

Advisory Opinion 22-02

This Advisory Opinion is in response to an inquiry from a [REDACTED] teacher at a BCPS school. The teacher states that he has created web-based tools which illustrate various [REDACTED] concepts, and that he has created these tools on his own time, on his own computer and in his own home. The teacher states that while he has created these tools independent from the BCPS curriculum and without using BCPS materials, he has used them during his classroom lessons.

The teacher would like to sell these tools to others and states: “If I wrote it independently but later used it in class, I didn’t waive ownership, did I?” The teacher adds: “I’m concerned about stuff I wrote on my own time/equipment which I used in class – do I still have the right to sell this stuff?” In follow-up correspondence, the teacher states: “This is really the root of my question. Assuming I’m right that I own the rights to stuff I write 100% on my own [and please tell me if I’m wrong], do I lose those rights if I use those materials in class, or permit others to use them in their classes?”

The teacher’s questions pertaining to ownership of the [REDACTED] tools that he has developed appear to relate primarily to issues of copyright law. Those questions are outside of the purview of this Panel. They also appear to relate, in part, to curricular decisions, *i.e.*, what materials may teachers utilize for classroom instruction. That question is also outside of the Panel’s purview.

The Board’s Ethics Code does touch upon an underlying question, *i.e.*, whether a school official may profit from the sale of instructional materials that are developed independently from BCPS. Section X.A. of Board of Education Policy 8363, *Conflict of Interest-Prohibited Conduct*, regarding *Royalties/Personal Gain*, provides that:

No royalties will be paid to a school official for textbooks, instructional materials or programs written or produced during working hours.

The teacher, as a BCPS employee, is a “school official.” See Policy 8363, section II.D. Thus, this provision explicitly precludes payment of royalties for instructional materials produced during the school official’s working hours. Conversely, this provision does not prohibit the payment of royalties for instructional materials produced outside of the school official’s working hours. However, this provision does not explicitly speak to ownership rights, which would be a matter of copyright law.

Other Board policies, which are outside of the Panel’s purview, may bear on the teacher’s questions. For example, section III.D. of Policy 4005, *Tutoring/Educational Services*, states that in order to avoid a conflict of interest, a Board employee may not “[u]se time during the duty day or use any Board resources, including but not limited to, advertising and/or promoting private educational services.” Policy 4005, however, is not part of the Board’s Ethics Code, and the Panel expresses no opinion on its applicability to the teacher’s questions.

In sum, the Board’s Ethics Code does not address the “root” of the teacher’s questions, which appear to pertain to copyright law. In addition to seeking competent advice on that matter, the teacher may also wish to consult with his supervisors regarding parameters on the use of independently created instructional materials in the classroom.

This Advisory Opinion has been adopted by the Ethics Review Panel members on April 21, 2022.

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