

## **Board of Trustees Agenda Item**

**Board Meeting Date:** 11/5/12

**Title of Item:** **Board Policy 3122 Gift Acceptance (Revised) (1<sup>st</sup> Reading)**

### **Background and Analysis:**

Presented for review and first reading are proposed revisions to board policy (BP) 3122 Gift Acceptance. The policy has been updated to reflect changes in Internal Revenue Service regulations and to shift processes for gift acceptance to a newly created administrative procedure (AP 3122). Proposed new language is indicated on the attached by bold, underlined text and deleted text is shown by strikethrough. The revised policy, showing proposed changes as accepted, and the approved administrative procedure are also included for clarification.

The Chancellor's Advisory Council reviewed and approved both the policy changes and new procedure on October 19, 2012.

The policy will be presented for approval at the December 3, 2012, Board of Trustees meeting.

**Recommendation:** Information only.

Submitted by:	Linda Thor, ext. 6104
Additional contact names:	
Is backup provided?	Yes

## **Acceptance of Gifts**

**3122**

The Foothill-De Anza Board of Trustees established a Foundation as the auxiliary organization responsible for coordinating and promoting **charitable giving** fundraising. The intent is that the Foundation function as the sole recipient of private **charitable** gifts to the District, **subject to the noted guidelines**, because:

- The Foundation is qualified as a 501(c)(3) public benefit corporation. Most donations **provide** trigger a Federal and State charitable tax deduction for the donor. **Foundation** College employees **are empowered to accept and** cannot validate gifts **as being** for tax **deductible** deductibility **and provide receipts to donors for these gifts**, that do not come through the Foundation and the donor may forfeit any claim for a deduction since the **The** IRS requires written substantiation by a qualified 501(c)(3) public benefit corporation for all gifts of \$250 or more **and the Foundation provides these to qualified donors**.
- The Foundation is charged with stewardship and fiduciary responsibilities to ensure that the gift is properly accounted for, that donors are appropriately **acknowledged** thanked and provided with the tax information required for them to secure a deduction, and that the gifts are correctly channeled **to appropriate departments and programs at the colleges and used according to the donors' wishes** to the department they are to serve.
- The District and many of its departments **occasionally** receive gifts-in-kind (equipment, goods or services) **to that can** be used in the instructional process. **There are very narrowly defined IRS rules and regulations and special requirements governing gifts-in-kind**. There are complicated tax requirements for the acceptance and recording of these gifts **and specific**. Numerous forms **to be completed to conform with**, fairly narrowly defined IRS rules and regulations, and special requirements **for accepting this type of gifts** govern gifts-in-kind.
- Gifts of property, securities, **some estate gift instruments and or testamentary gifts may** or "planned gifts" (those gifts invested on behalf of the donor for which the donor receives income for life as well as bequests and living trusts) have extremely complicated reporting and legal requirements **for acceptance**. **The Foundation is charged with the responsibility for being up-to-date on all legal requirements and working closely with donors or their financial and tax advisors to ensure gifts are accepted and acknowledged appropriately**.

It is vital that gifts are handled expeditiously, legally, and appropriately to ensure compliance with the complex tax laws governing gift acceptance.

### **Gifts to the Foothill-De Anza Community Colleges Foundation**

**Any charitable gift made to the Foothill-De Anza Foundation for the benefit of either or both colleges must** Gifts have all of the following characteristics:

- The contribution **must be received** is from a private individual, **public or private charitable foundation, corporation, corporate foundation,** or **other** non-government source;
- **Donor(s) may not receive any personal, economic, or other tangible benefit from their contribution;** ~~The donor specifies that the contribution is a charitable gift;~~
- **Donor(s) may place** ~~The donor places~~ reasonable conditions or stipulations on the intended use of the gift, **such as scholarship funds for specific programs or departments, etc.** **However,** in the absence of written conditions or stipulations, the **gift will be treated as “unrestricted” and deposited into** ~~assumption is that the gift is for the Foundation General Fund;~~
- **Any charitable contribution must be** ~~The donor intends the gift to be~~ irrevocable **for a donor to claim a tax deduction** and, therefore, **once the gift is completed, donor(s)** ~~relinquishes the right to reclaim the gift or any unused remainder;~~
- The donor makes the donation to the Foundation without the expectation of direct economic benefit or other tangible benefit commensurate with the worth of the gift.

The term “gift” can apply to any of the following:

- Cash (currency, coin, checks, money orders, bank drafts, etc.);
- Securities (bonds, stocks, etc.);
- Non-cash gifts, also known as “gifts-in-kind” (books, equipment, ~~art treasures,~~ etc.);
- Real property;
- Inventions, patents and copyrights **and other intellectual property;**
- Mineral rights;
- Fractional or remainder interests;
- Deferred arrangements **(CRIs, annuities, life insurance, etc.)** ~~(life income, contracts, unitrusts, etc.);~~
- Wills, bequests, **and other testamentary** devises.

Gifts made to the Foundation may be:

- Unrestricted — to be used as the **District administration, Board of Trustees, and/or** Foundation Board, ~~with recommendations from District administration and the Board of Trustees,~~ deems most appropriate;
- Restricted — to be used for a specific program or project **as specified by the donor(s). Gifts donated without clear written restrictions from the donor will be treated as Unrestricted gifts.**

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Funds may be:

- Current — to be used over a non-specific period of time;
- Endowed — the principal to be invested; interest to be available for income;
- Deferred — funds will be available at a later date or for a specific purpose occurring at a later date. Funds donated without written directions or restrictions will be treated as Unrestricted gifts and may be determined as Current or Endowed at the discretion of the Foundation. Generally, these gifts are the result of estate planning.

**Donor Restrictions**

~~The donor may direct in writing that a gift be used for specified purposes such as scholarship, a particular department or division, a specific program or project. Once established, the donor can change such restrictions only in writing.~~

**Gift Payee**

~~All gifts, whether restricted or unrestricted, should be made payable to THE FOOTHILL-DE ANZA COMMUNITY COLLEGES FOUNDATION.~~

**Gift Acceptance**

~~When a gift is accepted, the Foundation assumes a legal and ethical obligation to conform to the donor's wishes. Therefore, it is essential that donors be encouraged to state in writing those restrictions, if any, to be placed on the use of the funds provided.~~

~~Except as provided for below, the Foundation Executive Director, or his/her designee, has authority to accept gifts or related funds and instruments designated by the donor for purposes or uses congruent with the District's mission and needs.~~

~~The valuation and substantiation of charitable gifts is a matter between the donor/taxpayer and the taxing agency and the Foundation will not estimate the value of non-cash gifts. The Foundation will cooperate fully with the donor in the gift substantiation process required by the taxing agency.~~

**Special Acceptance Criteria**

~~Gifts to establish new programs, real property gifts, or donations involving a substantial or unique obligation of the Foundation or the District, shall be submitted to the Chancellor/Board of Trustees for the approval of donation acceptability and conformance with District regulations.~~

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**Declination of Gifts**

~~Gifts may have to be declined by the Foundation, in consultation with the college presidents and chancellor, under conditions including but not limited to when:~~

- ~~• The gift is restricted and would require support from other resources that are unavailable, inadequate, or may be needed for other institutional purposes.~~
- ~~• The gift is restricted and would support a purpose or program peripheral to existing principal purposes of the institution, or create or perpetuate programs or obligations that would dissipate resources or deflect energies from other programs or purposes.~~
- ~~• The gift would injure the reputation or standing of the District or generate controversy that may defeat the intended educational purpose.~~

**Gift Fund Accounts**

~~To establish a new Foundation account, a Foundation's authorized form must be completed, indicating account purpose, the types of authorized expenditures, and authorized budgeters.~~

Education Code Section 72205  
Title 5 Section 59016

Approved 1/7/63  
Amended 8/16/99; 12/15/03

## **Acceptance of Gifts**

**3122**

The Foothill-De Anza Board of Trustees established a Foundation as the auxiliary organization responsible for coordinating and promoting charitable giving. The intent is that the Foundation function as the sole recipient of private charitable gifts to the District, subject to the noted guidelines, because:

- The Foundation is qualified as a 501(c)(3) public benefit corporation. Most donations provide a Federal and State charitable tax deduction for the donor. Foundation employees are empowered to accept and validate gifts as being tax deductible and provide receipts to donors for these gifts. The IRS requires written substantiation by a qualified 501(c)(3) public benefit corporation for all gifts of \$250 or more and the Foundation provides these to qualified donors.
- The Foundation is charged with stewardship and fiduciary responsibilities to ensure the gift is properly accounted for, donors are appropriately acknowledged and provided with the tax information required for them to secure a deduction, and the gifts are correctly channeled to appropriate departments and programs at the colleges and used according to the donors' wishes.
- The District and many of its departments occasionally receive gifts-in-kind (equipment, goods or services) to be used in the instructional process. There are very narrowly defined IRS rules and regulations, and special requirements governing gifts-in-kind. There are complicated tax requirements for the acceptance and recording of these gifts, and specific forms to be completed to conform with narrowly defined IRS rules and regulations, and special requirements for accepting this type of gifts.
- Gifts of property, securities, some estate gift instruments and or testamentary gifts may have extremely complicated reporting and legal requirements for acceptance. The Foundation is charged with the responsibility for being up-to-date on all legal requirements and working closely with donors or their financial and tax advisors to ensure gifts are accepted and acknowledged appropriately.

It is vital that gifts are handled expeditiously, legally, and appropriately to ensure compliance with the complex tax laws governing gift acceptance.

### **Gifts to the Foothill-De Anza Community Colleges Foundation**

Any charitable gift made to the Foothill-De Anza Foundation for the benefit of either or both colleges must have all of the following characteristics:

- The contribution must be received from a private individual, public or private charitable foundation, corporation, corporate foundation or other non-government source;

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- Donor(s) may not receive any personal, economic, or other tangible benefit from their contribution;
- Donor(s) may place reasonable conditions or stipulations on the intended use of the gift such as scholarship funds, for specific programs or departments, etc.. However, in the absence of written conditions or stipulations, the gift will be treated as “unrestricted” and deposited into the Foundation General Fund;
- Any charitable contribution must be irrevocable for a donor to claim a tax deduction and, therefore, once the gift is completed donor(s) relinquish the right to reclaim the gift or any unused remainder;
- The donor makes the donation to the Foundation without the expectation of direct economic benefit or other tangible benefit commensurate with the worth of the gift.

The term “gift” can apply to any of the following:

- Cash (currency, coin, checks, money orders, bank drafts, etc.);
- Securities (bonds, stocks, etc.);
- Non-cash gifts, also known as “gifts-in-kind” (books, equipment, etc.);
- Real property;
- Inventions, patents and copyrights and other intellectual property;
- Mineral rights;
- Fractional or remainder interests;
- Deferred arrangements (CRTs, annuities, life insurance, etc.);
- Wills, bequests, and other testamentary devises.

Gifts made to the Foundation may be:

- Unrestricted — to be used as the District administration, Board of Trustees, and/or Foundation Board deems most appropriate;
- Restricted — to be used for a specific program or project as specified by the donor(s). Gifts donated without clear written restrictions from the donor will be treated as Unrestricted gifts.

Funds may be:

- Current — to be used over a non-specific period of time;
- Endowed — the principal to be invested; interest to be available for income;
- Deferred — funds will be available at a later date or for a specific purpose occurring at a later date. Funds donated without written directions or restrictions will be treated as Unrestricted gifts and may be determined as Current or Endowed at the discretion of the Foundation.

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Education Code Section 72205  
Title 5 Section 59016

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## **Acceptance of Gifts**

**AP 3122**

### **Donor Restrictions**

The donor may direct in writing that a gift be used for specified purposes such as scholarships, a particular department or division, a specific program or project. Once established, the donor can change such restrictions only in writing. Restrictions which require illegal discrimination or violation of other laws or policies of the Foundation or District will not be accepted, and unless such restrictions are withdrawn, gifts they relate to will be returned to the donor.

### **Gift Payee**

All gifts, whether restricted or unrestricted, should be made payable to THE FOOTHILL-DE ANZA COMMUNITY COLLEGES FOUNDATION.

### **Gift Acceptance**

When a gift is accepted, the Foundation assumes a legal and ethical obligation to use the contribution according to the donor's wishes. Therefore, it is essential that donors be encouraged to specifically state in writing their desire for how the funds are to be used.

Except as provided for below, the Foundation Executive Director, or his/her designee, has authority to accept gifts or related funds and instruments designated by the donor for purposes or uses congruent with the District's mission and needs.

The valuation and substantiation of charitable gifts is a matter between the donor/taxpayer and their CPA, financial advisor, the IRS or other State tax office. The Foundation will abide by all tax regulations and restrictions as required by law.

### **Special Acceptance Criteria**

Whenever, in the discretion of the Foundation Executive Director, in consultation with the District Chancellor, it is determined that acceptance of a particular gift raises unique issues including but not limited to imposing new or difficult obligations on the District, acceptance of the gift shall be determined by the Governing Board of the District. Gifts to establish new programs, real property gifts or donations involving a substantial or unique obligation of the Foundation or the District, shall be submitted to the Chancellor/Board of Trustees for the approval of donation acceptability and conformance with District regulations

*Foothill-De Anza Community College District  
Administrative Procedures*

**Declination of Gifts**

Gifts may be declined by the Foundation, in consultation with the College Presidents and Chancellor, under conditions including but not limited to when:

- The gift is restricted and would require support from other resources that are unavailable, inadequate, or may be needed for other institutional purposes.
- The gift is restricted and would support a purpose or program peripheral to existing principal purposes of the institution, or create or perpetuate programs or obligations that would dissipate resources or deflect energies from other programs or purposes.
- The gift would injure the reputation or standing of the District or generate controversy that may defeat the intended educational purpose.
  - The gift would implicate or cause conflicts of interest or ethical concerns
  - Other business or legal reasons for refusal, as determined in the discretion of the Executive Director and District Chancellor.

**Gift Fund Accounts**

To establish a new FHDA Foundation account, all necessary Foundation forms must be completed, indicating account purpose, the types of authorized expenditures, and authorized budgeters.

Education Code Section 72205  
Title 5 Section 59016

*See Board Policy 3122*

Approved by Chancellor's Advisory Council 10/19/12