Superintendent or designee, leave in the School’s possession all materials, notes, equipment, and/or components of Intellectual Property created in the scope of employment.

### **Categories of Covered Intellectual Property**

- A. Patentable Intellectual Property

- i. The School shall retain all ownership interests in and shall have the sole right to license or assign any inventions created with school Corporation resources, or in the scope of employment. The School Corporation, in its sole discretion, may file for any United States or international patents, and may license or assign any such Invention to the Creator or any third party. Additionally, the School may, in its sole discretion waive the School's interests in the Invention.
- ii. By being subject to this Policy, Creators assign all present and future right, title, ownership, shares, and interest in Inventions to the School. Creators shall promptly disclose, in writing, to the superintendent or designee any potentially Invention no later than five (5) business days after creation.
- iii. The Superintendent or designee shall assess all disclosures submitted in a timely fashion, normally within sixty (60) days of receipt, to determine whether School should seek patent protection for the Invention, and to notify Employee-Creator of the School's decision to either pursue patent protection for the Invention or waive its ownership rights in the Invention.

B. School Works (Non-Patentable Intellectual Property)

- i. School retains full ownership interests in and retains all rights to use and commercialize School Works. Upon becoming subject to this Policy through assignment, appointment, hire, and/or use of School Resources, Creators shall automatically assign and hereby do presently automatically assign all right, title, ownership, shares, and interest in School Works to the School. The School may choose to waive or modify its ownership of a particular School Work and any associated Intellectual Property rights, through a written agreement with Creators of the work.
- ii. In the absence of contractual or legal restrictions to the contrary, and with the exceptions noted below, School grants Creators a non-exclusive license to the non-commercial use and distribution of School Works they have authored while employed by or enrolled in School. Such Creators who leave School may continue to use such works at another charitable, non-profit institution for teaching, research, and other non-commercial purposes for a maximum of two (2) years. The rights granted to Creators under this subsection shall not extend to the following School Works: (a) recordings of performances, presentations, talks, or other educational or extracurricular activities by or involving Creators; or (b) software authored by Creators.
- iii. Revisions of School Works
  - a. School will respect the rights of Creators of School Works in considering and undertaking revisions.

- b. School shall either withdraw obsolete School Works from use or seek revisions.
  - c. Creators may initiate a request for withdrawal or revision to the School's license to use the School Work(s) in order to protect academic integrity.
  - d. School shall offer Creators employed by School the first opportunity to make revisions to the School Work(s) before making such request of another School Employee.
  - e. School shall for a maximum of two (2) years after an Employee's employment ends, make a reasonable effort to consult Creators no longer employed by School before modifying the Creator's School Work.
- iv. School shall provide attribution to all Creators who have made a substantial contribution to a School Work unless those individual Creators request to not be attributed. The School shall grant a Creator's request to have his or her names removed from works.
- v. Revenue arising from marketing, licensing, and protecting School Works, and from the sale of their copyright or associated rights, shall be distributed to Creators who have made a substantial contribution to a School Work in accordance with the Revenue Distribution section below, unless School and any Creators agree otherwise; however, the rights granted under this subsection shall not extend to recordings of performances, presentations, talks, or other educational or extracurricular activities by or involving Creators.
- vi. All copyright ownership of School Works held by School shall be in the name of the School or, as appropriate, School Board on behalf of the School.
- vii. Protection of and Liability for Intellectual Property Infringement
  - a. School Superintendent and his or her designee, as appropriate, shall investigate allegations of unauthorized use or infringement of School Works, and shall recommend appropriate action to the School or School Board. If School initiates legal action in response to an unauthorized use or infringement, all costs of such action shall be borne by School, which shall control the action. If Superintendent or School decides not to initiate legal action, Creators may appeal the decision to the School Board, whose decision shall be final.
  - b. In the event third parties assert claims of unauthorized use or copyright infringement against the School or any Creators, relating to a work in which School has asserted ownership, the School shall assume responsibility for the defense and control of any legal action arising from

such claims, in accordance with School's published, adopted indemnification policy.

- viii. In the case of all School Works, the School building or department that commissioned the work shall file a report with School Superintendent as to the existence of such School Work and an opinion as to such School Work's commercial potential. Superintendent will assess the commercial potential and determine whether School wishes to manage commercialization of the work and management of the Intellectual Property of the School Work.
- C. Externally Funded Works shall be considered School Works for all purposes, except that the terms of their respective licensing agreements or applicable laws shall take precedence over this Policy.

## **Revenue Distribution**

### **A. Monetary Proceeds**

- i. All Intellectual Property revenue shall be distributed as follows, unless such revenue is subject to other legal requirements or contractual agreements which take precedence:
  - a. Creators shall receive [35%] of Net Revenues arising from the applicable Intellectual Property. The Creator's share shall be divided equally among joint Creators, if any, absent a written agreement among Creators to the contrary. A Creator may also designate his or her share to be distributed to others as provided below. Any Creator shall be solely responsible for compliance with applicable state and federal tax laws and regulations related to the designation. Creators shall seek their own legal, financial, or tax advice on any revenues distributed pursuant to this Policy.
    - 1. A Creator may designate his or her share to the School Corporation.
    - 2. If, after reasonable effort, School Superintendent is unable to distribute a Creator's share to Creator, the share will be distributed to the originating building or department for use at the building or department's discretion.
  - b. The School Corporation shall receive the remainder of Net Revenues. A report shall be made annually to the School Board on the division of revenues and the activities of School in support of Intellectual Property creation and protection.
- ii. In the absence of a written agreement among Creators to the contrary, multiple Creators shall receive pro-rata shares of Creator's share of revenue, and cases

involving multiple programs or units shall receive the same percentage as their respective Creators receive.

**B. Equity Interests**

- i. School Superintendent may negotiate equity interests in lieu of or in addition to monetary consideration as a part of an agreement between School and an external entity relating to Intellectual Property. Such negotiations shall comply with federal and state statutes, School policies on conflicts of interest and commitment, and other applicable School policies.
- ii. School shall own the equity interests. If monetary proceeds are generated by the sale of equity interests, those proceeds shall be distributed according to the policies set forth above for revenue distribution. School does not act as a fiduciary for any Creator concerning equity interests or other non-monetary consideration received under the terms of this Policy and no Creator shall have any interest in, or legal right to, such equity interests or non-monetary consideration.
- iii. A Creator may propose to School Superintendent an equity interest in the Intellectual Property in exchange for his or her own distribution (all other distributions being proportionately increased). Superintendent shall negotiate with Creator in good faith; however, he or she is not required to reach agreement with Creator for an arrangement other than the equity and distribution arrangements contained in this Policy.

**Dispute Resolution**

- A. All appeals of decisions under this Policy will be referred to the School Board, which will determine how the appeal will be handled.
- B. Creators may appeal actions or decisions of School or School Superintendent within ten (10) business days after receiving notification of the action or decision, unless good cause is shown for delay. The School Board shall issue a final determination. Creators have ten (10) business days to appeal the School Board's determination to an arbitrator selected under and by following Rule 3 of the then current Indiana Rules for Alternative Dispute Resolution, whose decision will be nonbinding. The arbitrator shall submit a report to the School Board explaining the basis for his or her nonbinding decision.

Adopted [date], 2021