

1 **PIERPONT COMMUNITY & TECHNICAL COLLEGE**
2 **Board of Governors Policies and Procedures**
3 **Policy # 60**
4 **PP-3060**

5 **SHORT TITLE: Intellectual Property**

6 **REFERENCE:** W. Va. Code § 18-2A-4; §18B-1-6

7 **EFFECTIVE: TBD**

8 **AMENDED:**

9 **REPEALED:**

10 **REVIEWED:**
11 _____

12 **SECTION 1. PURPOSE**

13 Pierpont Community & Technical College ("Pierpont" or the "College") encourages
14 and recognizes research, publishing, and other activities by faculty and staff that further
15 the institution's mission. The College seeks to achieve a fair balance between the rights
16 of Creators who are employees and independent contractors, and the rights of the
17 College related to intellectual property developed using its resources.
18

19 **SECTION 2. SCOPE AND APPLICABILITY**

20 This Policy and Procedures applies to the creation of intellectual property by members
21 of the College community. To provide that Pierpont complies with laws governing
22 patents, copyrights, trademarks and other intellectual property rights, this Policy
23 establishes procedures for all members of the College community. Procedures are
24 outlined in general terms and may not cover every possible situation. For issues
25 specifically related to Copyrights and the detailed use copyrighted material at
26 Pierpont, refer to Board of Governors Policy #55, PP-3055.
27

28 **SECTION 3. DEFINITIONS**

29 **3.1 Intellectual property:** the product of creative or scholarly efforts, whether
30 or not protected by patent, copyright, trademark, trade secret laws, contract, or
31 agreement. Expressions of original ideas, objects, data, applications, and processes
32 are considered to be intellectual property. Expressions could include written material,
33 spoken descriptions, models, sketches, musical scores (including any accompanying
34 words), sculptures, software code and programs (and related manuals and/or
35 documentation), websites or web pages, audiovisual works, architectural works,
36 dramatic works (including any accompanying music), pantomimes and choreographic

37 works, and paintings. Such property includes, but is not limited to, inventions, goods,
38 materials, course material, lab manuals, instruments, equipment, biological
39 organisms, chemical compositions, mask works, computer software, graphics, literary
40 and musical works, and trademarks. The intellectual property may be in tangible or
41 intangible form. Intellectual property in tangible form may be physically distributed.
42 Intellectual property may be protected by one or more of the following: patent,
43 copyright, trade secret, trademark, contract, or agreement.
44

45 **3.2. College Resources:** College premises, property, IT resources, personnel,
46 branding, or funding.
47

48 **3.3 College Premises:** all buildings or grounds owned, leased, operated,
49 controlled, supervised, or temporarily used by the College.
50

51 **3.4. College Community:** trustees, students, and all employees of the College
52 as well as any independent contractors or other third parties to the extent it is included
53 under contractual agreements.
54

55 **3.5. Creative Commons Licensing:** licensing that enables creators of
56 copyrighted work to grant permission to others to retain (make and own a copy),
57 reuse (use in a wide range of ways), revise (adapt, modify, and improve), remix
58 (combine two or more) and redistribute (share with others).
59

60 **3.6. Creator:** refers to any member of the College community who is the originator of
61 intellectual property.
62

63 **3.7. Fair Use:** refers to the right to use copyrighted materials without consent of the
64 copyright owner, usually for scholarship, teaching, research, or criticism, as
65 stipulated by Section 504(c)(2) of the Copyright Act.
66

67 **3.8. Incidental Use of College Resources:** means the infrequent and de minimis use of
68 Pierpont office supplies, library resources, standard commercially-available software
69 (e.g. Microsoft Office) on desktop or laptop computers, or other resources on the
70 Pierpont campuses which are commonly available in non-Pierpont locations and does
71 not (1) involve the procurement of special supplies, services, equipment, or other
72 support by the College; (2) constitute more than a nominal amount of normal duty time
73 of any faculty, administrator, classified, or nonclassified employee; (3) involve released
74 or reassigned time; (4) demand more than a nominal amount of normal work hours of
75 assisting College employees. Incidental resources that are generally available to
76 employees should not be counted in the assessment of the use of College resources or
77 general funds. It is the sole right of the MSHS to determine whether more than Incidental
78 Use of College Resources and/or facilities has occurred.
79

80 **3.9 Invention:** refers to an invention, which may or may not be patentable, and is: (1) a
81 new design for a product or device; (2) a new process, sequence, or methodology; or
82 (3) a new use or application of a product, device, process, sequence, or methodology.
83 An invention may also be an improvement of any of these three.
84

85 **3.10 Information Technology Resources:** refers to resources that include, but are not
86 limited to, telephones, mobile devices, computers, printers, scanners, servers,
87 networking devices, public access computers, and licensed software and services.
88 These resources are often involved in the processing, storage, accessing, and
89 transmission of data owned by, controlled by, or contracted to the College.
90

91 **3.11. Patent:** refers to any work recognized by a national patent office to have been
92 created or invented by the bearer of the patent, alongside the rights and protections
93 granted by ownership of the patent.
94

95 **3.12. Student Work:** is work that is produced or created by a registered full-time or part-
96 time student of the College without exceptional use of College facilities or equipment
97 or the direct use of Pierpont funds (where student financial aid and/or scholarships
98 would not be considered "Pierpont funds"), that is produced or created outside of any
99 employment by Pierpont, and that is not sponsored, contracted, or commissioned by
100 Pierpont.
101

102 **3.13. Trademark:** refers to any symbol or combination of symbols which serve to
103 identify the commercial source of items marked by the symbol.
104

105 **3.14. Trade Secret:** refers to any information, including, but not limited to, a formula,
106 pattern, compilation, computer software, data, device, method, technique, process, or
107 application that: (1) derives independent economic value, actual or potential, from not
108 being generally known to and not being readily ascertainable by proper means by
109 other persons who can obtain economic value from its disclosure or use, and (2) is the
110 subject of efforts that are reasonable, under existing circumstances, to maintain its
111 secrecy.
112

113 **3.15. Work for Hire:** refers to language in the Copyright Act of 1976, as amended, and
114 refers to copyrightable intellectual property, which is, for the purposes of this Policy
115 and Procedures, deliverable to Pierpont, (1) prepared by an employee within the
116 scope of their employment, or (2) produced as a result of a special order or commission
117 by Pierpont. Work created pursuant to a research agreement between Pierpont and
118 an outside party, either a private sector company or a governmental agency, is
119 considered to be within the scope of employment.
120

121 **SECTION 4. POLICY**

122 **4.1 Ownership and Rights to Intellectual Property**

123

124 4.1.1 For intellectual property created with incidental use of College resources
125 or no use of College resources, the Creator retains ownership.
126

127 4.1.2 The College owns intellectual property created using College resources,
128 unless the College, in its sole discretion, recognizes a specific exception. By
129 way of example only, for intellectual property created using College resources
130 but not at the direction of the College, employees can seek prior approval for
131 Creator ownership. Should such approval be granted by the College President or

132 their designee, an agreement may be established between the College and the
133 Creator, which maintains the right of the College to use the intellectual property
134 for its educational mission and the development of its employees, and a royalty
135 share may be established between the College and the employee. Other
136 exceptions may be made by the College on a case-by-case basis.

137
138 4.1.3 For intellectual property created at the direction of the College and with
139 College resources, the College retains ownership and rights to the work,
140 subject to specific written agreements between the College and the Creator to
141 the contrary.

142
143 4.1.4 Course and program descriptions, course justifications, student learning
144 outcomes, course syllabi, and any other curriculum materials submitted by any
145 Pierpont faculty member or staff member for the Institutional Review of
146 Curriculum Proposals for approval of a course, degree or certificate program, or
147 other course of study shall be considered work for hire and within the scope of
148 employment of any such faculty member or staff member. The copyright in
149 such curriculum material shall belong to Pierpont.

150
151 4.1.5 The College does not claim ownership for works developed by a member
152 prior to becoming a member of the Pierpont organization and prior to having
153 any access to College resources. An example would be works brought to the
154 College from another place of employment.

155 156 **4.2 Intellectual Property Procedures**

157
158 4.2.1 The College shall own and have all rights to any inventions, trademarks,
159 patents, and/or trade secrets discovered, created, or developed by College
160 employees using Pierpont time, resources, facilities, or equipment, except as
161 otherwise provided in this Policy and Procedures. This right shall include, but
162 not be limited to, inventions that are (a) developed in the course of, or pursuant
163 to, a sponsored project or other agreement; or (b) developed under a written
164 agreement with Pierpont and with funds provided by Pierpont; or (c) developed
165 using Pierpont time, resources, facilities, or equipment; or (d) offered to Pierpont
166 by the Creators and accepted by Pierpont.

167
168 4.2.2 The College has the right to use Student Work for assessment, such as
169 determining grades, and other noncommercial purposes without entering into
170 any agreement with the student. Purposes means use of Student Work for
171 academic research or other not-for-profit scholarly purposes. An agreement
172 must be established with the student if Student Work is to be used by the College
173 or a College employee for other purposes.

174 175 **4.3 Exceptions to Creator Ownership of Intellectual Property**

176
177 4.3.1 Unless prior approval is established and, unless otherwise stated below, an
178 agreement is entered into between the College and the Creator, the following
179 types of intellectual property are not owned by the Creator:

180
181 4.3.1.1 Work for Hire: For purposes of ownership of works for hire,
182 ownership vests in the College, unless there is a specific written agreement
183 regarding the creation of the work and that agreement specifically vests
184 title or ownership in someone other than the College. In the case of non-
185 employee third parties with which the College is contracting for services
186 related to creation or development of the work, it is the general policy of
187 the College (subject to exception approved by the President or the
188 designee of the President) to enter into written “works for hire”
189 agreements in which the College will obtain or retain ownership rights in
190 the work as part of the agreement for work or services. Where the College
191 owns the copyright in a work, it may acknowledge Creators (including
192 Creators of works for hire) who have made a substantial creative
193 contribution to the work.

194
195 4.3.1.2 Institutional Works: Work that is produced as a collaborative effort
196 under the supervision and/or direction of the College. The College owns
197 institutional works. Accordingly, software and software related
198 documentation, as well as other works created by employees at the
199 direction of the College for administrative support purposes, such as
200 documents for administrative use and computer software created by
201 nonfaculty employees of the College for use by the College, are
202 considered works for hire.

203
204 4.3.1.3 Educational Works: Work that is related to curriculum and materials
205 used for the primary purpose of instruction for Pierpont students. Unless
206 otherwise negotiated prior to their creation, educational works created
207 or developed for the primary purpose of instruction for Pierpont students
208 by College employees during their employment with the College are
209 owned by the College and the College has the right to modify, amend,
210 and develop derivative uses for College purposes.

211
212 Lecture notes, articles, books, games, movies, simulations, software,
213 videos, art and music works and other publications created by faculty
214 members and technology created outside of the classroom and brought
215 into the classroom are not considered within the scope of employment for
216 purposes of this Policy and Procedures unless there is a specific written
217 agreement between Pierpont and a faculty member, which provides that
218 a deliverable will be considered a work for hire.

219
220 4.3.1.4 Grant Funded and Sponsored Works: When work is created with
221 the support of an external entity through an agreement such as a grant or
222 contract, and when any term or condition of the agreement conflicts or is
223 inconsistent with this Policy and Procedures, then the conflicting or
224 inconsistent term(s) contained in the agreement shall determine
225 ownership of the intellectual property in that work.

226
227 4.3.1.5 Non-Credit Adjunct Faculty Works: With respect to non-credit

instruction, the College will retain rights to unlimited use of all course titles and descriptions, regardless of the non-credit adjunct faculty's employment status with the College, unless material is under copyright to another party. Course materials (e.g., syllabi, lesson plans, tests, quizzes) created outside the scope of the non-credit adjunct faculty's normal responsibilities and produced without the use of College resources remain the sole intellectual property of the non-credit adjunct faculty member. A copy of all course materials will be kept by the Program Coordinator.

4.4 Copyright and Fair-Use

4.4.1 The "Fair Use" doctrine allows educators and students to use copyrighted materials without seeking prior approval to certain types of resources under certain conditions without prior approval, which may include College-owned copyrighted material.

4.5 Agreements Related to Ownership of Intellectual Property

4.5.1 The College may enter into legal agreements related to the creation and/or ownership of intellectual property. Agreements will be dealt with on a case-by-case basis, with the goal to achieve a fair balance between the rights of Creators who are employees of the College, and the rights of the College related to the intellectual property developed using its resources.

4.6 Creative Commons Licensing

4.6.1 Copyright owners and Creators are encouraged to add a Creative Commons (CC) license to appropriate works for the purposes of sharing and dissemination. Copyright designation for works that are subject to an intellectual property agreement between the Creator and Pierpont are determined by the agreement. However, some works and materials created through publicly funded contracts and grants (grantors) may require open licensing, published as an Open Educational Resource (OER), and carry a specific Creative Commons license. Grantees may be required to develop learning materials such as books, courses, modules, seminars, tutoring systems, and simulations as OER and use industry-leading e-learning open standards and specifications. In accordance with grant agreements, Pierpont will maintain its copyright over grant and contract-funded materials, in accordance with stipulations concerning dissemination, reuse, and adaptation of those materials under the designated CC license.

4.7 Dispute Resolution

4.7.1 Should a dispute about the application of this Policy and Procedures arise between the Creator(s) and the College, resolution is first pursued using the Complaint Policy and Procedures for Employees.

SECTION 5. GENERAL PROVISIONS

276 5.1 **Review Period.** Pierpont Community & Technical College will review this policy as
277 needed. Initial review will include discussions through the College's Meet and
278 Confer process.

279 5.2 **Procedure.** The Board of Governor's Human Resources, Bylaws, and Policy
280 Committee ("Policy Committee") will initiate and establish the guidelines for
281 each review and will recommend any changes to the Board of Governors.

282 5.3 **Approval.** Pierpont's Policy Committee will forward recommendations to the
283 Board of Governors for their final approval and adoption.

284 5.4 **Publication.** Pierpont will publish the policy on its website.

285 **SECTION 6. RESPONSIBILITIES**

286 6.1 **President's Cabinet.** The President's Cabinet is responsible for the execution of
287 this policy.

288 **SECTION 7. REVIEW STATEMENT**

289 All policies shall be reviewed on a regular basis with a time frame for review to be
290 determined by the Board of Governor's Human Resources, Bylaws and Policy
291 Committee. Upon such review, the Committee may recommend the policy be
292 amended or repealed.

293 **Attachments:** None.

294 **Distribution:** Members of the Board of Governors and the President's Cabinet of
295 Pierpont Community & Technical College

296 **Revision Notes:** The proposed revisions reorganize policy provisions pursuant to PP-
297 1000.B, insert applicable statutory and regulatory references, remove
298 references to Fairmont State University, and clarify the review process.