Draft Copyright Policy – Pilot for School of Education

I. **Introduction**

The School of Education at the University of Wisconsin-Madison (“School of Education”) is engaged in a pilot project to facilitate the creation of intellectual property, to clearly define copyright ownership, and to increase the dissemination of copyrighted materials in fulfillment of the university’s mission and the Wisconsin Idea. The pilot project includes the development of this corresponding copyright policy that is consistent with federal law and UW System Policy GAPP 27; clearly defines copyright ownership for the School’s faculty, staff, students, and affiliates who use the School’s facilities or act under contract with the School; and recognizes the School of Education’s long-standing commitment to the academic tradition of assigning copyright with the creators of scholarly, academic, and artistic works.

II. **Purpose and Scope**

Facilitating the creation of copyrighted works is one of the ways in which the School fulfills its mission of applying discovery in fulfillment of the Wisconsin Idea. Therefore, this policy clearly defines copyright ownership for the faculty, staff, students, and affiliates of the School of Education, and encourages the broad dissemination of new knowledge in service to the public good. The policy shall be effective beginning August 1, 2014 and shall terminate at the completion of the Pilot Project on June 30, 2017, at which time it may be renewed, revised, and/or adopted as a formal policy, subject to a review process conducted by the School and/or the university.

**III. Applicable Law**

U.S. Copyright (United States Code – Title 17) law grants copyright ownership to the Board of Regents for the University of Wisconsin System on behalf of the UW-Madison School of Education (hereinafter referred to as the “School of Education”) as works made for hire, in copyrighted works authored by its employees who are acting within the scope of their employment.[[1]](#footnote-1) Otherwise, copyright ownership does not vest in the School of Education unless such right has been transferred legally to it by written assignment or other process of law.

**IV. Copyright Ownership by Category of Work**

Given the applicable federal law, copyright ownership in works developed at the School of Education shall be determined based on the following categories of work:

1. **Copyright Ownership Originates with Author**

1. **Personal Work**. A work created by an employee outside the scope of his or her employment with no more than de minimis use of university resources and without a written agreement between the employee and the School of Education detailing the terms of copyright ownership

Copyright ownership of a Personal Work belongs to the employee author.

1. **Student Work**. A work created by a student, as that term is defined herein, outside the scope of his or her employment, without the use of *substantial university resources* and that is not otherwise subject to another provision under Section IV of this policy.

Copyright ownership of Student Work belongs to the student author.

1. **Copyright Ownership Originates with School of Education**
2. **Scholarly Work.** A work created within the scope of employment as part of or in connection with a *designated employee’s* teaching, research, or scholarship duties. Common examples of Scholarly Work include but are not limited to: lecture notes, case examples, syllabi and other course materials, textbooks, works of nonfiction, novels, lyrics, musical compositions/arrangements and recordings, journal articles, scholarly papers, poems, architectural drawings, software, visual works of art, sculpture, and other artistic creations, among others.

While copyright law originally vests copyright ownership with the School of Education, the School of Education transfers copyright in a Scholarly Work to the designated employee(s) who authored the Scholarly Work subject to the Conditions of Transfer listed in Section V of this policy.

1. **Institutional Work**. Except as otherwise provided in this policy, Institutional Work is a work created by an employee acting within the scope of his or her employment or using *substantial university resources*.

Copyright ownership in Institutional Work belongs to the School of Education.

1. **Copyright Ownership Established by Written Instrument**
2. **Sponsored Work**. A work created by employees or students as a *deliverable* pursuant to a written sponsorship agreement between the School of Education and a sponsor.

Copyright ownership in a Sponsored Work belongs with the School of Education unless the sponsorship agreement states otherwise. Any Sponsored Work agreement which provides for an owner other than the School of Education shall generally provide the School of Education with a free-of-cost, nonexclusive, world-wide license to use and reproduce the copyrighted work for education, research, and administrative purposes. Works created that are not a deliverable or otherwise addressed by the Sponsored Work agreement are subject to the provisions of Section IV of this policy.

1. **Commissioned Work**. A work that is created for School of Education purposes by individuals not employed at the School of Education or by School of Education employees outside the scope of their employment pursuant to a written agreement.

Copyright ownership in Commissioned Work normally belongs with the School of Education, but in all cases shall be specified in a written agreement. Any such agreement which provides for an owner other than the School of Education shall generally provide the School of Education with a free-of-cost, nonexclusive, world-wide license to use and reproduce the copyrighted work for education, research, and administrative purposes.

1. **Fee For Service Work**. A work created pursuant to a written agreement that uses designated School of Education facilities and that typically consists of the execution of a predefined or repetitive process or the production of a product that meets predefined specifications.

Copyright ownership in Fee For Service Work shall be governed by the agreement permitting use of the specified School of Education facilities.

**V. Conditions of Transfer**

When the School of Education transfers copyright in a Scholarly Work or an Institutional Work, it reserves the nonexclusive right to:

1. Use the copyrighted works for educational, research, and administrative purposes consistent with its educational mission and academic norms; and
2. Preserve, archive, and host the copyrighted works in institutional repositories where a copyright owner can control the timing and scope of access to his or her copyrighted works.

**VI. Copyright Ownership of Jointly Authored Works**

People who collaborate to author a copyrighted work often create what is called a “joint work” in which all the rights holders jointly hold non-exclusive rights to use the work. Copyright ownership of a jointly authored work shall be determined by separately assessing the Category of Work of each author under Section IV above. Rights between joint owners of a copyright shall be determined pursuant to copyright law.

**VII. Institutional Work**

1. **Disposition:**  School of Education units most closely associated with the authorship of Institutional Work may authorize uses of the work. The disposition of Institutional Work within the School of Education shall be managed by the Dean of the School of Education or designee.
2. **Notice and Registration**: Institutional Work that is registered with the U.S. Copyright Office or that includes a copyright notice should identify “The Board of Regents of the University of Wisconsin System” as the copyright owner.
3. **Release of School of Education Rights:** Where the School of Education is considered the copyright owner under the provisions of this policy, the author of the copyrighted material may request that the School of Education transfer ownership to the author. The School of Education may release its rights in copyrighted works to the author(s) when it is determined by the School of Education that the transfer will not a) conflict with an overriding or special obligation to a sponsor or third party; b) violate any legal obligations of or to the School of Education; c) limit appropriate School of Education use of the materials; d) create an unmanageable conflict of interest for the author; or e) otherwise conflict with the School of Education goals or principles. Such release of School of Education Rights must be contingent on the agreement of the author that no further effort on, or development of, the work will be made using university resources and shall incorporate the Conditions of Transfer listed in Section V of this policy.

**VIII. Equity Review Process**

The School of Education shall create an equity review process to resolve issues related to the determination of copyright ownership. The process will be detailed in a separate document and shall outline a mechanism for establishing clear title to a copyrighted work produced at, by or through the School of Education in order to facilitate an assignment, transfer or other authorized use of the copyrighted work. The equity review process would be triggered when necessary to resolve issues such as confusion or dispute over ownership or request for documentation of clear title.

**IX. Licensing and Institutional Work**

The School of Education is free to contract with employees, students, or third parties to license uses of or transfer copyright in an Institutional Work or to acquire the copyright in a work that is not an Institutional Work. Assignment or license of works owned by the School of Education shall be subject to a right of first refusal by the Wisconsin Center for Education Products and Services (“WCEPS”).

Owners other than the School of Education who are interested in commercialization are encouraged but not required to discuss commercialization of copyrighted materials with WCEPS.

Any license for commercial purposes shall incorporate the Conditions of Transfer listed in Section V of this policy.

**X. Definitions**

**Author:** An individual who creates the original material serving as the basis of the copyrighted work**.**

**Designated Employee**: An employee, as that term is defined herein, with a general obligation to produce Scholarly Works. Employees holding a tenure-track faculty appointment are deemed to have an obligation to produce Scholarly Works. The Dean of the School of Education or designee may approve requests for Designated Employee status for employees without a tenure-track faculty appointment on a case by case basis.

**Deliverable:** Copyrighted works that must be authored and delivered in order to comply with the obligations of an agreement for a Sponsored Work.

**De Minimis Use:** incidental personal use of university resources as contemplated by the University of Wisconsin-Madison Responsible Use of Information Technology Policy ( <http://www.cio.wisc.edu/policies-responsibleuse.aspx>

**Employee**: Any individual employed by the University of Wisconsin-Madison within its School of Education in any capacity, whether he or she is faculty, staff, administration, or a student and whether he or she is employed full-time, part-time, or in a temporary or volunteer capacity.

**Scope of Employment:** Activities of an employee that are not personal but instead further the business of the School of Education and occur in situations where the School of Education is or could be exercising some control, directly or indirectly, over the activities of the employee.

**Substantial University Resources:** University resources used to an extent not customarily or routinely available to employees or students for the development or production of teaching, research or scholarship works or use of university resources by the School of Education administration to support a specific investment in an initiative or project. For example, the creation of an online course which relies substantially on university information technology assistance is likely to be considered a resource that is not customary or routine.

**Sponsor:** An organization or agency which provides funding, equipment, or other support for the School of Education to carry out a specified project in research, training, or public service pursuant to a written agreement. Sponsors include federal, state, local, and other governmental entities as well as private industry, educational institutions, and private foundations.

**Student:** Individual enrolled at the University of Wisconsin-Madison.

**University Resources:** Include but are not limited to funds, facilities, equipment, IT resources, and personnel under the control, responsibility, or authority of the University of Wisconsin or another University of Wisconsin System institution.

1. Under federal copyright law, the creator of the original expression in a work is the “author.” The author is also considered the owner of the copyright unless there is a written agreement assigning the copyright to another entity or it is a work made for hire. For works made for hire, the employer or commissioning party is considered to be the author and owner. See 17 U.S.C. §101 Definitions:

A “work made for hire” is—

(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 signed by them that the work shall be considered a work made for hire. For the purpose of the foregoing sentence, a “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, pictorial illustrations, maps, charts, tables, editorial notes, musical arrangements, answer material for tests, bibliographies, appendixes, and indexes, and an “instructional text” is a literary, pictorial, or graphic work prepared for publication and with the purpose of use in systematic instructional activities.

See also the U.S. Copyright Office circular regarding work made for hire. <http://www.copyright.gov/circs/circ09.pdf> [↑](#footnote-ref-1)