

INSTITUTION / AGENCY AGENDA

SUBJECT

1st Reading of Proposed Amendments to Board Policy, Section V.E. – Gifts and Affiliated Foundations.

APPLICABLE STATUTE, RULE, OR POLICY

Idaho State Board of Education Governing Policies and Procedures, Section V.E.

BACKGROUND

The State Board of Education has requested a review of the relationship of foundations to the Board's institutions and agencies. Foundations are those tax-exempt organizations affiliated with institutions, including alumni associations, athletic booster groups, college-specific support organizations. This definition does not include the Idaho Research Foundation (IRF) as IRF was exempt under existing Board policy.

DISCUSSION

Board members have determined that a more comprehensive review and discussion take place between the Board, institutions and agencies, and affiliated foundations. Having revised governing policies in place will create a better framework for these discussions, and the resulting operating agreements between institutions and agencies, and foundations will be crafted with Board intentions and policies in mind.

Several documents are attached, and include:

Attachment A	Proposed Policy (minor changes from April review document)
Attachment B	Attorney-Client memorandum
Attachment C	Virginia memorandum regarding affiliated entities
Attachment D	Virginia Attorney General memorandum with recommendations
Attachment E	Article relating non-profit organizations

IMPACT

An amended policy will more accurately reflect the Board's intentions regarding foundations and agencies/institutions.

STAFF COMMENTS AND RECOMMENDATIONS

Goal of the Revised Policy – explicitly recognizes the benefits of affiliated foundations, but seeks to maintain sufficient oversight of foundations activities through a number of mechanisms. Policy is intended to be broad, and to serve as a framework for the individual (and unique) institution/foundation relationships.

Allows institutions and affiliated foundations flexibility to craft an operating agreement, outlining in greater detail the dynamics of their specific relationship.

Main Points in the Revised Policy – described below:

- Gifts may be made directly to institutions, but preference is for gifts directly to foundations. Requires that institution funds are not to be transferred to foundations without Board approval, but does provide institutions the ability to develop policies for transferring gifts that were inadvertently made to an institution instead of an affiliated foundation. Requires institutions to develop policies, to be outlined in operating agreement, for transfers of foundation funds to institutions. (Policy V.E.1. / Policy V.E.3.a.(5).)
- The revised Policy requires that foundations be established solely for the benefit of an affiliated institution, and further requires that the foundations adopt mission statements describing their purpose. Consistent with current Board policy, this Policy exempts technology transfer organizations. (Policy V.E.2.)
- The revised Policy recognizes foundation independence, but envisions Board recognition of all affiliated foundations that comply with its policies to ensure the integrity and reputation of the institutions and campuses. Already-organized foundations must come into compliance with the Policy. The foundation's enabling documents must be filed with and reviewed by the Board. Requires that foundation articles of incorporation provide that foundation assets be distributed to the affiliated institution in event of dissolution. (Policy V.E.3.a.)
- Revised Policy requires Board approval of all operating agreements. Foundation operating agreements must be renewed every 2 years, or sooner at Board request. (Policy V.E.3.b.)
- Requires that institution chief executive officers be permitted to attend foundation board meetings in an advisory role, and permits other institution officers to attend in a similar capacity, as outlined in operating agreement. (Policy V.E.3.c.)
- Permits institutions to provide limited resources and services (including administrative and support staff services) to foundations, and entitles institutions to recover costs for providing such resources/services. In this regard, the Policy permits institution employees to provide contract services to foundations, with one exception – the foundation executive director, as a high-ranking policy-making official, is required to be a foundation employee. Prohibits foundations from making direct payment to institution employees who provide contract services to the foundation. (Policy V.E.3.d. / Policy V.E.3.e.(21).)
- Lays out general principles related to management and operation of foundations. Provides for considerable oversight of foundation activities by institution chief executive officers or designees. Requires foundations to coordinate fundraising

efforts with the institutions. Requires that institutions approve gifts, grants, or contracts that include financial or contractual obligations of the institutions. Requires that foundations be operated in accordance with generally accepted business and accountability principles, and adopt prudent financial controls. Requires that foundation employees/officers handling foundations funds be bonded. Prohibits foundations from making direct payments for institutional expenditures. Permits foundations to acquire real estate for investment purposes, and even to acquire real estate for donation to the institutions, but prohibits foundations from developing real estate projects for the institutions. (Policy V.E.3.e.)

- Requires that transactions between institutions and foundations meet normal tests for ordinary business transactions, and in regard to such transactions foundations must avoid conflicts of interest. Requires foundations to permit the institution chief executive officer to review foundation books/records. Authorizes support payments (supplemental compensation) to institution employees (not for services provided to foundation) with appropriate approvals. (Policy V.E.3.f.)
- Requires periodic foundation reporting (on a mutually agreed upon schedule) to the institutions on a wide variety of financial matters. Requires annual foundation audits by an auditor approved by the Board, but permits foundations to use institution's Board-approved auditor. Requires foundations to annually submit to the institution chief executive officer a certification letter certifying its compliance with the Policy. (Policy V.E.3.g.)
- Requires foundations to develop and comply with a conflict of interest policy and a code of ethics. Foundations must also comply with any conflict of interest provisions approved by the Board. (Policy V.E.3.h.)
- Requires that foundations for other agencies and ISDB comply with the Board's Policy regarding institutional foundations. (Policy V.E.4.)

Restates policy provisions regarding the Idaho Educational Public Broadcasting System Foundations. (Policy V.E.5.)

This proposed policy is being presented to the Board for first reading.

BOARD ACTION

A motion to approve the first reading of changes to Idaho State Board of Education Governing Policies and Procedures, Section V.E. – Gifts and Affiliated Foundations.

Moved by_____ Seconded by_____ Carried Yes____ No____