



SAN DIEGO COMMUNITY COLLEGE DISTRICT

CITY COLLEGE • MESA COLLEGE • MIRAMAR COLLEGE • CONTINUING EDUCATION

DISTRICT GOVERNANCE COUNCIL

May 16, 2018

3:00 p.m. – Room 245

AGENDA

- *1.0 Review Minutes of May 2, 2018
- 2.0 No Review of Board Agenda
- 3.0 Additional Agenda Items
- *4.0 State Budget Update Carroll, Dowd
 - Governor's May Revision Budget
- *5.0 Policy and Procedure Review Neault
 - BP 2015 – Student Membership
 - AP 2015 – Student Membership
- *6.0 SDCCD Guidelines for the Bulger
Use of Copyrighted Material
- 7.0 CE Building at Mesa College Weinroth
- 8.0 Roundtable

*Attachments

Next DGC MEETING scheduled: Wednesday, June 6, 2018 – 3:00 p.m.
District Office – Room 245

Visitors and observers are welcome. The District Governance Council (DGC) follows an open process and conducts open meetings. However, because of limited space, we ask that visitors sit in the extra chairs provided against the walls to leave room available at the table for voting DGC members. Your help is appreciated.



SAN DIEGO COMMUNITY COLLEGE DISTRICT

CITY COLLEGE • MESA COLLEGE • MIRAMAR COLLEGE • CONTINUING EDUCATION

DISTRICT GOVERNANCE COUNCIL MINUTES

May 2, 2018

Present: Akers, Beresford, Bermodes, Bulger, Dowd, Kovrig, Lareau (for Manis), Larson, Luster, Mahler, McMahon, Neault, Payne, Perigo, Sabanos (for Cortez), Shabazz, Surbrook, Weinroth and Chairperson Chancellor Carroll

Absent: Cortez, Hsieh, Hubbard, Manis, Watkins

Guests: Sandra Pesce

1. APPROVAL OF MINUTES

The minutes of April 18, 2018, were approved.

2. REVIEW OF BOARD AGENDA

The agenda for the May 10, 2018, Board Meeting was opened for review by Chancellor Carroll. Each item was discussed and satisfied.

3. STATE BUDGET UPDATE

Executive Vice Chancellor Dowd shared that there are still many uncertainties regarding the state budget and the proposed funding formula, including the date when the Governor's May Revise will be released. She said that many groups are asking to postpone implementation of the proposed funding formula until it can be tested more thoroughly.

4. THREAT ASSESSMENT TASKFORCE

Vice Chancellor Neault announced that the Threat Assessment Taskforce will reconvene next week to address progress on previous issues and to assess new ones. They will also seek to broaden districtwide representation by adding new members.

5. HR POLICY & PROCEDURE REVIEW

Vice Chancellor Surbrook presented final copies of the revisions made to BP 7330 – Communicable Disease, and AP 7336 – Certification of Freedom from Tuberculosis. Members accepted changes. The policy will be adopted at a future meeting of the Board of Trustees.

6. SDCCD COPYRIGHT GUIDELINES

City College Academic Senate President Justin Akers introduced City College Librarian Susan Pesce who explained revisions made to the 2011 document. Language has been updated to add clarity and the table of contents has been expanded for easier access. The document will be reviewed next by District Legal Counsel and then come back to the DGC for a final review.

7. 2018-2019 DISTRICTWIDE STRATEGIC PLANNING COMMITTEE

Vice Chancellor Bulger asked college presidents and both academic and classified senate presidents to send her names of designees for this committee. Meetings will resume in the fall and this item will return to DGC for consideration.

Adjourned 3:38 p.m.

Chancellor's Office & Board of Trustees

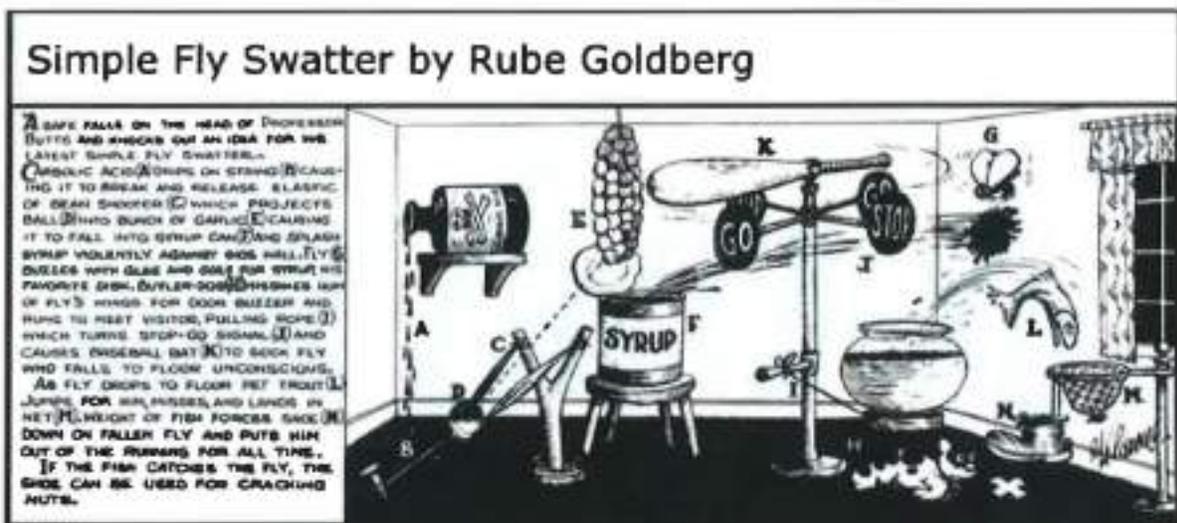


San Diego Community College District
Office of the Chancellor

May 11, 2018

Chancellor's Budget Message: Governor's May Revision

**THE CALIFORNIA BUDGET 2018-19
A RUBE GOLDBERG PROCESS**



The late American cartoonist Rube Goldberg was best known for his illustrations depicting immensely complex and unlikely machines for performing very simple tasks. His designs became so popular that the adjective "Goldbergian" was coined, and the term "Rube Goldberg" appeared in the 1966 Random House Dictionary of the English Language in 1966, defined as "having a fantastically complicated improvised appearance," or something that was "deviously complex and impractical." Above all, however, his contraptions were ingenious and fun.

The 2018-19 budget development process for the California Community Colleges has been a truly Goldbergian experience. The process began with a call for a major change in the funding mechanism itself, a departure from the essentially enrollment-driven formula with categorical directions in areas such as student success to an entirely new mechanism that would be half enrollment-driven, with the other half driven by "performance" metrics and other factors. A standing advisory workgroup of business offices and a CEO workgroup formed by the system office were asked to review and suggest modifications to this funding formula. Concerns about the speed of the process and the lack of budget simulations were expressed, and a legislative bill was authored requesting another year to review the proposed changes and other options in

detail. In the meantime, the new funding formula, whatever it may be in the end, is still being pursued with the goal of implementation on July 1.

The Governor's Overall Budget and Process

At a press conference this morning, after first introducing the new "Deputy First Dog Cali," Governor Brown presented his May Revision Budget, which is the second major step in the process toward developing a state budget for the next fiscal year, 2018-19. As always, the governor cautioned the community colleges to avoid using one-time funding for ongoing expenditures and, as he normally does, predicted that another recession is just around the corner. In his words today, "As Isaac Newton observed, what goes up must come down," and "in the current budget, we are already overextended." His cautions, as always, are well taken.

It is important to recall California's budget context. Following a five-year, severe recession, the California budget rebounded quickly due to the passage of Proposition 30 in 2012, which, through two temporary tax measures, provided a sudden infusion of funding to the public sector, preventing a continuation of the slide into fiscal decline and refilling coffers that had been depleted. However, the sudden influx of money did not fully offset the loss of purchasing power during the recession years nor did it buttress the enormous, new budget demands to come, especially the steep increase in the employer contribution to the retirement systems CalSTRS and CalPERS.



Governor Jerry Brown, with his wife Anne Gust Brown, and Deputy First Dog Cali.

Compared with the previous year, the governor's \$137.6 billion general fund spending plan for California makes a few augmentations, but essentially reduces some funding categories and redirects funding to address several new priorities. With regard to community colleges, the two new priorities are the proposed funding formula and statewide online college.

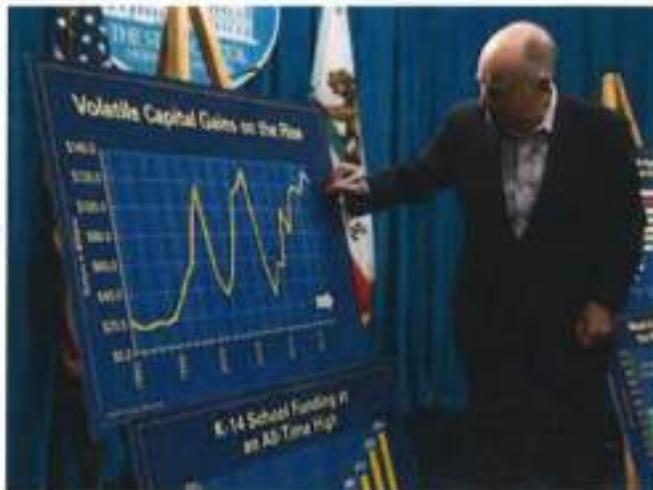
The new funding formula will, unless further modified, shift available funding within the system in significant ways. With only 60% of funding based upon enrollment (FTES) and 40% based on other factors (economic profiles, student success metrics, etc.), it is difficult to foresee exactly how that will play out, especially since there are no budget simulations to view. The proposal calls for a hold-harmless provision that "ensures that no district will receive less in both 2018-19 and 2019-20 than it received in 2017-18." \$104 million in one-time Proposition 98 funds will be deployed to ensure that districts that are in financial trouble will receive funds to ensure that they can reach the proposed COLA level. Reductions in other funds, such as deferred maintenance, are also intended to be used to help these districts. This means, of course, that less funding will be available to benefit districts that are more stable and prosperous. The funding formula will also change the manner in which districts schedule their summer sessions. In the months ahead, the SDCCD will focus on new strategies regarding our very successful enrollment management systems to address these changes.

The separate online community college is another prominent feature in the governor's budget. It will receive \$120 million in funding to offer online programs that are "competency-based" for "working adults without a postsecondary credential to improve their economic mobility," beginning with an Information Technology Support Credential Program and a Medical Coding Credential Program. The plan has been somewhat modified since originally proposed and will include these elements: the California Community Colleges Board of Governors will serve as the governing board of the online community college; faculty, as well as administrative and classified staff will be hired; a collective bargaining arrangement will be sought in conjunction with an existing community college district; and reports will be issued on student success and other factors.

The next steps in the process will include the development of responsive budgets by the California Senate and the Assembly, and a Conference Committee, which will lead to some modifications in the budget proposal and will be informed by local advocacy efforts. In June, it is hoped that all budget differences will be resolved so that the governor can approve the budget and sign it into law on or before the July 1 deadline.

The California Community Colleges (CCC) and the San Diego Community College District (SDCCD)

Many funds, such as the special student success and equity funds and other initiatives are continuing at essentially their current level of funding. There are some small increases for some new items, such as apprenticeship programs, student financial aid, Open Educational Resources, and programs for foster youth, about which we will receive more information at a later time. Below are the key elements of change in operational funding that we can estimate as proposed in the May Revision Budget that affect community colleges in general and the San Diego Community College District in particular.



Governor Brown discussing fiscal issues

First is the category of new ongoing funding.

- **Cost-of-Living Adjustment or COLA.** The May Revision proposes a COLA of 2.71% amounting to \$173.1 million.

SDCCD Impact. The COLA will be \$6 million in ongoing revenue and will be processed through the Resource Allocation Formula (RAF). There will also be a 2.71% COLA for categorical programs, e.g., DSPS, EOPS, CalWORKs, and Child Care.

The total amount in new ongoing funding for the SDCCD under the May Revision is \$6 million.

Second is the category of new one-time funding.

- **Deferred/Scheduled Maintenance and Instructional Equipment.** The May Revision proposes \$143.5 million in maintenance/equipment funding.

SDCCD Impact. The SDCCD will receive \$5 million, with a 60%/40% split between maintenance funding (\$3 million) and instructional equipment (\$2 million).

The total amount in new one-time funding for the SDCCD under the May Revision is \$5 million.

The total increase in all new funding under the May Revision is \$11 million.

Note: Because we do not know the precise details and impact of the new funding formula, there are no estimates as yet. We have determined that all noncredit (CDCP and regular noncredit) FTES funding will continue to be addressed in 2018-19 under the existing apportionment model, with adjustments to the funded rates for the two categories of noncredit. Also, there are no specifics regarding the statewide Promise funding under AB 19 for first-time, full-time students. That, too, is still to be determined.

Let me close by saying that, while much is still unclear about the precise budget under the May Revision, the Board of Trustees and I are generally optimistic that the outcome will be good for the SDCCD. As always, we will be supportive while also seeking modifications during the advocacy period. We especially hope to emphasize the need for funding full-time faculty positions. Executive Vice Chancellor Bonnie Dowd continues to monitor and refine our budget figures, while also working on an important statewide committee to sort out the details of the funding formula. The College and Continuing Education Presidents, Vice Chancellors, Governance Leaders, and Collective Bargaining Leaders also remain supportive and involved in this process. Because of the District's overall vision of service and close attention to detail, the San Diego Community College District has an excellent budget development and management process that supports its instructional programs, operations, and innovation. Stay tuned



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SAN DIEGO
COMMUNITY COLLEGE
DISTRICT



Chapter 2 – Board of Trustees DGC Review 5/16/18

The following **revised** Board Policy and **new** Administrative Procedure are being put forth for **approval** as part of the Board's ongoing 6-year comprehensive review of all Board policies and procedures:

Category 2 Procedures: New and/or revisions to policies and/or procedures in response to legal and/or regulatory requirements.

BP 2015 Student Membership – This legally required policy was updated to more accurately reflect current rights on responsibilities of student members of the Board of Trustees as part of the ongoing 6-year review.

AP 2015 Student Membership (new SDCCD Procedure)– This procedure was created to identify the role and responsibilities of student members.

NOTE for all following documents: The **red ink** signifies language that is **legally required** and recommended by the Policy & Procedure Service and its legal counsel (Liebert Cassidy Whitmore). The language in **black ink** is from current adopted board policies. The language in **blue ink** is included for consideration.



SAN DIEGO COMMUNITY COLLEGE DISTRICT

Board of Trustees Policy

Chapter 2 – Board of Trustees

BP 2015 STUDENT MEMBERSHIP

The Board of Trustees shall include one non-voting student member. The Associated Student Presidents of City, Mesa, and Miramar Colleges shall have the responsibility of Student Trustee. Only one of the three shall sit with the Board on a rotating basis determined by the three Associated Student Presidents. The term of office shall be one year commencing June 1st through May 31st.

The student member shall be enrolled in and maintain a minimum of five semester units in the District at the time of nomination and throughout the term of service. The student member is not required to give up employment with the District. The student shall maintain a 2.0 grade point average for all college work attempted.

The student member shall be seated with the Board and shall be recognized as a full member of the Board at meetings. The student member is entitled to participate in discussion of issues, receive all materials presented to members of the Board (except for closed session). The student member is not entitled to make, amend, or second motions, but may remove items from the consent calendar for discussion. The student member can cast an advisory vote, although the vote shall not be included in determining the vote required to carry any measure before the Board. The student member shall be entitled to any mileage allowance necessary to attend Board meetings to the same extent as publicly elected trustees.

On or before May 15th of each year, the Board of Trustees shall adopt regulations granting privileges to the student trustee including stipend and an advisory vote.

~~The Board shall include one non-voting student member(s). The student member will be elected in accordance with Board Policy BP 3200 Student Government and Organizations.~~

~~The Associated Student Presidents of City, Mesa, and Miramar colleges shall have the responsibility of Student Trustee. Only one of the three shall sit with the Board on a rotation basis determined by the three Associated Student Presidents. The student member(s) shall have an advisory vote. Such member(s) shall have the right to attend each and all meetings of the Board, except that the student member(s) shall not have the right, nor be afforded the opportunity, to attend Closed Sessions.~~

~~The student member(s) shall be seated with the members of the Governing Board on a rotation basis as described above and shall be recognized as a full member of the Board at the meetings, including receiving all materials for public meetings presented to the Board members and participating in the questioning of witnesses and the discussion of issues and casting an advisory vote. The student member(s) are not entitled to make, amend, or second motions. The student member(s) shall have the right to remove items from the consent calendar for discussion.~~

~~The advisory vote of the student member shall not be included in determining the vote required to carry any measure before the Board.~~

~~The term of office of the student member(s) shall be one year commencing on June 1 of each year. The student member is required through the term of office to be enrolled in a college of the District for at least five semester units and to maintain a 2.0 grade point average for all college work attempted.~~

~~The student member(s) shall be authorized reimbursement for mileage by resolution in the same manner and to the same extent as other Board members. The student member(s) shall not be compensated as prescribed by Section 72024 of the California Education Code. Compensation for the student member(s) is outlined in the Student Trustee Handbook on file in the Vice Chancellor, Student Services Office.~~

References:

Education Code Section 72023.5

California Code of Regulations, Title 19, Division 2, Chapter 4, Subchapter 3, Article 1, §2572.2

Adopted: 12/14/06

Revised:

(Replaces current SDCCD BP 2015, former policy 1001.33, current procedure 3200.1 (1/19/2000))



SAN DIEGO COMMUNITY COLLEGE DISTRICT

Administrative Procedure

Chapter 2 – Board of Trustees

AP 2015 – STUDENT MEMBERSHIP

1. STUDENT MEMBER

- a. The Associated Student President at City College, Mesa College and Miramar Colleges will collectively serve as the Student Trustee and sit at the Board of Trustees meetings on a rotating basis.
- b. The Student Trustee must be enrolled in a college of the District for at least five semester units and maintain an overall 2.0 grade point average.
- c. The Student Trustee will receive a stipend of \$100 per month.
- d. Term of service: June 1st – May 31st.

2. RESPONSIBILITIES

- a. Represent and advocate for all students of the District.
- b. Serve as the districtwide student voice at various participatory governance meetings including District Governance Council and the United Student Council.
- c. Be prepared and attend all assigned meetings of the Board of Trustees.
- d. Participate in the United Student Council in accordance with BP 3200 Associated Students Organizations.
- e. Participate in the Community College League of California (CCLC) Student Trustee training and other appropriate trainings in preparation for assuming the responsibilities of Student Trustee.

Approved by
the Chancellor: _____

Supersedes: New Procedure

These guidelines are to help the SDCCD faculty, staff, and students comply with U.S. copyright law and to make informed decisions about copyright.

SDCCD Guidelines for the Use of Copyrighted Material

2018 Revision

Lisa Burgert, Mesa College
Sean Flores, Mesa College
Kats Gustafson, District
Roger Olson, Miramar College
Sandra Pesce, City College

2010-2011 Districtwide Copyright Guidelines Committee

Gretchen Bitterlin, Continuing Education, Chair of Chairs, Academic Senate
Andrea Henne, Dean, Online & Distributed Learning, District Instructional Services. & Planning
Eric Mosier, Miramar College, Librarian
Sandra Pesce, City College, Librarian
Ray Ramirez, Continuing Education, Dean, Institutional Effectiveness
Carol Reagan, Miramar College, Media Technician
Alison Steinberg, Mesa College, Librarian
Carol Withers, City College, Librarian

Ad Hoc Committee 2018 Revision

Lisa Burgert, Mesa College, Librarian
Sean Flores, Mesa College, Librarian
Kats Gustafson, Dean, Online & Distributed Learning, District Instructional Services
Roger Olson, Miramar College, Librarian
Sandra Pesce, City College, Librarian

SDCCD Copyright Resources are posted to:

<https://www.sdccd.edu/about/departments-and-offices/instructional-services-division/copyright.aspx>

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I. Introduction

A. Purpose and Scope

These guidelines are meant to assist all San Diego Community College District (SDCCD) employees and students in making informed decisions regarding copyright as it applies to scholarly and educational activities. They fulfill the implementation requirement of SDCCD Board Policy 5750, are intended for general information only, and should not be considered a substitute for legal advice. It is the responsibility of all faculty, staff, students, and anyone using the facilities or resources of the SDCCD to read, to understand, and to follow these guidelines.

Copyright protects the authors, creators, and publishers of both published and unpublished original works, including literary, dramatic, musical, and artistic works. Books, newspapers, magazines, software, multimedia, audio recordings, dissertations, research papers, technology, scientific or technological developments, research data, photographs, as well as text, video, and images on the Internet are among the works covered under copyright law.

Since its passage in 1976, the Copyright Law has been amended numerous times by, for example, the Digital Millennium Copyright Act in 1998 and the Technology, Education, and Copyright Harmonization Act (“TEACH Act”) in 2002. These amendments outline the copyright requirements for digital content and online distance education addressed in these guidelines.

Copyright infringement occurs when a copyrighted work is reproduced, distributed, performed, publically displayed, or made into a derivative work without the permission of the copyright holder. A copyright notice is not required for works to be protected. These guidelines will address when it is or is not necessary to obtain authorization to use intellectual property.

B. District Compliance Responsibility

Per Board Policy 5750, SDCCD acknowledges and abides by all applicable intellectual property laws, including but not limited federal copyright law, Title 17 of the U.S. Code as amended at <http://www.copyright.gov/title17> . SDCCD expects that all individuals employed at the district, enrolled in the district or colleges, and/or using the facilities or resources of the district or colleges shall do the same.

In addition to issuing and educating the SDCCD community regarding this policy and guidelines, the SDCCD will, among other things, ensure that every photocopy machine, printer, and other equipment capable of creating copies shall include effective signage incorporating the following text:

Notice: The copyright law of the U.S. (Title 17 of the U.S. Code) governs the making of photocopies or other reproductions of copyrighted material. The person using this equipment is liable for any infringement.

C. Consequences for Copyright Infringement

The Copyright Act provides for the copyright owner to recover damages for unauthorized use of the owner's works. These damages may include the profits resulting from the infringement, or statutory damages ranging from \$750 to \$30,000 per willful infringement, as well as legal fees. <https://www.copyright.gov/title17/92chap5.html>.

II. Using Copyrighted Material

“Copyright is a form of protection provided by the laws of the United States to the authors of ‘original works of authorship’ that are fixed in a tangible form of expression. . . . Copyright protection in the United States exists automatically from the moment the original work of authorship is fixed.” (Circular 1, U.S. Copyright Office)

Copyrighted materials may or may not have markings to indicate their status. Use of copyrighted materials may or may not require permission. See below for guidelines on obtaining permission when it is required, and for an overview of the exemptions that do not require permission.

A. When Permission is Required: How to Get Permission

The law does not recognize a “best efforts to obtain copyright” exception, even if it is difficult, time-consuming, or expensive to locate the copyright owner. The process of granting permission requires time to check the status of the copyright and evaluate the nature of the request. It is advisable, therefore, to allow enough lead time to obtain permission before the materials are needed.

One of the simplest ways to obtain permission is through the Copyright Clearance Center (CCC), which has the right to grant permission and collect fees for rights for certain publications. CCC’s Pay-Per-Use Services provide a quick and-easy way for faculty, students, and staff at colleges to secure permissions to use and share content. Search by title or ISBN at www.copyright.com.

In cases where the CCC does not have the legal rights to obtain copyright clearance, permission must be obtained directly from the copyright holder (see sample draft letter in section VI Appendix B of this document).

B. When Permission is Not Required: Three Exemptions

There are three exemptions from the permission requirement: fair use exemption, library exemption, and instruction exemption. This will offer a brief explanation of each, as well as some examples by materials format and by intended use.

1. Fair Use Exemption

Some copyrighted works may be used without permission under circumstances deemed “fair use.” §107 of the United States Copyright Act lists four factors to help judges determine when content usage may be considered “fair use:”

The **purpose and character** of the use, including whether such use is of a commercial nature or is for nonprofit educational purposes. However, not all educational uses are fair use.

The **nature** of the copyrighted work. Use of a purely factual work is more likely to be considered fair use than use of someone’s creative work.

The **amount and substantiality** of the portion used in relation to the copyright protected work as a whole. There are no set page counts or percentages that define the boundaries of fair use. Courts exercise common sense judgment about whether what is being used is too much of — or so important to — the original overall work as to be beyond the scope of fair use.

The **effect** of the use on the potential market for or value of the copyright protected work. This factor looks at whether the nature of the use competes with or diminishes the potential market for the form of use that the copyright holder is already employing, or can reasonably be expected soon to employ, in order to make money for itself through licensing.

If it is unclear whether a particular use is permitted under the fair use doctrine, consider obtaining permission from the copyright owner to use the work.

The fair use provision is intentionally broad and flexible. It requires an analysis that weighs and balances the four factors based on the particular facts of an individual situation. SDCCD employees and students are encouraged to use a fair use evaluator tool to determine fair use. One such interactive online tool is:

<http://librarycopyright.net/resources/fairuse/index.php>. Although a fair use evaluator tool does not guarantee legal protection from copyright infringement claims, it will help determine whether fair use applies to the material under the U.S. Copyright Code. Furthermore, it will provide a time-stamped, PDF document that could prove valuable, if ever a copyright holder claimed infringement.



2. Library Exemption

Copyright law grants exceptions to libraries for archiving lost, stolen, damaged, or deteriorating works; and for making copies for library patrons, or for other libraries' patrons (interlibrary loan).

3. Instruction Exemption

Educators have, with publishers, developed the following guidelines, which allow faculty to distribute copyrighted materials (i.e. workbook sections, textbook chapters; does not apply to journal articles) to students in a class without the publisher's prior permission.

The distribution of materials practices of a faculty member should not have a significant detrimental impact on the market for the copyrighted work (17 U.S.C. §107(4)). Materials may be distributed to students under the following conditions:

- Distribution of the same material does not occur every semester
- Only one copy is distributed for each student and it must become the student's property
- Material must include a copyright notice on the first page of the portion of the material (i.e., © 2017 by Mary Brown). See section IV Attribution in this document.
- If a print copy is provided, students may not be assessed a fee beyond the actual cost of printing.

C. Typical Examples of Educational Uses of Copyrighted Works

1. Examples By Format (Physical and Electronic)

It is advisable to consult with a librarian on the work to be used and how it will be used. The table below is a sample of educational uses and is not intended to be exhaustive. (Table reproduced and adapted from "Copyright and Fair Use Guidelines for Teachers," by Hall Davidson, <http://www.halldavidson.net/copyrightTEACH.pdf>). For more comprehensive information, see Circular 21 – "Reproduction of Copyrighted Works by Educators and Librarians" (U.S. Copyright Office).

Sample of Educational Uses of Copyrighted Works by Format

| Format | Specifics | What you can do | Fine print (not exhaustive) |
|--|--|---|---|
| Short Text | Poem less than 250 words; 250 word excerpt of poem greater than 250 words; Articles, stories, or essays less than 2,500 words; 2 pages (max) from an illustrated work less than 2,500 words | Faculty may make multiple copies for classroom use and incorporate into multimedia for teaching classes; Students may incorporate text into multimedia projects; [See Instruction Exemption in this document] | Copies may be made only from legally acquired originals; Only one copy allowed per student; Spontaneity “at the instance and inspiration of the teacher”; Do not create anthologies; Consumables such as workbooks may not be copied. [See Circular 21, pp. 6&7] |
| Longer Text | 1 article per journal; 1 chapter per book; 10% to 20 % of a book | Faculty may make multiple copies for classroom use [See Instruction Exemption in this document] | Same as for Short Text |
| Music | Vinyl; Cassette tapes; CDs; Digital files; Audio clips on the web | Faculty may copy music for academic purposes other than performances. In Learning Management Systems up to 10%, but no more than 30 seconds with no change to basic melody or fundamental character. [See University of Rhode Island “Fair Use and Copyright” LibGuide for extensive details] | Performances limited as follows: excerpts of sheet music may be copied only if out of print; student performances may be recorded only for faculty or institutional evaluation or student’s portfolio; sound recordings may be copied once for classroom or reserve use. Sheet music may be copied in its entirety for an emergency when purchased copies are not available for an imminent performance provided that purchased replacements are substituted in due course. |
| Images | Photograph; Illustration; Collections of photographs; Collections of illustrations | Single works may be used in their entirety, but not more than 5 images by a single artist or photographer; From a collection, not more than 15 images or 10% (whichever is less). | Although older illustrations may be in the public domain and don’t need permission to be used, sometimes they’re part of a copyrighted collection. |
| Video (Instructional Use) | Videos or DVDs; Video clips from the Internet (YouTube, TED Talks); Streaming Videos (library subscription) | Show and play (perform) in a face to face classroom; Transmit over the internet as part of a class sessions; Transmit over the internet as part of a class session or class enhancement | The material must be legitimately acquired. Use should be instructional, not for entertainment or reward. Archival copy can be made provided a suitable replacement is unavailable in a viable format; for Learning Management Systems technological measures must be in place to prevent unauthorized access or copying. |
| Video (for integration into multi-media or video projects) | Videos or DVDs; Video clips from the Internet (You Tube, TED Talks); Streaming Videos (library subscription) | Students “may use portions of lawfully acquired copyright works in their academic multimedia,” defined as 10% or 3 minutes (whichever is less) of “motion media.” | The material must be legitimately acquired. Copyright works included in multimedia projects must give proper attribution to copyright holder. |

2. Examples By Use

a. Classroom (including Learning Management System)

The classroom, including the Learning Management System, offers the capability to provide controlled access to class material.

i. Electronic Library Resources for Classroom Use

The District's libraries provide access to a number of databases by subscription agreement with vendors. In many cases the license agreements with the vendors or publishers of these materials specifically address whether or not content may be downloaded and reposted. Since the answer to this question is uneven and there are many licenses to consider, best practice is to link to the database or the electronic journal content, rather than downloading the document and uploading it for online access to a LMS.

ii. Single Copy for Classroom Use

Because of the uncertainties inherent in the general fair use analysis, there have been a number of efforts over the years to develop more concrete guidelines for specific common situations. Under one such set of guidelines negotiated by representatives from higher education and the publishing industry, it is generally accepted that faculty may make single copies of the following for use in their scholarly research, teaching, or preparation for teaching:

- A chapter from a book
- An article from a periodical or newspaper
- A short story, short essay, or short poem
- A chart, graph, diagram, drawing, cartoon, or picture from a book, periodical, or newspaper

These guidelines represent the minimum of what is permissible, not the outer limits of fair use. Copying in excess of these guidelines may be a fair use if it meets the fair use test. Also keep in mind that while these guidelines do not specifically discuss copying by students, it generally has been assumed that they have comparable rights under fair use.

iii. Multiple Copies for Classroom Use

Under a similar set of negotiated guidelines, it also is generally considered to be fair use for faculty to make copies of copyrighted material and distribute them to their students for classroom use and discussion under the following conditions:

- The number of copies made of any given work may not exceed the number of students in the course.
- The copies must be made "at the instance and inspiration of the individual teacher."
- The inspiration to use the work and "the moment of maximum teaching effectiveness" with respect to that work must be "so close in time that it

would be unreasonable to expect a timely reply to a request for permission."

- Each copy must include a notice of copyright.
- Any charge to the students may not exceed the actual cost of copying.
- The amount copied from any given work may not exceed the following:

Poetry: (a) a complete poem if less than 250 words and if printed on not more than two pages or (b) an excerpt of not more than 250 words from a longer poem (though either limit may be expanded to permit the completion of an unfinished line).

Prose: (a) a complete article, story, or essay consisting of less than 2,500 words or (b) an excerpt of not more than 1,000 words or 10% of any other prose work, whichever is less, but in any event a minimum of 500 words (though either limit may be expanded to permit the completion of an unfinished paragraph).

Illustration: a single chart, graph, diagram, drawing, cartoon, or picture per book or per periodical issue.

Special works combining words and illustration, and consisting of fewer than 2,500 words in their entirety: an excerpt of up to two pages, but no more than 10% of the words.

- The copying of any given item must be for only a single course and may not be repeated by the faculty from term to term.
- The copying must be limited to one short poem, article, story, or essay, or two excerpts from the same author and three from the same collective work or periodical volume (other than current news periodicals and newspapers) during one class term.
- No more than nine items in total may be copied for one course during one class term.
- "Consumables" such as workbooks, exercises, and tests may not be copied.
- Copying may not be used to create or substitute for anthologies, compilations, or other such collective works.

As with the single copy guidelines, these guidelines represent the minimum of what is permissible, not the outer limits of fair use. Copying in excess of these guidelines should be based on the fair use factors (see section II.B.1 in this document).

b. Library Reserves

Faculty intending to place items (books or media) on library reserve are responsible for ensuring copyright compliance for materials. A fair use evaluation tool (<http://librarycopyright.net/resources/fairuse/index.php>) should be used and documentation of the results should accompany the reserve request. Photocopies of entire copyrighted textbooks are not permitted on reserve. Any complex questions concerning whether a particular use constitutes fair use should be directed to a librarian, who may forward it to legal counsel. Course reserve materials should be removed at the end of the academic term. Items cannot be placed on permanent reserve, in order to comply with federal copyright law Title 17 of the U.S. Code.

c. Recording of Events

Permission to record presentations by registered students, faculty, and staff is assumed if the recording is to be used for archival or classroom use only. Written permission of the presenter or sponsor is required for presentations made by any other individual or group regardless of the recording's purpose. One archival copy of non-classroom events using copyrighted materials may be produced if the presenter has obtained clearance from the copyright holder. Non-archival copies of presentations may only be produced if written permission allowing the duplication of the material has been obtained in advance from all.

d. Public Performance

Public performance licenses must be obtained for non-classroom performances. This legal requirement applies regardless of whether an admission fee is charged, whether the institution or organization is commercial or non-profit, or whether a federal or state agency is involved.

e. First Sale

The owner of lawfully obtained copyrighted content may dispose (lend, rent, sell, give-away, or throw away) that copy without permission of the copyright owner. This exception does not apply to recorded music, and software licenses typically prohibit the use of the first-sale doctrine.

III. Using Works in the Public Domain and Creative Commons

For those works not covered by U.S. copyright law, use and sharing rules may vary widely. Works may fall within the completely free public domain or be covered by Creative Commons licenses that reserve some rights.

A. Public Domain

All U.S government publications and all works published prior to 1923 are considered public domain and are no longer subject to copyright protection. These works may be used freely by anyone, in any way, and for any purpose, educational or otherwise (at least insofar as copyright is concerned).

Works published after 1923 are subject to variations of copyright expiration based on registration dates, so use this simple online interactive tool to determine if an item is still protected by copyright: <http://librarycopyright.net/resources/digitalslider/index.html>. In general, works published in 1923 will fall into the public domain starting in 2019, then in 2020 works published in 1924 will expire, and so on. For works published by a single author after 1977, the copyright will not expire until 70 years after the author's death. If a work was written by several authors and published after 1977, it will not expire until 70 years after the last surviving author dies.

Directions:

- Set arrow at correct date
- Read information in windows
- Mouse-over any [notes] or asterisks [*] for clarifying information

Is it Protected by Copyright?
For works first published in the U.S.A.*

No Permission Needed?

Copyright Status/Term **In Public Domain***

Date of First Publication

- Before 1923**
- After 1922 & Before 1978**
If published without © notice
- After 1922 & Before 1964**
If published with © notice, but not renewed after 28 years
- After 1922 & Before 1964**
If published with © notice & renewed after 28 years
- After 1963 & Before 1978**
If published with © notice
- After 1977 & Before 2003**
Created (unpublished) before 1978 & first published before January 1, 2003
- After 1977 & Before March 1, 1989**
If published without © notice & without subsequent registration
- After 1977 & Before March 1, 1989**
If published without © notice but registered within 5 years; or published with © notice
- On or after March 1, 1989**
Published with or without © notice
- Published after 2002**
Created before 1978 and author died more than 70 years ago

Unpublished Works (date of creation)

- Created by Individual or Joint Authors
- Created under Corporate Authorship

© 2012 Michael Bower & VLA Office for Information Technology Policy

This is an interactive slider tool. Moving the red triangle will change answers in red text.

B. Creative Commons Licenses

Creative Commons is a global non-profit organization that provides copyright licenses with sharing restrictions ranging from “most free” to “least free.” It is important to understand the differences – some allow free sharing while others do not – see the table below for a breakdown. Consider sharing your own materials with a Creative Commons license.

| License | Attribution | What you can do |
|---|--|---|
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|  | Attribution – ShareAlike CC BY-SA | This license lets others remix, tweak, and build upon your work even for commercial purposes, as long as they credit you and license their new creations under the identical terms. This license is often compared to “copyleft” free and open source software licenses. All new works based on yours will carry the same license, so any derivatives will also allow commercial use. This is the license used by Wikipedia, and is recommended for materials that would benefit from incorporating content from Wikipedia and similarly licensed projects. |
|  | Attribution – NoDerivs CC BY-ND | This license allows for redistribution, commercial and non-commercial, as long as it is passed along unchanged and in whole, with credit to you. |
|  | Attribution – NonCommercial CC BY-NC | This license lets others remix, tweak, and build upon your work non-commercially, and although their new works must also acknowledge you and be non-commercial, they don't have to license their derivative works on the same terms. |
|  | Attribution – NonCommercial- ShareAlike CC BY-NC-SA | This license lets others remix, tweak, and build upon your work non-commercially, as long as they credit you and license their new creations under the identical terms. |
|  | Attribution- NonCommercial- NoDerivs CC BY-NC-ND | This license is the most restrictive of our six main licenses, only allowing others to download your works and share them with others as long as they credit you, but they can't change them in any way or use them commercially. |

IV. Providing Attribution – How to Give Credit to the Author

There are many ways to give credit to an author. Below are examples for copyrighted works and for those that fall into the public domain or are covered by a Creative Commons license.

A. For Copyrighted Works

Per the U.S. copyright law, Title 17 of the U.S. Code, the material must include a notice of copyright on the first page of material (for example, "© 2012 by Ysabelle Garcia"). It is recommended that a complete citation of the work be provided for full attribution. Citation builders for style guides like MLA and APA will work for this purpose: i.e. Noodle Bib, BibMe, EndNote, RefMe, etc.

B. For Works in the Public Domain and for Creative Commons Licensed Works

Numerous online interactive tools will format an attribution notice using descriptive information that you provide about an item licensed under Creative Commons or in the public domain. These tools are similar to citation builders for style guides like MLA and APA, and are helpful for creating consistent citations in open educational resources (OER). An example of one such tool is: <http://www.openwa.org/open-attrib-builder/>, shown below.

The screenshot shows the 'Open Attribution Builder' web application. The interface is divided into several sections:

- Title ?**: A text input field labeled 'Content Item Title' and a 'URL:' field labeled 'URL of the content item'.
- Author ?**: A text input field labeled 'Author name' and a 'URL:' field labeled 'URL of the author page'.
- + Organization ?**: A plus sign followed by the text 'Organization' and a question mark.
- + Project ?**: A plus sign followed by the text 'Project' and a question mark.
- License ?**: A dropdown menu titled 'Choose a license...' with the following options: Attribution (CC BY), Attribution-ShareAlike (CC BY-SA), Attribution-NoDerivs (CC BY-ND), Attribution-NonCommercial (CC BY-NC), Attribution-NonCommercial-ShareAlike (CC BY-NC-SA), Attribution-NonCommercial-NoDerivs (CC BY-NC-ND), Public Domain (General), and Public Domain (CC0). Below the dropdown is a 'Version' dropdown set to '4.0'.
- This work is a derivative ?**: A checkbox followed by the text 'This work is a derivative' and a question mark.
- URL:** **URL of original work**: A text input field.
- Attribution ?**: A large text area for the generated attribution notice, with a 'clear and start over' link to its right.

Open Attribution Builder is licensed under [CC BY 4.0](#). Managed by [WA SBCTC](#). Check out the [Open Washington website](#) for more open educational resources

V. Making Your Own Materials: Ownership of Intellectual Property

A. Author/Creator as Owner

The author or creator of intellectual property is typically the owner of the intellectual property unless the intellectual property is a work “made for hire” (see section V.B. below). Copyright on works wholly created by SDCCD faculty members on their own time, outside of their assigned work schedule, without any use of District equipment and/or resources and intended for non-District use, would be held by the author/creator.

See <http://hr.sdccd.edu/docs/employee%20relations/Collective%20Bargaining%20Agreements/Faculty.pdf>

B. Works Made for Hire (SDCCD faculty)

In general, a work made for hire is one created by an employee within the scope of his/her employment, or as directed for inclusion in a larger work as part of a written agreement to do so (U.S. Code Title 17, Section 101). Works made by SDCCD faculty: Article XXVI of the San Diego Community College District AFT Guild’s Faculty Collective Bargaining Agreement identifies the owners of the copyrights to certain works that may be created by faculty members, and identifies the uses that may be made of those works by faculty members and the District. See also “Work for Hire” definition in the Appendix of this document.

See <http://hr.sdccd.edu/docs/employee%20relations/Collective%20Bargaining%20Agreements/Faculty.pdf>

VI. Appendix

A. Definitions

Attribution -- An acknowledgement crediting the author of a work.

Classroom – A physical or virtual environment where instruction takes place.

Copyright – The set of exclusive legal rights that authors have over their works for a limited period of time. Copyright protection is based upon Article I, Section 8 of the United States Constitution which provides in pertinent part: "The Congress shall have the Power To ... promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries ..." The Copyright Act of 1976 and its amendments implement this provision of the Constitution and extend protection to eight categories of "works of authorship":

- literary works (including not only books, articles and similar works, but also software programs and their accompanying documentation)
- musical works, including any accompanying words
- dramatic works, including any accompanying music
- pantomimes and choreographic works
- pictorial, graphic and sculptural works
- motion pictures and other audiovisual works
- sound recordings
- architectural works

Copyright Infringement – A violation that occurs when a copyrighted work is reproduced, distributed, performed, publicly displayed, or made into a derivative work without the permission of the copyright owner.

Creative Commons (CC) Licensing - "CC licenses are copyright licenses, and depend on the existence of copyright to work. CC licenses are legal tools that creators and other rights holders can use to offer certain usage rights to the public, while reserving other rights." [https://creativecommons.org/faq]

Fair Use – The fair use doctrine provides for limited use of copyrighted materials for educational and research purposes without permission from the copyright owner.

Intellectual Property – Includes, but is not limited to, any works of authorship, computer software, invention, discovery, creation, know-how, trade secret, technology, scientific or technological development, research data, regardless of whether subject to legal protection such as copyright.

Public Domain - The status of publications, products, and processes that are not protected by copyright; for example, materials on which the copyright has expired and works created by the federal government or a state government. All original sources published prior to 1923 are in the public domain. Refer to <http://librarycopyright.net/resources/digitalslider/index.html>

Public Performance – A public performance occurs when there is a performance “at a place open to the public or at any place where a substantial number of persons outside of a normal circle of a family and its social acquaintances is gathered,” or when one “transmit[s] or otherwise communicate[s] a performance” to such a place, 17 U.S.C. § 101. This legal requirement applies regardless of whether an admission fee is charged, whether the institution or organization is commercial or non-profit, or whether a federal or state agency is involved.

Work Made for Hire – Pursuant to Section 101 of Title 17 of the U.S. Code, work for hire is defined as “(1) a work prepared by an employee within the scope of his or her employment; or (2) a work specially ordered or commissioned for use as a contribution to a collective work, as a part of a motion picture or other audiovisual work, as a translation, as a supplementary work*, as a compilation, as an instructional text**, as a test, as answer material for a test, or as an atlas, if the parties expressly agree in a written instrument that the work shall be considered a work made for hire.”

*Supplementary work is “a work prepared for publication as a secondary adjunct to a work by another author for the purpose of introducing, concluding, illustrating, explaining, revising, commenting upon, or assisting in the use of the other work, such as forewords, afterwords, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes.”

**Instructional Text is a “literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.”

B. Sample Permission Letter

The following sample, a “Letter for Requesting Copyright Permission” was obtained from Duke University <https://blogs.library.duke.edu/scholcomm/files/2007/02/sample-letter-requesting-copyright-permission.doc>

[Date]
[Rights holder name and address]

Dear Permissions Editor [Insert name, if known]:

I am in the process of creating [Describe project]. I would like your permission to include the following material in this project:

[Citation of material for which permission is sought, specifying exactly what material would be used]

The [Name of Project] will be used [Describe how the project and material will be used]. It will be available to [Specify who the users will be and how they will gain access, including any charges or fees involved].

If you do not control the copyright on all of the above mentioned material, I would appreciate any contact information you can give me regarding the proper rights holder(s), including current address(es). Otherwise, your permission confirms that you hold the right to grant the permission requested here.

Permission includes non-exclusive world rights in all languages to use the material and will not limit any future publications-including future editions and revisions-by you or others authorized by you.

I would greatly appreciate your consent to my request. If you require any additional information, please do not hesitate to contact me. I can be reached at:

[Your contact information]

A duplicate copy of this request has been provided for your records. If you agree with the terms as described above, please sign the release form below and send one copy with the self-addressed return envelope I have provided.

Sincerely,

[Signature]
[Printed Name]

Permission granted for the use of the material as described above:

Agreed to: _____ Name & Title: _____

Company/Affiliation: _____ Date: _____

C. Additional Resources

Attribution Builder (Open Washington) -- <http://www.openwa.org/open-attrib-builder/>

Copyright and Intellectual Property Policy 2009 (Cape Cod Community College) –
<https://www.capecod.edu/files/policies/copyright-policy.pdf>

Copyright and Fair Use: The Lawsuits (California State University Long Beach)
<https://csulb.libguides.com/c.php?g=39326&p=250444>

Circular 1: Copyright Basics (U.S. Copyright Office) -- <https://www.copyright.gov/circs/circ01.pdf>

Circular 21: Reproduction of Copyrighted Works by Educators and Librarians (U.S. Copyright Office) -- <https://www.copyright.gov/circs/circ21.pdf>

Copyright and Fair Use Guidelines for Teachers (Hall Davidson) –
<http://www.halldavidson.net/copyrightTEACH.pdf>

Copyright Clearance Center -- <http://www.copyright.com/>

Copyright Protection Slider -- <http://librarycopyright.net/resources/digitalslider/index.html>

Creative Commons Licensing -- <https://creativecommons.org/licenses/>

Digital Millennium Copyright Act -- <https://www.copyright.gov/legislation/dmca.pdf>

Fair Use Evaluator Tool -- <http://librarycopyright.net/resources/fairuse/index.php>

Fair Use and Copyright for Online Education (University of Rhode Island) –
<https://uri.libguides.com/fairuse/copyright>

Permission Letter (Duke University) --
<https://blogs.library.duke.edu/scholcomm/files/2007/02/sample-letter-requesting-copyright-permission.doc>

SDCCD Board Policy 5750 –
<https://www.sdccd.edu/docs/District/policies/Instructional%20Services/BP%205750.pdf>

SDCCD Faculty Collective Bargaining Agreement (AFT) --
<http://hr.sdccd.edu/docs/employee%20relations/Collective%20Bargaining%20Agreements/Faculty.pdf>

TEACH Act explanation (American Library Association) –
<http://www.ala.org/advocacy/copyright/teachact>

United States Copyright Law -- <https://www.copyright.gov/title17/>