

POLICY 2.163

5-H I recommend the Board approve the proposed new Policy 2.163, "Direct-Support Organizations."

[Contact: Joe Moore, 434-8584; or JulieAnn Rico Allison.]

Development

CONSENT ITEM

- This proposed Policy should enhance the legal compliance of foundations that intend to provide direct support to the District or a particular school, as well as clarifying the relationship of such organizations to the School Board.
- Because Fla. Stat. § 1001.453 will require coordinating with the DOE concerning the adoption of a portion of this proposed Policy (regarding budget and audit review and oversight by the School Board as a condition precedent to a direct-support organization using the property, facilities, or personal services of the District), the final reading of this Policy will be scheduled after both the School Board and the DOE have both had an opportunity to comment on the proposed text.

PROPOSED NEW POLICY 2.163

DIRECT-SUPPORT ORGANIZATIONS

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3 **1. Purpose.**-- Pursuant to Fla. Stat. § 1001.453(1)(a)3, (2)(b), the School Board sets
4 forth conditions and guidelines for foundations that support public pre-kindergarten
5 through 12th grade education, adult vocational, or community education in this
6 District.

7 a. As required by Fla. Stat. § 1001.453(1)(a)3, the exclusive purpose and func-
8 tion of a direct-support organization ("DSO") shall be "to receive, hold, invest,
9 and administer property and to make expenditures to or for the benefit of pub-
10 lic . . . education" in this District.

11 b. A DSO shall not have any governance authority over the school, a school's
12 personnel, the District, or the School Board.

13 c. This Policy applies to each DSO of the District, regardless of whether it sup-
14 ports the District in general or an individual school.

15 **2. Conditions and Guidelines.**-- Each DSO must receive the approval of the School
16 Board, as required by Fla. Stat. § 1001.453(1)(a)1. The Superintendent/designee
17 shall maintain a record of all approved DSOs.

18 a. For any organization newly seeking to become a DSO after the adoption date
19 of this Policy, the Board's approval shall be set forth in a charter with the
20 School Board. The charter shall specify the organization's purpose, functions,
21 and responsibilities consistent with Fla. Stat. § 1001.453(1)(a)3 and the provi-
22 sions of this Policy. The Board's approval of the charter shall be based on a
23 review by the Board concluding that the DSO will operate in a manner consis-
24 tent with the goals of, and in the best interests of, the School Board.

25 b. Any existing organization already purporting to operate as a foundation or
26 other direct-support organization for the District or a public school therein on
27 the date of this Policy's adoption, with or without a charter from the Board,
28 shall have until June 30, 2003 to initiate an application for a charter compliant
29 with the Education Code and this Policy, to formalize its status as a DSO in
30 compliance with this Policy, and the charter of existing DSO shall be reviewed
31 for legal compliance. Any such existing organization failing to apply for a
32 charter by that date shall cease to use the name of the District or any school in
33 the District; shall not hold itself out as being recognized by the District or the

- 34 school; and shall not make use of any District property, facilities, or personal
35 services.
- 36 c. The charter of each DSO must include a provision to the effect that upon dis-
37 solution of the DSO, the funds or property that it had received, held, invested,
38 or administered for the support of public education, shall be given to the Dis-
39 trict or the school that the DSO supported, as appropriate.
- 40 d. Each DSO shall submit to the School Board its federal Application for Recog-
41 inition of Exemption (IRS Form 1023) and its IRS Return of Organization
42 Exempt from Income Tax (IRS Form 990). The foundations must be organ-
43 ized as Florida not-for-profit corporations and comply with 26 U.S.C. §
44 501(c)(3) for tax-deductibility of donations, including requirements such as:
- 45 i. The corporation shall be organized and operated exclusively for charita-
46 ble or educational purposes to support the District or public schools, and
47 no part of the net earnings shall may inure to the benefit of any private
48 shareholder or individual;
- 49 ii. The activities of the corporation may not, in any substantial part, include
50 propaganda or lobbying to influence legislation; and
- 51 iii. The corporation shall not participate in or intervene in any political cam-
52 paign on behalf of, or in opposition to, any candidate for public office.
- 53 e. The Board of Directors of each DSO must be approved by the School Board,
54 as required by Fla. Stat. § 1001.453(3).
- 55 f. Each DSO may invite a School Board member or his/her designated repre-
56 sentative, and the Superintendent's designee, to serve without compensation
57 on its board of directors and executive committee.
- 58 g. As stated in Fla. Stat. § 1001.453(2), DSOs may make reasonable use of Dis-
59 trict property, facilities, or personal services (as set forth in their individual
60 charter with the Board), but only if they "provide equal employment opportuni-
61 ties to all persons, regardless of race, color, religion, sex, age, or national
62 origin." Fla. Stat. § 1001.453(2)(c).
- 63 i. DSO personnel and activities on school grounds or other Board property
64 must comply with Board policies regarding possession or use of firearms,
65 weapons, tobacco, and controlled substances, including alcohol.

66 ii. "Personal services" may include using the services of a District employee
67 part-time or full-time at the DSO's expense (if approved by the Superin-
68 tendent/designee) or receiving payroll processing services from the
69 District. Otherwise, however, no District employee shall have any con-
70 tractual or employment relationship with a DSO. Further, no District
71 employee may accept any additional compensation or gift from a DSO
72 (provided that receiving a certificate, plaque, ribbon, or similar recognition
73 with a value less than \$50 at a public meeting, will not be deemed to vio-
74 late this guideline).

75 h. If an organization seeks a DSO charter and is denied such charter, that or-
76 ganization may not use the name of the District or any school in the District;
77 shall not hold itself out as being recognized by the District or the school; and
78 shall not make use of any District property, facilities, or personal services.

79 i. The Board shall revoke a DSO's charter if the DSO loses its tax-exempt status
80 under the IRS Code, has its corporation involuntarily dissolved by the State, or
81 voluntarily dissolves or permanently ceases operations. The Board may also
82 revoke a DSO's charter if the DSO is shown to have engaged in fraud or gross
83 mismanagement or knowingly violated any provision of this Policy.

84 **3. Fiscal Responsibilities.--** The School Board, in conjunction with the DOE, shall
85 have budget and audit review oversight of all DSOs, in accordance with Fla. Stat. §
86 1001.453(2)(b).

87 a. As stated in Fla. Stat. § 1001.453(4), each DSO with more than \$100,000 in
88 annual expenditures or expenses shall submit an annual audit report within
89 nine (9) months after the fiscal year's end to the School Board and the Auditor
90 General, pursuant to the requirements of Fla. Stat. § 1001.453(4) and SBER
91 6A-1.0013:

92 i. The fiscal year for DSOs shall begin on July 1 and shall end June 30.

93 ii. Following the close of each fiscal year, the board of directors shall pro-
94 vide for an audit to be conducted in accordance with the American
95 Institute of Certified Public Accounts audit standards by an independent
96 CPA, consistent with SBER 6A-1.0013(5).

97 iii. The audit report must include any notations of any failure to comply with
98 the Florida Statutes, State Board of Education Rules, the DSO's own cor-
99 porate charter and bylaws, and commentary as to financial management

- 100 and irregularities, as required by SBER 6A-1.0013(5).
- 101 iv. The auditor shall submit a signed, written report to each member of the
102 board of directors, each member of the School Board, and to the Super-
103 intendent, pursuant to SBER 6A-1.0013(5).
- 104 b. Any new transaction or agreement to be effective any time after June 30, 2003
105 between one DSO and another DSO must be approved by the School Board.
- 106 c. Consistent with Policy 6.08(II), the District's pooled funds for investments shall
107 include the internal accounts of direct support organizations that choose to
108 have the District Treasurer invest funds on their behalf.
- 109 d. The School Board may enter into an agreement with a DSO to provide financ-
110 ing for lease-purchase agreements under Fla. Stat. § 1013.15 and State
111 Requirements for Educational Facilities (SREF) § 2.3(1), (3).
- 112 e. Any funding received from DSOs for athletic programs shall be disbursed in a
113 manner ensuring equivalent benefits and services to male and female ath-
114 letes, pursuant to SBER 6A-19.004(16).
- 115 f. Funds received by a school from a DSO shall be deposited into the school's
116 internal accounts. A principal or other school employee shall not write checks
117 on the DSO's account nor sign contracts on behalf of a DSO.
- 118 4. **Open Meetings.**-- The Sunshine Law applies to DSOs for public entities, pursuant
119 to Attorney General Opinion 92-53. At a minimum, this requirement means:
- 120 a. reasonable public notice must be given prior to meetings;
- 121 b. the meetings must be open and accessible to the general public (including, but
122 not limited to, School Board members and District personnel); and
- 123 c. written minutes of the meetings must be taken and made available for public
124 inspection following the meeting.
- 125 5. **Public Records.**-- DSOs shall keep the identity of each donor confidential; and all
126 information identifying donors and prospective donors shall be confidential and ex-
127 empt from the provisions of the Public Records Act. However, as required by Fla.
128 Stat. § 1001.453(4), absent a specific applicable exemption, all other DSO docu-
129 ments and records shall be public records under Fla. Stat. § 119.07 and School
130 Board Policy 2.041.

131 **6. Ethics Considerations**

132 a. Each DSO shall observe the gift-reporting requirements of Fla. Stat. §
133 112.3148(6).

134 b. Pursuant to Fla. Stat. § 112.313(7)(a) and Commission on Ethics Opinion
135 "CEO") 85-59, a DSO governed by this Policy shall not employ or contract with
136 a School Board member or District employee. However, consistent with CEOs
137 85-59 and 87-56, School Board members may serve without compensation as
138 officers or directors of a DSO.

139 STATUTORY AUTHORITY: §§ 1001.41(1), (2), (3) [230.22(1), (2), (3)]; 1001.43(2);
140 1001.453(2)(b), Fla. Stat.

141 LAWS IMPLEMENTED: §§ 119.07(1); 1001.32(2); 1001.543; 286.011, Fla. Stat.

142 SBER SUPPLEMENTED: Rule 6A-1.0013, F.A.C.; and SREF § 2.3(1), (3).

143 HISTORY: _____ New: ___ / ___ / 03

Legal signoff:

The Legal Department has reviewed proposed Policy 2.163 and finds it legally sufficient for development by the Board.

Attorney

Date