

| | |
|------------------|--|
| POLICY NAME: | 213.01: College-Related Foundations |
| EFFECTIVE: | 09-27-07 |
| SUPERSEDES: | 213.01 issued 12-08-94; 06-23-83, 03-24-05 |
| SOURCE: | State Board of Education Resolution |
| CROSS REFERENCE: | Policy 320.01 |

I. Authority

Upon approval of the State Board of Education, this “Policy for College-Related Foundations” shall apply to all College-related organizations that fall within the parameters of §501(c)(3) of the Internal Revenue Code, and their subsidiaries and affiliates, by whatever name or description, which are organized and existing primarily for the benefit of the respective Colleges in the system.

II. Transitional Provisions

Within ninety (90) days of the date this Policy is initially approved, and from time to time thereafter as may be requested by the Chancellor, the President or chief executive officer of each College shall provide the Chancellor with a written report listing all College-related Foundations and other organizations associated with the College. Such report shall describe the entities’ histories, structure, functional and financial relationships with the College, and whether and how the College and such organizations are in compliance with, or are deviating from this Policy. It is understood that as of the effective date of this Policy, a College-Related Foundation might have been structured or engaged in activities that would be inconsistent with the letter of the Policy. In such cases, the particular Foundation may temporarily maintain its current structure or continue providing such services, provided that it submits a detailed written request to the Chancellor for review of whether the circumstance is inconsistent with this Policy, and whether a sound basis exists for permitting the structure or services to continue, either temporarily or for an extended period, based on the particular circumstances, in keeping with the best interests of the College and the Department. If the Chancellor determines that one or more of such variances to this Policy may continue, he or she shall define the scope of such variances, and any conditions and duration of their continuance in writing, and appropriate provisions must be included in any relevant contract executed between the College and the Foundation.

III. Mission and Responsibilities

It is critical that each College work in coordination with the individual and corporate citizens of its service area to develop a strong and supportive Foundation in furtherance of the College’s mission. No provision of this policy should be construed to prohibit or divert gifts which donors may wish to make directly to a College. Each Foundation must support the fundraising efforts of its College and coordinate its fundraising with the College’s President and development staff in order to meet the College’s particular needs and priorities. Each Foundation is charged with helping to provide the College with mechanisms to receive and manage gifts and make gift revenues and assets of the Foundation available to the College to support approved College programs and activities, while maintaining a high degree of fiscal and institutional integrity in all of its functions on behalf of the College. Accordingly, a Foundation shall engage in the following activities:

1. A Foundation may receive and manage gifts and assets in support of College programs and activities in accordance with its corporate charter and applicable laws and regulations. Donations may be solicited from the public at large, as well as Foundation and College employees, but no College or Foundation employee shall be required or coerced in any manner to donate to the Foundation. In the exercise of this responsibility the Foundation shall also:

- a. Ensure that the proceeds of College fundraising are appropriately recorded, credited, acknowledged and administered based on legal requirements, ethical constraints, proper corporate governance, the College's and the Department's applicable policies and policy and sound accounting principles.
 - b. Develop, administer, and communicate to its College and the Department a policy or policies on endowment funds management, including asset allocation, whether and how it will select investment managers, its spending strategies, and the method(s) by which it administers its scholarship program(s).
 - c. Adopt, maintain and enforce duly-adopted policies which prohibit Foundation officers, directors and employees from engaging in actions or becoming involved in circumstances which conflict with the interests of the College, the Department, the State, the Foundation, and the lawful and faithful performance of the duties and fiduciary responsibilities of such officers, directors and employees, and which establish an audit committee to review and report at least on an annual basis to the Foundation's governing board matters that pertain to the Foundation's fiscal practices and condition.
 - d. Periodically take reasonable steps to inform the Foundation's Officers, Directors and employees of the existence of statutory and regulatory directives and constraints, as well as policies, guidelines and practices that apply to the Foundation's activities.
 - e. Obtain reasonable and prudent insurance coverage to cover customary risks pertaining to the Foundation's operations.
2. As may be mutually agreed between the Foundation and its College, receive and acquire on behalf of its College certain real and personal property that supplement College equipment and facilities, and provide a mechanism to help the College meet its facility needs.
 3. Consistent with its mission to help advance the plans and objectives of the College, accept a license from the College to use the name of the College, and its seal and logotype, in association with activities in support of the College, pursuant to a written agreement between the Foundation and the College. The College shall reserve the right to withdraw or condition such license in its sole discretion. Nevertheless, the Foundation's publications and representatives shall prominently display and utilize the Foundation's corporate name and the Foundation shall operate under its own seal and logotype.
 4. Provide other support services to the College in support of its educational mission, with the prior written approval of the College President.
 5. Foundations shall not engage in the following activities:
 - a. Activities that are prohibited by law, regulation, or are in conflict with guidelines or policies of the State Board of Education, Department of Postsecondary Education or the College.
 - b. The hiring or compensation of employees who are also employed by the College or other College or institution associated with the Department of Postsecondary Education and the State Board of Education.

IV. Structure

1. All Foundations must be duly incorporated. The Charter or Certificate of Incorporation of the Foundation should refer to the particular College that it supports. The Foundation must be a non-profit corporation organized and existing under the laws of the State of Alabama, tax-exempt under §501(c)(3) of the Internal Revenue Code (IRC), and classified as a “supporting organization” to the College within the parameters of §509(a)(3) of the Internal Revenue Code and applicable regulations. If the Foundation has obtained tax exempt status other than as a “supporting organization,” it should report its status to the Chancellor in accordance with section II, above, for consideration of whether its particular status should continue, or be amended to comply with this paragraph.
2. A Foundation is authorized to establish one or more corporate subsidiaries to the extent that it is involved in activities other than fundraising in support of the College. Any subsidiary should also be a 501(c)(3) corporation and classified as a “supporting organization” to the primary Foundation within the parameters of §509(a)(3) of the Internal Revenue Code. The majority of the members of the board of directors of each subsidiary should be members of the board of directors of the primary Foundation.
3. The College President or President’s designee shall be an *ex officio* [voting or non-voting] member of the Board of Directors of the primary Foundation.
4. No College employee may serve on the board of, or as an officer of the Foundation except as may serve in an *ex officio*, voting or non-voting capacity, without the prior written authorization of the College President. No *ex officio* officer or member of the Foundation’s Board shall serve as President, Chief Executive Officer or Chair of the Foundation or of any of its subsidiaries. Any exceptions to this structure require the College President’s and the Chancellor’s written approval.

V. Linkage to College

A formal agreement, in substantial accord with the model agreement attached to and incorporated in this Policy [See Section VII, below], must be executed between the College and the Foundation. The agreement is terminable in whole or part with 90 days written notice given by the College or the Foundation. The agreement may be extended for a period of no more than 10 years and is subject to the review and approval of the Department’s Counsel and the Chancellor. The agreement authorizes the Foundation to operate as a supporting organization for the College, and enumerates its activities and those of each subsidiary entity. Each such subsidiary organization is bound by the same policy governing the Foundation. Each category of activity authorized for the Foundation shall be identified in the agreement, with written amendments required for new activity categories.

VI. Accountability and Reporting

1. Each Foundation must prepare annual financial statements in conformity with generally accepted accounting principles and have them audited annually by an independent certified public accounting firm or practitioner (independent auditor) in accordance with generally accepted auditing standards, no less than annually, or no less than once every three years if the Foundation has gross assets of \$250,000.00 or less. To enable the College and the Department to include pertinent information in their annual financial reports and statements, the audit must be completed in time to be reflected on a timely basis in the College’s financial reporting cycle for the applicable fiscal year.
2. The books, records, financial condition, operating results, and program activities of the Foundation and its affiliate(s) are subject to inspection and periodic audit by the Chancellor and his or her designees. The Foundation and any affiliate(s) may also be subject to audits by external

bodies or officers to the extent allowed by law. All audit reports from whatever source, including the certified (consolidated) financial statements and management letters of the Foundation (and any subsidiaries), must be reviewed by the College President and provided to the Chancellor of the Department of Postsecondary Education. The Foundation and its affiliate(s) shall be subject to the financial reporting requirements set by the Governmental Accounting Standards Board (GASB). The Foundation shall provide the College with such information as the College may require to comply with such requirements.

3. The articles of incorporation and other organizing documents of each Foundation (and any subsidiary) must provide that the net assets of the organization be distributed to the College or other College-approved entity organized for similar purposes in the event that the Foundation (or affiliate or single member Limited Liability Corporation) is dissolved. Dissolutions and dispositions of related net assets are subject to all applicable laws, regulations, and restrictions and unless otherwise stated, the net assets revert to the College or College-approved organization.

VII. Model Agreement:

Agreement between _____ Foundation and _____ Community College

THIS AGREEMENT, entered into as of this ____ day of _____ [month], 20____, by and between the _____ [name and address of College] and the _____ [name and address of Foundation].

The Foundation was organized and incorporated in ____ [year] for the purpose of stimulating voluntary private support from alumni, parents, friends, corporations, foundations, and others for the benefit of _____ [name of College].

The _____ [name of Foundation] exists to raise and manage private resources supporting the mission and priorities of _____ [name of College], and provide opportunities for students and a margin of institutional excellence not achievable with institutional funds alone.

The Foundation is dedicated to assisting the College in the building of the endowment and in addressing, through financial support, the long-term academic and other priorities of the College.

As stated in its articles of incorporation, the Foundation is a separately incorporated 501(c)(3) organization and is responsible for identifying and nurturing relationships with potential donors and friends of _____ [name of College]; soliciting cash, securities, real and intellectual property, and other private resources to support _____ [name of College]; and acknowledging and stewarding gifts in accordance with donor intent and its fiduciary responsibilities.

The Foundation plans for and manages private contributions and works with the College to assist and advise in such activities.

In consideration of the mutual commitments herein contained, and other good and valuable

consideration, receipt of which is hereby acknowledged, the parties agree as follows:

Term of the Agreement

Subject to earlier termination by law or as provided elsewhere below, this Agreement shall have a term of _____ years [*term should not exceed ten (10) years*], starting with the day it has been signed by both parties.

Foundation Name, Seal and Logotype

Consistent with its mission to help to advance the plans and objectives of the College, the College may grant the Foundation license to use the name, _____ [name of College], and its seal and logotype, in association with activities in support of the College. The College reserves the right to withdraw or condition such license in its sole discretion. Nevertheless, the Foundation's publications and representatives shall prominently display and utilize the Foundation's corporate name, and the Foundation shall operate under its own seal and logotype.

The Foundation's Relationship to the Institution

- The _____ [name of Foundation] is a separately incorporated 501(c)(3) nonprofit "supporting organization," created to raise, manage, distribute, and steward private resources to support the mission of the College.
- The _____ [name of Foundation] board of directors is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts consistent with donor intent.
- The _____ [name of Foundation] is responsible for the performance and oversight of all aspects of its operations based on a comprehensive set of bylaws that clearly addresses the board's fiduciary responsibilities and avoidance of conflicts of interest and promotion of ethical behavior on the part of its board members, officers and employees. The Foundation shall also comply with the any policies of the State Board of Education and Chancellor's Guidelines regarding foundations.
- Where Foundation funds are to be expended on College property, the prior written approval of the College president shall be secured, and the Foundation shall not financially obligate or encumber the College in any way without the President's prior written consent. Capital construction activities on College property supported in whole or in part by Foundation funds shall follow all College, State Board of Education and State procedures and requirements governing such projects.
- The _____ [name of Foundation] is responsible for the employment, compensation, and evaluation of all its employees. [*Note: The agreement's language should clarify whether the Foundation has its own employees or relies on College employees to fulfill its responsibilities. In the event that College employees provide such services, they shall remain solely as employees of the College.*]
- The _____ [name of Foundation] may earmark a portion of its unrestricted funds to a discretionary fund for the president of the College and will either transfer a percentage of those funds annually to the institution or reimburse appropriate presidential expenditures in compliance with state law and institutional policies and guidelines of the College. All such expenditures must comply with applicable provisions of the Internal Revenue Code pertaining to

the Foundation's status as a §501(c)(3) supporting organization and be consistent with the Foundation's mission. Such funds will be audited as part of Foundation audits.

The Institution's Relationship to the Foundation

- The College president is responsible for communicating _____ [name of College] priorities and long-term plans to the Foundation.
- The _____ [name of College] recognizes that the Foundation is a private corporation with the authority to keep all records and data confidential, consistent with the law and this Agreement.
- The _____ [name of College] may include the Foundation as an active and prominent participant in the strategic planning for the College.
- The College's president shall serve as an ex-officio member of the Foundation board and shall assume a prominent role in fund-raising activities. *[Note: The agreement should designate if this is with or without vote.]* No College employee may serve on the board of the Foundation except in an ex officio *[voting or non-voting]* capacity without the prior written consent of the College president. Ex officio members of the board shall not serve as board chair or president of the Foundation.
- In consideration of the Foundation's services to the College in furtherance of its public mission, the _____ [name of College] may contract with the Foundation to provide the Foundation with in-kind support, including: *[list major in-kind support such as staff, office space, and technology]*.

Foundation Responsibilities

1. Fund-Raising

- The _____ [name of Foundation] shall create an environment conducive to increasing levels of private support for the mission and priorities of _____ [name of College].
- The _____ [name of Foundation], in consultation with the College president, is responsible for planning and executing comprehensive fund-raising and donor-acquisition programs in support of the institution's mission. These programs include annual giving, major gifts, planned gifts, special projects, and campaigns as appropriate.
- The _____ [name of Foundation] will establish, adhere to, and periodically assess its gift-management and acceptance policies. Such policies shall not be inconsistent with the policies and guidelines of the State Board of Education and the Alabama College System. It will promptly acknowledge and issue receipts for all gifts on behalf of the Foundation and the College and provide appropriate recognition and stewardship of such gifts.
- The _____ [name of College] recognizes that the Foundation bears major responsibility for fund-raising. College representatives will coordinate fund-raising initiatives including major gifts solicitations with the Foundation.
- The College president will work with the leadership of the Foundation board and the Foundation chief executive to identify, cultivate, and solicit prospects for private gifts.
- The _____ [name of Foundation] shall not accept grants from state or federal agencies, except in special circumstances that are approved by the Foundation board of directors and the College. *[Note: Some foundations may be called upon to accept and manage governmental grants, such as Title III endowment grants].*

- The _____ [name of Foundation] shall establish and enforce policies to protect donor confidentiality and rights.

2. Asset Management

- The _____ [name of Foundation] will establish asset-allocation, disbursement, and spending policies that adhere to applicable federal and state laws, such as the Uniform Management of Institutional Funds Act (UMIFA) (Alabama Code §16-61A-1, *et seq.*)
- The _____ [name of Foundation] will receive, hold, manage, invest, and disperse contributions of cash, securities, patents, copyrights, and other forms of property, including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred-gift instruments.

3. Institutional Flexibility

- The _____ [name of Foundation] will explore current opportunities, including acquisition and management of real estate on behalf of the _____ [name of College] for future allocation, transfer, or use.
- The _____ [name of Foundation] may serve as an instrument for ancillary activities for the College and engage in such activities as purchasing, developing, or managing real estate for College expansion, student housing, or retirement communities. It also may hold licensing agreements and other forms of intellectual property, and borrow or guarantee debt issued by their parties.
- When distributing gift funds to the College, the _____ [name of Foundation] will disclose any terms, conditions, or limitations imposed by donor or legal determination on the gift. The _____ [name of College] will abide by such restrictions and provide appropriate documentation.

4. Transfer of Funds

- The _____ [name of Foundation] is the primary depository of private gifts and will transfer funds to the designated entity within the institution in compliance with applicable laws, College policies, and gift agreements. Nevertheless, no provision of this agreement shall be construed to prohibit or require the diversion of gifts which donors may wish to make directly to a College.
- The _____ [name of Foundation]'s disbursements on behalf of the College must be reasonable business expenses that support the institution, are consistent with donor intent, and do not conflict with the law.

5. Accountability and Reporting

- The _____ [name of Foundation] must prepare annual financial statements in conformity with generally accepted accounting principles and have them audited by an independent certified public accountant (independent auditor) in accordance with generally accepted auditing standards, no less than annually [*or "no less than once every three years" for Foundations having gross assets of \$250,000 or less*]. To enable the College and the Department of Postsecondary Education to include pertinent information in their annual financial reports and statements, the audit must be completed in time to be reflected on a timely basis in the College's financial reporting cycle.
- The books, records, financial condition, operating results, and program activities of

- _____ [name of Foundation] are subject to inspection and periodic audit by the Chancellor and his/her designees. The Foundation and any affiliate(s) may also be subject to audits by external bodies or officers to the extent allowed by law. All audit reports from whatever source, including the certified (consolidated) financial statements and management letters of the Foundation (and any subsidiaries), must be reviewed by the College President and the Chancellor of the Department of Postsecondary Education.
- The _____ [name of Foundation] shall be subject to the financial reporting requirements set by the Governmental Accounting Standards Board (GASB). The Foundation shall provide the College with such information as the College may require to comply with such requirements.

Student and Alumni Records

- The _____ [name of College] shall make available to the _____ [name of Foundation] records and information concerning alumni in accordance with requirements of the Family Educational Rights and Privacy Act of 1974 and any amendments and regulations under the Act. Any such records and information shall not be released to other organizations without the written permission of the College.
- In performing this contract, the _____ [name of Foundation] will receive, maintain, process or otherwise will have access to confidential information on students and/or customers of _____ [name of College]. With respect to these records, the Foundation will comply with the Gramm-Leach-Bliley Act (P.L. 106-102), as amended, and the Federal Trade Commission's Safeguards Rule (16 CFR Part 314). As part of doing so, the Foundation agrees that it will: 1) protect the security and confidentiality of student and/or College customer records and information; 2) protect against any anticipated threats or hazards to the security or integrity of such records; and 3) protect against unauthorized access to or use of such records or information which could result in substantial harm or inconvenience to any student and/or College customer.
- If the _____ [name of Foundation] sub-contracts with a third party for any services required in the furtherance of this contract, the Foundation must ensure that such third parties implement practices to protect nonpublic personal information of students and/or College customers that they receive, maintain, process or are permitted to access.

Foundation Funding and Administration

- The _____ [name of Foundation] is responsible for establishing a financial plan to underwrite the cost of Foundation programs, operations, and services.
- The _____ [name of Foundation] has the right to use a reasonable percentage of the annual unrestricted funds, or assess fees for services to support its operations. [*Note: The use of fees should be disclosed to donors and institution staff.*]
- The _____ [name of Foundation], at its own expense, will provide adequate personnel (beyond personnel which may be provided by the College), office supplies, and other such services that may be necessary or required to fulfill its responsibilities and obligations.
- The _____ [name of Foundation] shall maintain, at its own expense, copies of the plans, budgets, and donor and alumni records developed in connection with the performance of its obligations.

Miscellaneous Terms

- To ensure effective achievement of the items of the agreement, the College and Foundation officers and board representatives shall hold meetings not less than quarterly, to foster and maintain productive relationships and to ensure open and continuing communications and alignment of priorities.
- Either party may, upon 90 days prior written notice to the other, terminate this agreement. Notwithstanding the forgoing, either party may terminate this agreement at any time in the event the other party defaults in the performance of its obligations and fails to cure the default within a reasonable time after receiving written notice of such default.
- Consistent with provisions appearing in the Foundation’s bylaws and its articles of incorporation, should the Foundation (or any subsidiary) cease to exist, or cease to be a supporting organization of the College, or cease to be a qualified organization under Internal Revenue Code §501(c)(3), the Foundation (or such subsidiary) shall transfer its assets and property to the College or a College-approved incorporated successor foundation in accordance with law and donor intent.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers as of the day and date first above written.

[Name of College]
By:

[Name of Foundation]
By:

President

[Authorized Officer of the Foundation]

Date: _____

Date: _____