

POLICY 2.163

5-C 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) [237.40(1)(a)3, (2)(b)],**
4 **the School Board sets forth conditions and guidelines for foundations that support**
5 **public pre-kindergarten through 12th grade education, adult vocational, or commu-**
6 **nity education in this District.**

7 **a. As required by Fla. Stat. § 1001.453(1)(a)3 [237.40(1)(a)3], the exclusive pur-**
8 **pose and function of a direct-support organization ("DSO") shall be "to receive,**
9 **hold, invest, and administer property and to make expenditures to or for the**
10 **benefit of public . . . 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 [237.40(1)(a)1]. The Superinten-**
17 **dent/designee 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 [237.40(1)(a)3]**
22 **and the provisions of this Policy. The Board's approval of the charter shall be**
23 **based on a review by the Board concluding that the DSO will operate in a**
24 **manner consistent with the goals of, and in the best interests of, the School**
25 **Board.**

26 **b. Any existing organization already purporting to operate as a foundation or**
27 **other direct-support organization for the District or a public school therein on**
28 **the date of this Policy's adoption, with or without a charter from the Board,**
29 **shall have until June 30, 2003 to initiate an application for a charter compliant**
30 **with the Education Code and this Policy, to formalize its status as a DSO in**
31 **compliance with this Policy, and the charter of existing DSO shall be reviewed**
32 **for legal compliance. Any such existing organization failing to apply for a**
33 **charter by that date shall cease to use the name of the District or any school in**

34 the District; shall not hold itself out as being recognized by the District or the
35 school; and shall not make use of any District property, facilities, or personal
36 services.

37 c. The charter of each DSO must include a provision to the effect that upon dis-
38 solution of the DSO, the funds or property that it had received, held, invested,
39 or administered for the support of public education, shall be given to the Dis-
40 trict or the school that the DSO supported, as appropriate.

41 d. Each DSO shall submit to the School Board its federal Application for Recog-
42 inition of Exemption (IRS Form 1023) and its IRS Return of Organization
43 Exempt from Income Tax (IRS Form 990). The foundations must be organ-
44 ized as Florida not-for-profit corporations and comply with 26 U.S.C. §
45 501(c)(3) for tax-deductibility of donations, including requirements such as:

46 i. The corporation shall be organized and operated exclusively for charita-
47 ble or educational purposes to support the District or public schools, and
48 no part of the net earnings shall may inure to the benefit of any private
49 shareholder or individual;

50 ii. The activities of the corporation may not, in any substantial part, include
51 propaganda or lobbying to influence legislation; and

52 iii. The corporation shall not participate in or intervene in any political cam-
53 paign on behalf of, or in opposition to, any candidate for public office.

54 e. The Board of Directors of each DSO must be approved by the School Board,
55 as required by Fla. Stat. § 1001.453(3) [237.40(3)].

56 f. Each DSO may invite a School Board member or his/her designated repre-
57 sentative, and the Superintendent's designee, to serve without compensation
58 on its board of directors and executive committee.

59 g. As stated in Fla. Stat. § 1001.453(2) [237.40(2)], DSOs may make reasonable
60 use of District property, facilities, or personal services (as set forth in their indi-
61 vidual charter with the Board), but only if they "provide equal employment
62 opportunities to all persons, regardless of race, color, religion, sex, age, or na-
63 tional origin." Fla. Stat. § 1001.453(2)(c) [237.40(2)(c)].

64 i. DSO personnel and activities on school grounds or other Board property
65 must comply with Board policies regarding possession or use of firearms,
66 weapons, tobacco, and controlled substances, including alcohol.

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

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

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

85 **3. Fiscal Responsibilities.--** The School Board, in conjunction with the DOE, shall
86 have budget and audit review oversight of all DSOs, in accordance with Fla. Stat. §
87 1001.453(2)(b) [237.40(2)(b)].

88 a. As stated in Fla. Stat. § 1001.453(4) [237.40(4)], each DSO with more than
89 \$100,000 in annual expenditures or expenses shall submit an annual audit re-
90 port within nine (9) months after the fiscal year's end to the School Board and
91 the Auditor General, pursuant to the requirements of Fla. Stat. § 237.40(4) and
92 SBER 6A-1.0013:

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

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

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

- 101 and irregularities, as required by SBER 6A-1.0013(5).
- 102 iv. The auditor shall submit a signed, written report to each member of the
103 board of directors, each member of the School Board, and to the Super-
104 intendent, pursuant to SBER 6A-1.0013(5).
- 105 b. Any new transaction or agreement to be effective any time after June 30, 2003
106 between one DSO and another DSO must be approved by the School Board.
- 107 c. Consistent with Policy 6.08(II), the District's pooled funds for investments shall
108 include the internal accounts of direct support organizations that choose to
109 have the District Treasurer invest funds on their behalf.
- 110 d. The School Board may enter into an agreement with a DSO to provide financ-
111 ing for lease-purchase agreements under Fla. Stat. § 1013.15 [235.056(3)(a)]
112 and State Requirements for Educational Facilities (SREF) § 2.3(1), (3).
- 113 e. Any funding received from DSOs for athletic programs shall be disbursed in a
114 manner ensuring equivalent benefits and services to male and female ath-
115 letes, pursuant to SBER 6A-19.004(16).
- 116 f. Funds received by a school from a DSO shall be deposited into the school's
117 internal accounts. A principal or other school employee shall not write checks
118 on the DSO's account nor sign contracts on behalf of a DSO.
- 119 **4. Open Meetings.--** The Sunshine Law applies to DSOs for public entities, pursuant
120 to Attorney General Opinion 92-53. At a minimum, this requirement means:
- 121 a. reasonable public notice must be given prior to meetings;
- 122 b. the meetings must be open and accessible to the general public (including, but
123 not limited to, School Board members and District personnel); and
- 124 c. written minutes of the meetings must be taken and made available for public
125 inspection following the meeting.
- 126 **5. Public Records.--** DSOs shall keep the identity of each donor confidential; and all
127 information identifying donors and prospective donors shall be confidential and ex-
128 empt from the provisions of the Public Records Act. However, as required by Fla.
129 Stat. § 1001.453(4) [237.40(4)], absent a specific applicable exemption, all other
130 DSO documents and records shall be public records under Fla. Stat. § 119.07 and
131 School Board Policy 2.041.

132 **6. Ethics Considerations**

133 a. Each DSO shall observe the gift-reporting requirements of Fla. Stat. §
134 112.3148(6).

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

140 STATUTORY AUTHORITY: §§ 1001.41(1), (2), (3) [230.22(1), (2), (3)]; 1001.43(2)
141 [230.23005(2)]; 1001.453(2)(b) [237.40(2)(b)], Fla. Stat.

142 LAWS IMPLEMENTED: §§ 119.07(1); 1001.32(2) [230.03(2)]; 1001.543 [237.40];
143 286.011, Fla. Stat.

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

145 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