

## **AUXILIARY ORGANIZATIONS**

**References:**        *Education Code Sections 72670 et seq.;*  
                         *Government Code Sections 12580 et seq.;*  
                         *Title 5 Sections 59250 et seq.*

### **Definitions**

**Associated Student Organization (ASO):** as used herein means an organization formed by any group of students from the College District in accordance with the provisions of Education Code Section 76060.

**Board of Directors:** as used herein means the governing board of an auxiliary organization.

**Board of Governors:** as used herein means the Board of Governors of the California Community Colleges.

**College District:** as used herein means the Southwestern Community College District.

**Governing Board:** as used herein means the Board of Trustees of the College District.

**Superintendent/President:** as used herein means the Superintendent/President of the College District or designee.

### **Recognition and Establishment of Auxiliary Organizations**

The Superintendent/President shall submit a recommendation to the Governing Board to establish an auxiliary organization when the organization will serve the College District. The recommendation includes, but is not limited to, the following:

- The purpose(s) for which the auxiliary organization is to be established;
- Whether the proposed auxiliary organization will primarily serve the College District or a particular District;
- The functions which the auxiliary organization is intended to perform;
- The proposed bylaws and articles of incorporation for the auxiliary organization, including the size and composition of the board of directors; and
- The proposed written agreement between the auxiliary organization and the College District, as required in Title 5 Section 59259.

The process of recognition shall be as follows:

- When the Superintendent/President receives a request to establish an auxiliary organization, the Superintendent/President shall submit a recommendation

## **AUXILIARY ORGANIZATIONS**

concerning the establishment of said organization to the Governing Board within three months.

- The Governing Board shall hold a public hearing on each recommendation concerning the establishment of an auxiliary organization.
- At a subsequent scheduled meeting after the public hearing, the board shall announce its decision concerning the establishment of the organization, and, if approved, authorize the functions it may perform, identify the number and category or categories of the board of directors and approve contractual arrangements.

At such time as the College District recognizes an auxiliary organization, it shall submit to the California Community Colleges Chancellor's Office any written agreements with the auxiliary organization, as well as the articles of incorporation, bylaws, or other governing instruments.

### **Recognized Services, Programs and Functions**

Auxiliary organizations may be recognized and established by the Governing Board to perform services, programs and functions which are an integral part of the community college educational programs. The following supportive services and specified programs have been determined to be appropriate:

- Student association or organization activities;
- Bookstores;
- Food and campus services;
- Student union programs;
- Facilities and equipment, including parking;
- Loans, scholarships, grants-in-aid;
- Workshops, conferences, institutes and federal and specially funded projects;
- Alumni activities;
- Supplementary health services;
- Gifts, bequests, devises, endowments and trusts; and
- Public relations programs.

This section shall not be construed to prohibit an auxiliary organization from taking actions essential to satisfy the non-profit corporation or tax laws of the State of California or the Federal tax laws.

Operations of commercial services on a campus shall be self supporting when operated by an auxiliary organization.

## **AUXILIARY ORGANIZATIONS**

### **Authority and Responsibility of Auxiliary Organizations**

Participation in workshops, conferences, or institutes offered by auxiliary organizations shall not be included in reports to the state for the purpose of receiving apportionment funding.

All services, programs and activities that may be undertaken by an auxiliary organization shall be maintained for the general benefit of the educational program of the College District. Upon Governing Board approval, an auxiliary organization may assume any of the services, programs and activities listed in these procedures in order:

- To provide the fiscal means and the management procedures that allow the College District to carry on educationally related activities not normally funded by State apportionment;
- To eliminate the undue difficulty that would otherwise arise under the usual governmental budgetary, purchasing and other fiscal controls except as expressly prohibited by the Education Code or Title 5, or the College District's procedures; or
- To provide fiscal procedures and management systems that allow effective coordination of the auxiliary activities with the College District in accordance with sound business practices.

### **Composition of Boards of Directors**

The board of directors of each auxiliary organization shall have the following composition:

**Student Associations or Organizations:** The board of directors shall consist primarily of students. The Superintendent/President or designee may attend and participate in meetings of the board of directors in order to advise on policy and to provide for the control and regulation required by Education Code Section 76060.

**Other Auxiliary Organizations:** Any other College District-approved auxiliary organization that is established pursuant to Section 72670 et seq. of the Education Code shall have a board of directors appointed in accordance with the organization's articles of incorporation or bylaws and consisting of voting membership from one or more of the following categories: administration, staff; members of the community; students.

The size of the board of directors of an auxiliary organization shall be at least large enough to accommodate the one or more categories from which board members are selected.

The board of directors shall have the advice and counsel of at least one attorney admitted to practice in California and at least one certified public accountant. Upon being notified of the certified public accountant selected by an auxiliary organization, the district shall forward the applicable auditing and reporting procedures to the selected certified public accountant.

## **AUXILIARY ORGANIZATIONS**

### **Conduct of Boards of Directors**

No member of the board of directors of an auxiliary organization shall be financially interested in any contract or other transaction entered into by the board of which he/she is a member. Any contract or transaction entered into in violation of this section is void.

No contract or other transaction entered into by the board of directors of an auxiliary organization is void under the provisions of Education Code Section 72677; nor shall any member of such board be disqualified or deemed guilty of misconduct in office under such provisions, if pursuant to Education Code Section 72678 both of the following conditions are met:

- The fact of such financial interest is disclosed or known to the board of directors and noted in the minutes, and the board thereafter authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of such financially interested member or members.
- The contract or transaction is just and reasonable as to the auxiliary organization at the time it is authorized or approved.

The provisions of Education Code Section 72678 above shall not be applicable if any of the following conditions are met:

- The contract or transaction is between an auxiliary organization and a member of the board of directors of that auxiliary organization.
- The contract or transaction is between an auxiliary organization and a partnership or unincorporated association of which any member of the governing board of that auxiliary organization is a partner or in which he/she is the owner or holder, directly or indirectly, of a proprietorship interest.
- The contract or transaction is between an auxiliary organization and a corporation in which any member of the board of directors of that auxiliary organization is the owner or holder, directly or indirectly, of five percent or more of the outstanding common stock.
- A member of the board of directors of an auxiliary organization is interested in a contract or transaction within the meaning of Education Code Section 72677 and without first disclosing such interest to the governing board at a public meeting of the board, influences or attempts to influence another member or members of the board to enter into the contract or transaction.

It is unlawful for any person to utilize any information, not a matter of public record, which is received by the person by reason of his/her membership on the board of directors of an auxiliary organization, for personal pecuniary gain, regardless of whether he/she is or is not a member of the board at the time such gain is realized.

## **AUXILIARY ORGANIZATIONS**

### **Bylaws**

The bylaws of an auxiliary organization shall include, but not be limited to, specifying:

- The number of members of the board of directors, the categories from which members shall be selected and the method by which they shall be selected.
- The size of the board of directors.
- That at least one public business meeting will be held each quarter.
- The time table for the preparation and adoption of its program and annual budget and the submission of both for review to the Superintendent/President.
- That an attorney admitted to practice in this state and a licensed certified public accountant shall be selected to provide advice and counsel to the board of directors. Each shall have experience appropriate to the responsibility and shall have no financial interest in any contract or other transaction entered into by the board which he/she serves. Neither the attorney nor the certified public accountant needs to be a member of the board of directors.
- The procedures for approving expenditures.
- The procedures for accepting gifts, donations, bequests, trusts and specially funded grants and other income.

### **Master Agreement between College District and Auxiliary Organizations**

In the recognition and establishment of an auxiliary organization, there shall be a written agreement between the College District and the auxiliary organization which sets forth the purposes of the auxiliary organization as permitted under this Regulation, and Title 5 Section 59259.

Should an auxiliary organization provide more than one service, program or function, such service, program or function may be authorized in one of more written contracts with the College District. Such services, programs and functions thereby performed by an auxiliary organization may also be part of a joint powers agreement in accordance with Education Code Section 72671 and Government Code Sections 6500 et seq.

An auxiliary organization shall provide only those services, programs or functions authorized by a written agreement. No other service, program or function shall be permitted or performed unless a written agreement between the College District and the auxiliary organization is amended to provide otherwise.

The agreement shall include, but is not limited to, the following provisions:

- The services, programs, or functions the auxiliary organization is to manage, operate or administer.

## **AUXILIARY ORGANIZATIONS**

- A statement of the reasons for administration of the functions by the auxiliary organization instead of by the College District under usual College District procedures.
- The areas of authority and responsibility of the auxiliary organization and the College District.
- The facilities and services to be made available by the College District to permit the auxiliary organization to perform the services, programs or functions specified in the written agreement.
- The charge or rental to be paid to the College District by the auxiliary organization for the facilities used or services provided in connection with the performance of its function. The charge or rental specified shall be identified in sufficient time before it is incurred so that the organization may determine to what extent it is liable.
- Full reimbursement to the College District for services performed by the College District or by College District employees in support of the auxiliary organization. No more than 50% of the reimbursement may be made in the form of non-monetary benefits that the auxiliary organization provides to the College District, such as increased community awareness or other such benefits that are agreed upon by authorized College District officials and the auxiliary organization. The College District shall assign a good-faith reimbursement value to such non-monetary benefits. Student body auxiliary organizations may be exempt from reimbursing all or any portion of the costs for such services. Methods of proration where services are performed by College District employees for the organization shall be as mutually determined.
- A mutually agreed upon method of determining in advance to what extent the organization shall be liable for indirect costs relating to specially funded programs (including federally sponsored programs.).
- The responsibility for maintenance and payment of operating expenses.
- Proposed expenditures for public relations or other purposes which would serve to augment College District appropriations for operation of the College District. With respect to these expenditures, the auxiliary organization may expend funds in such amount and for such purposes as are approved by the board of directors of the auxiliary organization. The board of directors shall file with the Superintendent/President a statement of such policy on accumulation and use of public relations funds. The statement shall include the policy and procedure on solicitation of funds, source of funds, amounts, and purpose for which the funds will be used, allowable expenditures, and procedures of control.
- The disposition to be made of net earnings derived from the operation of the auxiliary organization, including earnings derived from facilities owned or leased by the auxiliary organization, and provisions for reserves.
- The disposition to be made of net assets and liabilities on dissolution of the auxiliary organization or cessation of the operations under the agreement.

## **AUXILIARY ORGANIZATIONS**

- The covenant of the auxiliary organization to maintain its organization and to operate in accordance with Education Code Sections 72670-72682 and with Title 5 Sections 59250 et seq. as well as College District Policy.
- The understanding that the auxiliary organization shall obtain the services and counsel of an attorney admitted to practice in the State of California whenever the need arises.
- The understanding that the auxiliary organization shall not enter into any contract or other business arrangement involving real property either by lease involving payments of more than \$25,000 per annum and duration terms of more than one year, or by purchase without prior notification and consultation with the Superintendent/President.

### **Personnel**

Each auxiliary organization shall develop general regulations to govern its operations, including policies and regulations concerning the salaries, working conditions and benefits of its employees.

The aforesaid regulations shall not conflict with the implementing policies adopted by the Governing Board or with these procedures.

Except as otherwise provided in any board rules, the board of directors of each auxiliary organization shall, pursuant to Education Code Section 72672, provide salaries, working conditions and benefits for its full-time employees that are comparable to those provided College District employees performing substantially similar services. For those full-time employees who perform services that are not substantially similar to the services performed by College District employees, the salaries established shall be comparable to the salaries prevailing in other educational institutions in the area or commercial operations of like nature in the area.

Regular College District employees may be employed by the auxiliary organization. College District employees must resign or request a personal leave of absence from the District in order to accept employment with the auxiliary organization. College District officers and employees who are required by the College District's Conflict of Interest Code (AP 2712) to file disclosure of financial information are responsible to determine whether or not they are eligible to accept employment with the auxiliary organization immediately upon resignation from the College District.

- **Educational Administrators** may be granted a personal leave of absence for two semesters, which may be extended to a maximum of ten consecutive semesters

## **AUXILIARY ORGANIZATIONS**

- **Classified Administrators** may be granted a personal leave of absence for up to one year. This leave may not be extended beyond one year without the employee first having returned to active duty.
- **Academic employees** may be granted personal leave of absence for two semesters. The leave may be extended for not more than six consecutive semesters.
- **Classified employees** may be granted a personal leave of absence for up to one year. This leave may not be extended beyond one year without the employee first having returned to active duty.

The board of directors of each auxiliary organization may provide retirement benefits different from those provided comparable College District employees and may withhold retirement benefits or permanent status benefits or both from temporary employees. For the purposes of this procedure, a temporary employee is:

- An employee employed for a specific research project, workshop, institute or other special project funded by any grant, contract or gift; or
- An employee whose contract of employment is for a fixed term not exceeding three years.

The board of directors of each auxiliary organization may withhold permanent status benefits from executive employees. For the purposes of this procedure, an executive employee is any management employee with responsibility for the development and execution of the auxiliary organization's policies and includes, but is not limited to, general managers, managers, directors and the like, as determined by the board of directors of each auxiliary organization.

Should retirement benefits be provided, they may but need not be provided by the Public Employees' Retirement System. Any newly created auxiliary organization is exempted from the requirement of providing retirement benefits for a period not to exceed three years from the date on which the Governing Board recognizes the establishment of such auxiliary organization.

An auxiliary organization may contract with the College District for the services of a College District employee and reimburse the College District for that portion of the employee's full-time assignment (and corresponding benefits) that is spent in providing said services.

### **Accounting and Reporting for Auxiliary Organizations**

The fiscal year of the auxiliary organization shall coincide with that of the College District.



## **AUXILIARY ORGANIZATIONS**

Each auxiliary organization shall develop an accounting system that is in accordance with generally accepted accounting principles.

The auxiliary organization shall implement financial practices that will assure its fiscal viability. Such standards shall include professional management, adequate working capital, adequate reserve funds for current operations, capital replacements, contingencies and adequate provisions for new business requirements.

Each auxiliary organization serving the College District shall submit its programs and budgets for review at a time and in a manner specified by the Superintendent/President.

Funds derived from indirect cost payments shall only be appropriated with the specific approval of the Superintendent/President. All uses of such funds shall be regularly reported to the College District's governing board.

Should the Superintendent/President determine that any program or appropriation planned by an auxiliary organization is not consistent with College District policy, the program or appropriation shall not be implemented. Further, should a program or appropriation which has received approval, upon review, be determined by the Superintendent/President to be operating outside the acceptable policy of the Board of Governors or the College District, then that program or appropriation shall be discontinued by direction of the Superintendent/President until further review is accomplished and an appropriate adjustment is made.

The board of directors of an auxiliary organization shall approve all expenditure authorizations.

### **Records and Annual Report of Auxiliary Organizations**

Personnel and payroll records shall be maintained as permanent records by each auxiliary organization.

Adequate records of all other transactions of an auxiliary organization shall be maintained for a minimum of five years. Transactions of the organization include, but are not limited to, purchases, disbursements, and investments.

An annual report shall be submitted to the Board of directors of the auxiliary organization and to the Superintendent/President by September 15. The report shall include, but is not limited to:

- All financial statements required to be filed with the California Community Colleges Chancellor's Office

## **AUXILIARY ORGANIZATIONS**

- A comparison of budgeted and actual expenditures
- A description of major accomplishments of the organization
- A description of improvements proposed for operation of the organization.

Records maintained by an auxiliary organization shall be available to the public to inspect or copy at all times during the office hours of the auxiliary organization, pursuant to and with the exceptions provided in Education Code Sections 72690 et seq.

### **Annual Audit**

Each auxiliary organization shall have an annual fiscal audit of any and all funds. The audit shall be performed by a certified public accountant in accordance with procedures prescribed by the Chancellor. Copies of the annual audit report shall be submitted to the Governing Board and to the California Community Colleges Chancellor's Office within 30 days after it is received by the auxiliary organization. Thereafter, it shall be a public record, except as otherwise provided by law. Such audits may be conducted as part of a fiscal audit of the District itself.

Auxiliary organizations shall annually publish an audited statement of their financial condition, which shall be disseminated as widely as feasible and be available to any person on request. A reasonable fee may be charged to cover the costs of providing a copy. An auxiliary organization shall comply with this requirement by:

- Publishing the audited financial statement in a campus newspaper; or
- Publishing a notice in a campus newspaper indicating the on-campus location where copies of the financial statement may be obtained or reviewed; or
- Publishing or noticing the audited statement in a campus bulletin or other appropriate medium if a campus newspaper is unavailable.

### **Insurance**

An auxiliary organization shall secure and maintain insurance adequate to protect its operations from catastrophic losses and as required by law, including but not limited to, the following:

- Comprehensive liability;
- Property and extended coverage, when applicable;
- All risks, money and securities;
- Fidelity and performance bonds covering its chief fiscal officer;
- Automotive liability when applicable; and
- Workers' Compensation

## **AUXILIARY ORGANIZATIONS**

In any insurance policy secured by the auxiliary organization, the District shall be named as additional insured.

A copy of each policy or endorsement or insurance certificates setting forth the coverage and limits shall be provided to the District within 30 days from the receipt of the document.

In obtaining the insurance coverage, the auxiliary organization may secure the insurance directly through its own broker or through the District.

### **Auxiliary Organizations: Use of Facilities**

Facilities may be made available by the District to an auxiliary organization to perform the functions specified in these regulations or in an agreement, under the following circumstances:

- The auxiliary organization may occupy, operate and use such District facilities as are mutually identified as appropriate for the functions and/or activities that have been undertaken by the auxiliary organization.
- The auxiliary organization may pay to the District a charge or rental for the District facilities to be used by it in connection with the performance of its function or functions.
- The charge or rental to be paid by the auxiliary organization shall not require involved methods of computation, and shall be identified by the District and the auxiliary organization in sufficient time before it is incurred so that the auxiliary organization may determine to what extent it shall be liable.
- The charge or rental to be incurred by an auxiliary organization for use of District facilities in excess of five days shall be incorporated into the agreement between the parties.
- An auxiliary organization shall provide full reimbursement to the District for any services performed by District employees under the direction of the auxiliary organization. Methods of proration where services are performed by District employees for the auxiliary organization shall be simple and equitable.

### **List of Auxiliary Organizations in Good Standing**

Each year, the Superintendent/President shall provide to the Governing Board a list of all auxiliary organizations in good standing. All auxiliary organizations which, after periodic review in the manner specified hereinafter in these regulations, are found to be in compliance with applicable laws, policies and regulations shall be included in the list.

When the Superintendent/President has reason to believe that a particular organization should be removed from the list of auxiliary organizations in good standing, a conference

## **AUXILIARY ORGANIZATIONS**

shall be held to determine whether such grounds for removal do in fact exist. The board of directors of such organization shall be entitled to participate in this conference, and shall have a minimum of one month notice to prepare response to the issues which have been raised.

Based upon such conference, the Superintendent/President shall decide whether the particular organization shall be removed from the list of auxiliary organizations in good standing.

An organization so removed shall not be permitted to do any of the following:

- Use the name of the District;
- Have as a director any official in the District acting in his/her official capacity;
- Operate a commercial service for the benefit of the District or any of its Colleges; and
- Receive gifts, property or funds to be used for the benefit of the District or any of its Colleges.

If the auxiliary organization is dissolved or ceases operations upon removal from the list of organizations in good standing, its net assets and liabilities shall be distributed according to the terms of the written agreement between the organization and the District.

### **Limitation on Transfer of Funds to Auxiliary Organizations**

No funds or resources, other than funds or resources derived from gifts or bequests, shall be transferred by the District to any of its auxiliary organizations for the purpose of either avoiding laws or regulations which constrain community college districts or providing the District with an unfair advantage with respect to the application of any state funding mechanism. Such state funding mechanisms include, but are not limited to, general apportionment funding, capital outlay funding, Extended Opportunity Programs and Services funding, and funding for programs and services for disabled students.

### **Compliance Review by Superintendent/President**

All auxiliary organization procedures and practices shall be reviewed to determine compliance with Education Code Sections 72670 et seq., and the policies, rules and regulations of the Board of Governors, and of the District. The Superintendent/President shall designate the individual to conduct this review, which shall be conducted at the end of the first complete fiscal year after its establishment and at least once every three years thereafter.

## **AUXILIARY ORGANIZATIONS**

When the Superintendent/President's designee determines, after inspection and review, that certain auxiliary organization procedures and practices are not in compliance with policies, rules and regulations of the Board of Governors and the District, a recommendation concerning the items of noncompliance shall be communicated in writing to the Superintendent/President and to the board of directors of the auxiliary organization. The board of directors shall reply in writing within one month, either describing the actions which will be taken, including time table, to bring said procedures and practices into compliance; or describing the reasons why the board considers the procedures already to be in compliance.

If the Superintendent/President's designee considers the proposed corrective actions to be acceptable, the auxiliary organization shall be so informed. A second compliance review shall be held at the end of the time agreed to and the results communicated in writing to the Superintendent/President and to the board of directors.

When the auxiliary organization fails to provide an acceptable proposal for corrective actions or fails to implement successful corrective actions within the agreed upon time, the Superintendent/President shall inform the board of directors of such further action as he/she considers appropriate, which may include a recommendation to the Governing Board for termination of the contract.

### **Revision of Rules and Procedures and Reports to the State Chancellor's Office**

Rules and procedures for the administration of auxiliary organizations may be revised as necessary by the Superintendent/President or designee. The board of directors of each auxiliary organization in good standing shall be promptly notified in writing of such revisions and be informed of the date by which any changes in the organization's procedures must be accomplished.

Any such revisions shall be submitted to the State Chancellor's Office for approval.

The District shall report, as may be required from time to time, on the operation of its auxiliary organizations.