

BOARD AGENDA ITEM

May 26, 2020

SUBJECT:

Changes to Policy EGAD Copyright Compliance and Administrative Rule
EGAD Copyright Compliance, First Reading

BACKGROUND INFORMATION:

Policy EGAD establishes the basic structure for district compliance with federal copyright laws and regulations.

ADMINISTRATIVE CONSIDERATION:

The proposed change updates the policy from the 1976 Federal Copyright Law to reflect the District's understanding of the Fair Use Guidelines for Educational Multimedia (1996) and Digital Millennium Copyright Act (1998) while applying the 1976 Federal Copyright Act. The proposed change includes specific guidelines on photocopying, use of audiovisual works, music, and various multimedia for educational use.

RECOMMENDATION:

Approve changes to Policy EGAD Copyright Compliance and Administrative Rule EGAD Copyright Compliance on first reading

ATTACHMENTS:

EGAD Copyright Compliance Policy
EGAD Copyright Compliance Administrative Rule

PREPARED BY:

Jennifer Hart

[DRAFT]

Policy

COPYRIGHT COMPLIANCE

Code **EGAD** Issued _____

These guidelines represent Aiken County School District's understanding of the Fair Use Guidelines for Educational, Multimedia (1996) and Digital Millennium Copyright Act (1998) as applied to education.

Section 107 of the Copyright Act of 1976 provides educators with four factors to consider when determining if they are infringing on copyright. In essence, the four factors of fair use are as follows.

- the purpose and character of the use (must be nonprofit and educational in nature)
- the copyrighted work should be published (author intended it for the public eye)
- the amount and substantiality of the portion used in relation to the work as a whole (excerpts are favored)
- the effect of the use upon the potential market for or value of the copyrighted work

Educators need to follow the fair use guidelines whenever using copyrighted materials in any manner.

Copying print material

Photocopying - single copies (teacher/classroom use)

For teaching or research, a teacher may make a single copy of any of the following.

- one chapter from a book
- one article from a periodical or newspaper
- one short story, short essay or short poem, even if they are contained in a collection
- one chart, graph, diagram, drawing, cartoon or picture from a book or periodical

If a teacher needs a larger portion of the work than allowed, the item should be purchased. In general, consumable materials (workbooks, standardized testing materials, etc.) may not be copied. However, some consumable materials are reproducible. Individuals should follow

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copyright instructions or permissions printed in the book or periodical.

Photocopying - multiple copies (teacher/classroom use)

Teachers may make multiple copies for classroom use provided they meet the standards for spontaneity (teachable moment), cumulative effect (cannot substitute copying for purchase) and brevity.

- a complete poem of less than 250 words
- an excerpt from a longer poem, not to exceed 250 words
- a complete article, story or essay of less than 2500 words
- excerpt from a larger article, story or essay not to exceed 1000 words or 10 percent of the whole, whichever is less
- two pages of a picture book, as long as the two pages do not contain more than 10 percent of the text
- one chart, diagram, drawing, cartoon or picture per book, periodical or source, so long as they are copied exactly and not altered in any way
- special works containing prose, poetry and illustrations, but limited to no more than 10 percent of total

Each copy must include a notice of copyright.

Limits to the preceding list are as follows.

- copying is made for one course only
- one work from a single author
- no more than three authors from a collective work
- no more than nine instances of multiple copying in one term
- copying does not replace or substitute for anthologies
- same item not reproduced term to term
- no charge made to students beyond actual photocopy cost

Photocopying out of print material

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Out of print is not necessarily out of copyright; if copyright is still in effect, permission must be requested.

Using audiovisual works

Fair use exemption for schools requires the following.

- The presentation must be part of the current teaching unit.
- The presentation must occur in the course of face-to-face teaching activities, not used as entertainment or reward.
- The presentation must take place in a classroom or similar place for instruction (including the library).
- The presentation must be of a legally acquired (or legally copied) copy of the work.

Music for educational use

Sheet music

Emergency copying is allowed, provided that replacement copies are purchased.

Excerpts may be of no more than 10 percent of the whole work.

Editing is permitted, as long as the fundamental character of the work is not distorted or lyrics altered or added.

Sound recordings

A single copy of student performances may be made for evaluation or rehearsal purposes.

A single copy of copyrighted music owned by the school or the individual teacher may also be made, as long as it is only used for aural exercises or examinations.

Off-air recording (VHF and UHF channels received via antenna or cable)

This privilege is only for nonprofit educational institutions.

Programs taped must be used directly for instruction and not for entertainment, and may only be taped from open-air broadcast stations for which no payment is made to receive programs.

Programs taped may be kept 45 calendar days after taping, and then they must be erased. During the 45-day period, programs may only be used with students during the first 10 consecutive school days. During the first 10 consecutive school days, tapes may be used in teaching activities and repeated once for reinforcement. After the first 10 days, tapes can be used for teacher

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evaluation purposes. At the end of the 45 days, the tapes must be erased.

Recordings may only be made at the request of teachers.

No broadcast program may be recorded off-air more than once for the same teacher, no matter how many times it is broadcast.

Limited numbers of copies may be made to service all teachers requesting use, but all are governed by the same 10-day use, 45-day erasure period.

Programs must be recorded in their entirety and may not be altered (edited).

Satellite or cable channel recording (Disney, Discovery Channel, History Channel, etc.)

Using satellite or cable channel recordings requires the permission of the copyright holder and payment of appropriate fees for satellite broadcasts.

It is permissible when the copyright holder offers rights without requesting (for example, cable in the classroom programming, C-Span, special satellite broadcasts).

Programs may be taped from cable that also can be received on local, open air broadcast stations (same channel that can be received with "rabbit ears" is carried on cable).

Cable channels have their own guidelines and restrictions on a program-by-program basis. Many offer educator guidelines that list the available rights for each program and provide addresses so that permission and supplemental materials may be requested.

NOTE: It is illegal to copy an entire AV work or convert it to another format (e.g. videotape to DVD, DVD to media file, etc.) without written permission from the copyright holder.

Utilizing videotapes with the home use only warning label

Purchased videos may be used for direct instruction only and may not be used for entertainment.

Rental videos may be used for face-to-face teaching activity only and may not be used for entertainment.

Libraries may acquire and loan videos. Libraries wishing to make videos available for public viewing in the library must obtain public performance rights.

Using videos on closed circuit systems

It is permissible to show the following types of video programs on a CCTV system within a single institution. All programs may only be used for direct instruction, not entertainment.

- videos purchased by the educational institution with closed circuit rights

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- videos for which the copyright holder has granted closed circuit use rights (e.g. cable in the classroom programming)
- videos produced by the institution and not containing copyrighted material (unless permission has been obtained)
- simultaneous transmission of live broadcasts
- programs provided by the state department of education (instructional television)

Under limited circumstances, libraries may duplicate videotapes. According to Section 108(h), videotapes may be reproduced if the following conditions are met.

- It serves the purpose of preservation, scholarship or research.
- It is housed in the library.
- A copy of the work cannot be obtained at a reasonable price.

Multimedia

Portion limitations

Motion media

- may take up to 10 percent or three minutes, whichever is less, in the aggregate of a copyrighted motion media work

Text material

- may take up to 10 percent or 1,000 words, whichever is less, in the aggregate from a copyrighted work consisting of text material
- may use an entire poem of 250 words or less; no more than three poems from one poet or five poems from different poets from an anthology
- poems longer than 250 words - may use 250 words, but no more than three excerpts by a poet or five excerpts from different poets from a single anthology

Music, lyrics, music video

- may use up to 10 percent of a copyrighted musical composition, but no more than 30 seconds
- may use up to 10 percent of a body of sound recordings, but no more than 30 seconds

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Any alterations to a musical work will not change the basic melody of the fundamental character of the work.

Illustrations and photographs

- no more than 10 percent or 15 images, whichever is less, from a published collective work
- no more than five images by an artist or photographer

Numerical data sets (spreadsheets/databases)

- may take up to 10 percent or 2,500 fields, whichever is less, from a copyrighted database or data table
-
- teachers may make two use copies of the work they produced, only one of which may be placed on reserve
-
- may make one additional preservation copy, which may be used to generate replacement copies in the event a use copy is lost, stolen or damaged

Creating multimedia

Teachers

Teachers may create, perform and display multimedia productions which contain portions of copyrighted material for educational uses, purposes of face-to-face instruction, assigning students to self-study or remote instruction to students or at peer conferences and may retain for their professional portfolio.

Teachers may use their productions up to two years after the first instructional use with a class. It may be retained indefinitely for portfolio use.

Use beyond two years requires obtaining permission for each copyrighted portion incorporated in the production.

If at any time the teacher wants to commercially reproduce or distribute the work, he/she must obtain copyright permission for all copyrighted material and approval of immediate supervisor.

Students

Students may create, perform and display their own multimedia productions for educational uses only in the course for which they were created and may retain for portfolio use.

Students may only use their productions for and during the course for which it was prepared.

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However, they may retain, indefinitely, productions for their personal portfolio as examples of their academic work for later personal issues.

Important reminders

Exercise caution in using digital material downloaded from the Internet. Some copyrighted works cannot be reused without permission or royalty payment. Also, many websites contain material posted without authorization from the copyright holder.

Credit the sources and display the copyright notice and copyright ownership information; this information may be shown in a credit section.

A notice that "certain materials are included under the fair use exemption of the U.S. Copyright Act and have been prepared according to the educational multimedia fair use guidelines and are restricted from further use" must be included on the opening screen of the multimedia project and any accompanying print material.

Alterations of copyrighted works must support specific instructional objectives. Make note that alterations have been made.

Fair use guidelines do not preempt or supersede license agreements and contractual obligations.

Making copies of computer software

By law, the legitimate owner of a legitimate copy of the software may do the following.

- make a copy or adaptation of the program in order to be able to use the program with the machine
- make a copy for archival (preservation) purposes (cannot be used as another working copy)

Standalone software must be installed on only one computer. Disks and manuals for that software must be present in the classroom.

Software for multiple users (lab packs, site licenses, network versions) may only be installed on the number of computers specified in the license.

Shareware copies are only legal for 30 days. After that, they must be purchased.

When using clip art from any source, please refer to the software documentation or usage guidelines on the web site. Acceptable usage varies.

Whenever possible, use royalty-free and public domain graphics.

Copying from CD-Rom sources

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An individual may copy information from CD-Rom periodicals, encyclopedias and other printed works, applying the photocopying guidelines.

Copying from the Internet

Unless otherwise stated, one should assume that all materials on the Internet, including web sites, are copyrighted and that existing copyright guidelines apply. When in doubt, permission should be secured from the copyright holder.

~~Purpose: To establish the basic structure for district compliance with federal copyright laws and regulations.~~

~~The 1976 Federal Copyright Law makes it illegal to duplicate copyrighted materials without permission, except for certain exempt purposes. The federal law provides severe penalties for unauthorized copying of audio visual, or printed materials unless the copying falls within the bounds of the “fair use” doctrine.~~

~~Therefore, the board will inform all personnel that unauthorized reproduction and/or use of copyrighted materials is illegal, unethical and not permitted by the board and that violations of the copyright law may result in criminal or civil suits and/or suspension or dismissal from employment in the system.~~

~~To protect staff members and the district against legal redress for alleged violation of the copyright laws, the person making the reproduction is responsible for determining that the action is within the law. Any time a person copies materials, he/she should request permission from the copyright holder, even if the materials copied fall under the fair use standard. If the copyright holder denies permission, the user can destroy the copied works. If approved, the user may keep the materials for as long as the permission is in effect.~~

~~The district will not honor requests to reproduce materials on district equipment unless the reproduction is legally permissible.~~

Adopted 10/23/01; Revised __/__/20

Legal references:

- A. Federal Legislation:
 - 1. Copyright Act of 1976, Title 17 USC Section 101 et seq., effective January 1, 1978.
 - 2. H. R. Rep No. 94-1476, 94th Congress 2d Session, 63 (September 3, 1976).

[DRAFT]

Administrative Rule

COPYRIGHT COMPLIANCE

Code **EGAD-R** Issued _____

The District will maintain detailed regulations governing the use of copyrighted materials in each school library media center. It is the responsibility of the school principal to schedule an annual review of the copyright law at school staff orientation. It is the responsibility of the library media specialist to keep the school staff informed on the use of copyrighted materials.

Fair use

In determining whether use of copyrighted materials without permission in any particular case is "fair use," the following factors are to be considered.

- the purpose and character of the use, including whether it is for nonprofit/public educational purpose(s)
- the nature of the copyrighted materials
- the amount and substantiality of the portion used as compared to the copyrighted materials as a whole
- the effect of the use on the potential market for, or value of, the copyrighted materials

Permission for reproduction

Written permission from the copyright holder should always be obtained prior to the use of the material. Permission to copy must include this information.

- title, author and/or editor, and edition of materials to be duplicated
- exact material to be used giving amount, page numbers, chapters and, if possible, a photocopy of the material
- number of copies to be made
- use to be made of duplicated materials
- form of distribution (classroom, newsletter, etc.)
- whether or not the material is to be sold
- type of reprint (ditto, photocopy, offset, typeset, etc.)

If written permission for reproduction is not received, the copyrighted material may not be used.

Credit the source of all copyrighted material by indicating the copyright symbol and year, (c) 19__ or 2__ and the copyright owner's name on the materials. State "with permission" if permission for reproduction has been granted.

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Guidelines for reproduction and use of copyrighted material in print

Teachers may make or have made a single copy of the following for instructional uses.

- a chapter from a book
- an article from a newspaper or periodical
- a short story, essay or short poem, whether or not from a collective work
- a chart, graph, diagram, drawing cartoon or picture from a book, periodical or newspaper

Teachers may make multiple copies (not to exceed one per student) of the following for classroom use or discussion provided all of these requirements are met.

The copying meets the tests of brevity and spontaneity as defined below.

The copying meets the cumulative effect test as defined below.

Each copy includes a notice of copyright.

Brevity

- a complete poem of less than 250 words
- an excerpt of no more than 250 words from a longer poem
- a complete prose work if it is less than 2,500 words
- an excerpt of no more than 500 words from a prose work of between 2,500 and 5,000 words
- an excerpt of not more than 10% of a prose work of between 5,000 and 10,000 words
- an excerpt of not more than 1,000 words from a prose work which is greater than 10,000 words
- one illustration per book or periodical use
- not more than two pages and 10% of the words of "special works" which are poetic or prose works which combine illustrations and less than 2,500 words (such as many children's books)

NOTE: Numerical limits may be exceeded in order to complete a line of poetry or a paragraph of prose.

Spontaneity

The copying must be at the instance and inspiration of the individual teacher.

The inspiration and decision to use the work and the moment of its use for maximum teaching effectiveness are too close in time that it would be unreasonable to expect a timely reply to a request for permission.

Cumulative effect

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The copying of the material must be for only one course in the school in which copies are made.

Not more than one short poem, article, story, essay or two excerpts may be copied from the same author, nor more than three from the same collective work or periodical volume during one class term.

Not more than nine instances of such multiple copying for one course may occur during one class term.

***NOTE:** The limitations stated in the last two items above will not apply to current news periodicals and newspapers and current news sections of other periodicals.*

Performances by teachers or students of copyrighted dramatic works without authorization from the copyright owner are permitted as part of a teaching activity in a classroom or instructional setting. All other performances require permission from the copyright owner.

Teachers may use copyrighted material in opaque projectors for instructional purposes.

The right to change the chart, picture, cartoon or illustration into a poster, slide, transparency, video or wall graphic (also called the right of adaptation) rests with the copyright holder. Modification of the original does not protect the user from liability.

Guidelines for reproduction and use of copyrighted music

Teachers may make a single copy of a song, movement or short section from a printed musical work that is unavailable except in a larger work for purposes of preparing for instruction.

Teachers may make multiple copies for classroom use of an excerpt of not more than 10% of a printed musical work if it is to be used for academic purposes other than performance, provided that the excerpt does not comprise a part of the whole musical work which would constitute a performable unit such as a complete section, movement or song.

In an emergency, teachers may make and use replacement copies of printed music for an imminent musical performance when the purchased copies have been lost, destroyed or are otherwise not available, provided purchased replacement copies will be substituted in due course.

Teachers may make and retain a single recording of student performances of copyrighted material when it is made for purposes of evaluation or rehearsal.

Teachers may make and retain a single copy of excerpts from recordings of copyrighted musical works for use as aural exercises or examination questions.

Teachers may edit or simplify purchased copies of music provided that the fundamental character of the music is not distorted. Lyrics will not be altered or added if none exist.

Performance by teachers or students of copyrighted musical works is permitted without the

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authorization of the copyright owner as part of a teaching activity in a classroom or instructional setting. The purpose will be instructional rather than for entertainment.

Performances of non-dramatic musical works which are copyrighted are permitted without the authorization of the copyright owner under these conditions.

The performance is not for a commercial purpose.

None of the performers, promoters or organizers are compensated.

Admission fees are used for educational or charitable purposes only.

All other musical performances require permission from the copyright owner.

Guidelines for off-air recording

Instructional television programs

Unlimited use designates a series that is leased or owned by the Department of Education. Programs in the series may be taped off-air and retained on tape for as long as the series is contained in the resources book.

Designated time period use designates a series that may be taped off-air and retained on tape for as long as that series airs on the school television schedule. Broadcast and record rights are negotiated periodically; school personnel are notified when the tapes are to be erased. The South Carolina State Department of Education Office of Instructional Technology prints in its resources catalog the specific rights for each series.

The Office of Instructional Technology has no copyright jurisdiction over programs not airing on the ITV schedule. It does, however, have jurisdiction over the use of state-owned equipment for airing these programs and has adopted the following policy concerning ITFS and district taping centers.

State owned and supplied equipment in these operations may only be used to record, transmit or broadcast State Board of Education approved resources (those contained each year in the ITV/R resources book or otherwise added during a year to the ITV schedule by the office of instructional technology.

Non-school television programs

A broadcast may be recorded simultaneously with the broadcast transmission and retained for a period of 45 calendar days after the date of recording. Recordings must be erased or destroyed at the end of the 45 days.

Teachers may use broadcast recordings once in the course of relevant teaching activities, and repeat the use once for instructional reinforcement during the first ten consecutive school days

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within the 45-day retention period.

After the first 10 consecutive school days, recordings may only be used up to the end of the 45-day retention period for evaluation purposes by teachers. This evaluation is to be used to determine the likelihood of using programs in the series or in purchasing a copy of the program.

Broadcast recordings must be done only at the request of individual teachers. Recordings may not be made in anticipation of requests and no program may be recorded more than once at the request of the same teacher, regardless of the number of times the program is broadcast.

A limited number of copies may be reproduced from each recording to meet the needs of teachers under these guidelines. Each such copy will be subject to all provisions governing the original off-air recording.

The content of recordings may not be altered or merged, but recordings need not be used in their entirety.

All copies of off-air recordings must include the copyright notice on the broadcast program as recorded.

Off-air recording guidelines apply only to non-profit educational institutions.

Guidelines for reproduction and use of copyrighted audiovisual material

No type of audiovisual work may be copied in any form without permission from the copyright holder. However, a teacher may make a single copy of an entire recording or a portion thereof, but only for the purpose of constructing aural exercises or examinations. Such copies must be retained by the school and/or by the teacher, and may not be used in a performance.

Audiovisual/videos

The audiovisual section of the copyright provides a type of fair use exemption for schools. All of the following conditions must be met before a performance is considered exempt from public performance requirements.

The performance must be presented by instructors of pupils.

The performance must occur in the course of face-to-face teaching activities.

The performance must take place in a classroom or similar place for instruction (including the library).

The performance must be of a legally acquired (or legally copied) copy of the work. (The presenter is protected from liability for illegal copies if the presenter is unaware that the copies were not legally acquired or made.)

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The teacher must use videotapes in accordance with labels on audiovisual materials. Restrictions printed on videotapes are binding. Use is subject to licensing or other written permission.

Guidelines for reproduction and use of copyrighted materials in library

A library may make a single copy of the following.

- an unpublished work which is in its collection
- a published work in order to replace it because it is damaged, deteriorated, lost or stolen, provided that an unused replacement cannot be obtained at a fair price.

A library may provide a single copy of copyrighted material at no cost to a student or staff member. The copy must be limited to one article of a periodical issue or a small part of other material, unless the library finds that the copyrighted work cannot be obtained elsewhere at a fair price. In the latter circumstance, the entire work may be copied. In any case, the copy will contain the notice of copyright and the student or staff member will be notified that the copy is to be used only for private study, scholarship or research. Any other use may subject the person to liability for copyright infringement.

At the request of a teacher, copies may be made for reserve use. The same limits apply as for single or multiple copies designated in the sections on material in print.

Guidelines for reproduction and use of microcomputer software

The owner of a copy of a computer program may make or authorize the making of another copy or adaptation of that computer program under these circumstances.

A new copy or adaptation is created as an essential step in the utilization of the computer program in conjunction with a machine and it is used in no other manner.

Such new copy or adaptation is for archival purposes only and that all archival copies are destroyed in the event that continued possession of the computer program should cease to be rightful.

Plagiarism and copyright infringement

Employees will not plagiarize works found on the Internet. Plagiarism is taking the ideas or writings of others and presenting them as if they were the writer's.

Employees will respect the rights of copyright owners. Copyright infringement occurs when an individual inappropriately reproduces a work that is protected by a copyright. If a work contains language that specifies appropriate use of that work, employees must follow the expressed requirements. If an employee is unsure whether or not a work can be used, he/she should request in writing permission from the copyright owner.

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Employees will not copy/install district owned software on personal computers at work or at home. This is a violation of the federal copyright law.

Employees will not install single user software on more than one machine. This is in violation of the federal copyright law.

Employees will not install personal software and/or personal computer equipment on district owned computers and/or the district network system.

Copying limitations

Circumstances will arise when personnel are uncertain whether or not copying is prohibited. In those circumstances the Superintendent (or designated copyright compliance officer) should be contacted. Nonetheless, the following prohibitions have been expressly stated in federal guidelines.

Reproduction of copyrighted material will not be used to create or substitute for anthologies, compilations or collective works.

Unless expressly permitted by agreement with the publisher and authorized by district action, there will be no copying from copyrighted consumable materials such as workbooks, exercises, test booklets, answer sheets and the like.

Personnel will not do the following.

Use copies to substitute for the purchase of books, periodicals, music recordings or other copyright material except as permitted by District procedure.

Copy or use the same item from term to term without the copyright owner's permission.

Copy or use more than nine instances of multiple copying of protected material in any one term.

Copy or use more than one short work or two excerpts from works of the same author in any one term.

Copy or use protected material without including a notice of copyright. The following is a satisfactory notice.

"This Material May Be Protected By Copyright Law".

Personnel will not reproduce or use copyrighted material at the direction of someone in higher authority or copy or use such material in emulation of some other teacher's use of copyrighted material without permission of the copyright owner.

Adopted 7/25/78; Revised 3/11/86, 10/23/01, __/__/20