

ADMINISTRATIVE REGULATION 3610 (3600)

SOUTH ORANGE COUNTY
COMMUNITY COLLEGE DISTRICT

BUSINESS (GENERAL INSTITUTION)

AUXILIARY ORGANIZATIONS, INCLUDING FOUNDATIONS

I. DEFINITIONS

- A. Board of Directors. The term board of directors as used herein means the governing board of an auxiliary organization.
- B. Board of Trustees. The term Board of Trustees as used herein means the Board of Trustees of the District.
- C. Board of Governors. The term Board of Governors as used herein means the Board of Governors of the California Community Colleges.
- D. The term Chancellor as used herein means the Chancellor of the District or designee.
- E. District. The term District as used herein means the South Orange County Community College District.
- F. Associated Students' Organization. The terms Associated Students' Organization, Student Association, Student Organization, ASIVC, or ASG as used herein means an organization formed by any group of students from a college of the District. All clubs and organizations recognized by an Associated Students' Organization shall be included in any auxiliary organization established by the Associated Students' Organization.

II. RECOGNITION AND ESTABLISHMENT OF AUXILIARY ORGANIZATIONS

- A. The Chancellor shall submit a recommendation to the Board of Trustees to establish an auxiliary organization when the organization will serve the District. The recommendation includes, but is not limited to, the following:
 - 1. The purpose(s) for which the auxiliary organization is to be established;
 - 2. Whether the proposed auxiliary organization will primarily serve the District or a particular college;
 - 3. The functions which the auxiliary organization is intended to perform;
 - 4. The proposed bylaws and articles of incorporation for the auxiliary organization, including the size and composition of the board of directors; and
 - 5. The proposed written agreement between the auxiliary organization and the District, as required in Title 5, Section 59257.

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- B. The process of recognition shall be as follows:
 - 1. When the Chancellor receives a request to establish an auxiliary organization, the Chancellor shall submit a recommendation concerning the establishment of said organization to the Board of Trustees.
 - 2. The Board of Trustees shall hold a public hearing on each recommendation concerning the establishment of an auxiliary organization.
 - 3. 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.
- C. At such time as the District recognizes an auxiliary organization, it shall submit to the state Chancellor's Office any written agreements with the auxiliary organization, as well as the articles of incorporation, bylaws, or other governing instruments.

III. RECOGNIZED SERVICES, PROGRAMS AND FUNCTIONS

- A. Auxiliary organizations may be recognized and established by the Board of Trustees to perform the following services, programs and functions:
 - 1. Associated Students' Organization activities;
 - 2. Bookstores;
 - 3. Food and campus services;
 - 4. Student union programs;
 - 5. Facilities and equipment;
 - 6. Loans, scholarships, grants-in-aid;
 - 7. Workshops, conferences, institutes, and federal projects;
 - 8. Alumni activities;
 - 9. Supplementary health services;
 - 10. Gifts, bequests, devises, endowments, and trusts; and
 - 11. Public relations programs.
- B. No auxiliary organization shall be authorized by the Board of Trustees to engage in any other function unless the Board of Governors amends Section 59259 of Title 5 by adding said function to the list of approved functions of auxiliary organizations.
- C. 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.
- D. Operations of commercial services on a campus shall be self-supporting when operated by an auxiliary organization.

Adopted: 06-28-10
Revised: 05-09-19
Revised: 09-10-20

E. The Board of Trustees has authorized the following auxiliary organizations:

1. ATEP Facilities Corporation
2. Irvine Valley College Foundation
3. Saddleback College Foundation
4. Foundation for the South Orange County Community College District

IV. AUTHORITY AND RESPONSIBILITY OF AUXILIARY ORGANIZATIONS

- A. 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.
- B. All services, programs, and activities that may be undertaken by an auxiliary organization must be for the purpose of providing activities that are an integral part of the educational programs of the District. Upon Board of Trustees approval, an auxiliary organization may assume any of the services, programs, and activities listed in these regulations in order to:
 1. provide the fiscal means and the management procedures that allow the District to carry on educationally related activities not normally funded by State apportionment;
 2. 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 District's procedures;
 3. provide fiscal procedures and management systems that allow effective coordination of the auxiliary activities with the District in accordance with sound business practices;
 4. be a highly visible conduit for individuals or entities to direct resources in a way that ensures donor intentions are fulfilled; or,
 5. provide services for the benefit of the District and its students.

V. COMPOSITION OF BOARDS OF DIRECTORS

- A. Any 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; and students.
- B. 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.
- C. 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. Neither the attorney nor the certified public accountant need be a member of the board of directors.

Adopted: 06-28-10
Revised: 05-09-19
Revised: 09-10-20

VI. CONDUCT OF BOARDS OF DIRECTORS

- A. 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.
- B. 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 both of the following conditions are met:
 - 1. 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.
 - 2. The contract or transaction is just and reasonable as to the auxiliary organization at the time it is authorized or approved.
- C. The provisions of Education Code Section 72678 above shall not be applicable if any of the following conditions are met:
 - 1. The contract or transaction is between an auxiliary organization and a member of the board of directors of that auxiliary organization.
 - 2. 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 or she is the owner or holder, directly or indirectly, of a proprietorship interest.
 - 3. 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.
 - 4. 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.
- D. 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 she or he is or is not a member of the board at the time such gain is realized.
- E. Conflict of interest statements shall be signed and discussed annually.

VII. BYLAWS

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

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Revised: 05-09-19
Revised: 09-10-20

1. 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.
 2. The size of the board of directors.
 3. That at least one public business meeting will be held each quarter. The board of directors shall conduct its business in public meetings in accordance with the provisions of the Ralph M. Brown Act, Government Code Section 54950, *et seq.*
 4. The time table for the preparation and adoption of its program and annual budget and the submission of both for review to the Chancellor or college president
 5. 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.
 6. The procedures for approving expenditures.
 7. The procedures for accepting gifts, donations, bequests, trusts and specially funded grants and other income.
- B. The auxiliary organization's bylaws (as well as the articles of incorporation and other governing instruments) shall become part of the implementing regulations adopted by the District Board of Trustees and submitted to the State Chancellor's Office for approval in accordance with Education Code Section 72672(c).

VIII. MASTER AGREEMENT BETWEEN DISTRICT AND AUXILIARY ORGANIZATIONS

- A. In the recognition and establishment of an auxiliary organization, there shall be a written agreement between the District and the auxiliary organization that sets forth the purposes of the auxiliary organization as permitted under this regulation, and Title 5, Sections 59257 and 59259.
- B. The written agreement shall be reviewed every five years to ensure that it corresponds with current federal, state, and/or local codes, rules, and regulations. If deemed necessary, the Foundation Executive Director and the District Vice Chancellor of Business Services or designee will work together to revise the agreement so that it is amenable to both parties.
- C. Should an auxiliary organization provide more than one service, program or function, such service, program or function may be authorized in one or more written contracts with the 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.*
- D. 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 District and the auxiliary organization is amended to provide otherwise.

Adopted: 06-28-10
Revised: 05-09-19
Revised: 09-10-20

- E. The agreement shall include, but is not limited to, the following provisions:
1. The function or functions that the auxiliary organization is to manage, operate, or administer.
 2. A statement of the reasons for administration of the functions by the auxiliary organization instead of by the District under usual District procedures.
 3. The areas of authority and responsibility of the auxiliary organization and the District or College.
 4. The facilities to be made available by the District to permit the auxiliary organization to perform the functions specified in the implementing regulations or written agreement.
 5. The charge or rental to be paid to the District by the auxiliary organization for any District facilities used in connection with the performance of its function. The charge or rental may be for less than fair rental value to the extent permitted by Section 81440(b) of the Education Code.
 6. The items defined as either tangible or intangible benefits when calculating the exchange of values for the District employees' salaries and benefits paid by the District that are assigned to the Foundation.
 7. A simple and stable method of determining in advance to what extent the organization shall be liable for indirect costs relating to federally sponsored programs.
 8. The responsibility for maintenance and payment of operating expenses.
 9. Proposed expenditures for public relations or other purposes, which would serve to augment District appropriations for operation of the District/college. 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 Chancellor 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.
 10. 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.
 11. The disposition to be made of net assets and liabilities on dissolution of the auxiliary organization or cessation of the operations under the agreement.
 12. The covenant of the auxiliary organization to maintain its existence throughout the period of the agreement and to operate in accordance with Sections 72670 - 72682 of the Education Code and with the regulations contained in Title 5, Sections 59250 et seq., as well as District Board Policy.

Adopted: 06-28-10
Revised: 05-09-19
Revised: 09-10-20

- 13. 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.
- 14. 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 Chancellor or college president.

IX. PERSONNEL

- A. 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, if any. (Education Code Section 72672)
- B. The aforesaid regulations shall not conflict with the implementing policies adopted by the Board of Trustees or with these regulations.
- C. 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 District employees performing substantially similar services. For those full-time employees who perform services that are not substantially similar to the services performed by 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.
- D. An auxiliary organization may contract with the District for the services of a District employee and reimburse the District for that portion of the employee's full-time assignment (and corresponding benefits) that is spent in providing said services if the tangible and intangible benefits provided by the Foundation do not exceed the amount of the employees' salaries and benefits.

X. ACCOUNTING AND REPORTING FOR AUXILIARY ORGANIZATIONS

- A. The fiscal year of the auxiliary organization shall coincide with that of the District.
- B. Each auxiliary organization shall develop an accounting system that is in accordance with generally accepted accounting principles.
- C. 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.
- D. Each auxiliary organization serving the District shall submit its programs and budgets for review at a time and in a manner specified by the Chancellor.
- E. Funds derived from indirect cost payments shall only be appropriated with the specific approval of the Chancellor. All uses of such funds shall be regularly reported to the District

Adopted: 06-28-10
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Board of Trustees.

- F. Should the Chancellor determine that any program or appropriation planned by an auxiliary organization is not consistent with District policy, the program or appropriation shall not be implemented. Further, should a program or appropriation that has received approval, upon review, be determined by the Chancellor to be operating outside the acceptable policy of the Board of Trustees or the District, then that program or appropriation shall be discontinued by direction of the Chancellor until further review is accomplished and an appropriate adjustment is made.
- G. The board of directors of an auxiliary organization shall approve all expenditure authorizations and fund appropriations. Appropriations of funds for use outside of the normal business operations of the auxiliary organization shall be approved in accordance with District policy and regulations by an officer designated by the District Board of Trustees.
- H. If the auxiliary organization receives or accrues in any fiscal year gross revenue of two million dollars (\$2,000,000) or more, it shall also include in its bylaws an audit committee appointed by the board of directors. The audit committee may include persons who are not members of the board of directors, but the member or members of the audit committee shall not include any members of the staff, including the president or chief executive officer and the treasurer or chief financial officer. If the auxiliary committee has a finance committee, it must be separate from the audit committee. Members of the finance committee may serve on the audit committee; however, members of the finance committee cannot comprise more than 50 percent (50%) or more of the audit committee. Moreover, the chairperson of the audit committee may not be a member of the finance committee.
- I. Members of the audit committee shall not receive any compensation from the auxiliary in excess of the compensation, if any, received by members of the board of directors for service on the board and shall not have a material financial interest in any entity doing business with the auxiliary. Subject to the supervision of the board of directors, the audit committee shall be responsible for recommending to the board of directors the retention and termination of the independent auditor and may negotiate the independent auditor's compensation, on behalf of the board of directors, unless the auxiliary is using the same independent auditor as the District.
- J. The audited financial statements shall be available for inspection by the Attorney General and shall be made available to members of the public no later than nine (9) months after the close of the fiscal year covered by the financial statements.

XI. RECORDS AND ANNUAL REPORT OF AUXILIARY ORGANIZATIONS

- A. Personnel and payroll records shall be maintained as permanent records by each auxiliary organization.
- B. Adequate records of all transactions of an auxiliary organization shall be maintained for a minimum of five years unless a longer period applies under Government Code Section 12599.7. Transactions of the organization include, but are not limited to, purchases, disbursements, and investments.

Adopted: 06-28-10
Revised: 05-09-19
Revised: 09-10-20

- C. An annual report shall be submitted to the board of directors of the auxiliary organization and to the Chancellor and college president. The report shall include, but is not limited to:
 - 1. All financial statements required to be filed with the state Chancellor’s Office,
 - 2. A description of major accomplishments of the organization,
 - 3. A description of improvements proposed for operation of the organization, if any, and
 - 4. A calculation of commensurate return showing the tangible and intangible benefits provided by the auxiliary organization.
- D. This requirement of an annual report shall not apply if the auxiliary organization receives less than \$25,000 in gross receipts during the fiscal year, provided, however, that the information specified above for inclusion in an annual report must be furnished to any director who requests it in writing.

XII. ANNUAL AUDIT

- A. Each auxiliary organization shall contract for and receive an annual fiscal audit or review (if allowable by IRS regulation) of any and all auxiliary funds. The audit/review shall be performed by an independent certified public accountant, pursuant to Education Code 72672(a), in accordance with generally accepted auditing standards. Should the auxiliary elect to secure fiscal audit services separately from the District, it will be at the expense of the auxiliary. Copies of the annual audit/review report shall be submitted to the Board of Trustees and to the state 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/reviews may be conducted as part of a fiscal audit of the District itself.
- B. 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:
 - 1. Publishing the audited financial statement in a campus newspaper; or
 - 2. Publishing a notice in a campus newspaper indicating the on-campus location where copies of the financial statement may be obtained or reviewed; or
 - 3. Publishing or noticing the audited statement in a campus bulletin or other appropriate medium if a campus newspaper is unavailable.

XIII. INSURANCE

- A. Insurance adequate to protect the operations as required by law, including but not limited to, the following, must be provided:
 - 1. Comprehensive general liability;
 - 2. Property and extended coverage, when applicable;
 - 3. All risks, money, and securities;

Adopted: 06-28-10
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4. Fidelity and performance bonds covering its chief fiscal officer;
 5. Automotive liability when applicable;
 6. Workers' compensation;
 7. Crime; and
 8. Directors and officers.
- B. In any insurance policy secured by the auxiliary organization, the District shall be named as additional insured.
- C. 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.
- D. The auxiliary organization may also seek supplemental coverage under the District's existing policies of coverage required to be carried by the District (e.g. property, crime, directors and officers) and, upon the auxiliary organization's written request to the District for such coverage, the District shall apply with the insurance provider, for proper endorsement with respect to the auxiliary organization's coverage. Any such coverage shall be subject to the insurance provider's limits, as may be set forth in the memorandum of coverage or other controlling policy underwriting documents. To the extent such endorsement increases the District's premiums, the increased cost shall be reimbursed to the District by the auxiliary pursuant to Title 5, Section 59257(j)(6). Districts are not required to apply for additional coverage, other than endorsement, or change insurance providers in order to accommodate the insurance coverage requirements or supplemental coverage requests of the auxiliary organization. However, when special events are hosted by the auxiliary organization, separate insurance coverage may be required by the District and paid by the auxiliary.

XIV. AUXILIARY ORGANIZATIONS: USE OF FACILITIES

- A. 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:
1. 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 at no cost to the auxiliary organization as permitted by Section 81440(b) of the Education Code.

XV. LIST OF AUXILIARY ORGANIZATIONS IN GOOD STANDING

- A. Annually, a Good Standing Self-Assessment must be completed by each auxiliary organization and submitted to the Chancellor and Board of Trustees for approval. All auxiliary organizations that, 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 Board of Trustees agenda item for approval.

Adopted: 06-28-10
Revised: 05-09-19
Revised: 09-10-20

- B. Auxiliary organizations achieve and maintain good standing by working cooperatively with the college/District and the Chancellor of the District to integrate their specific operations with those of the whole college community as established by the college president. Basic criteria for good standing status encompasses compliance with District policy, fiscal responsibility, social responsibility, good business practices and compliance with applicable statutes.
- C. If and when the Chancellor has reason to believe that a particular organization should be removed from the list of auxiliary organizations in good standing, the auxiliary board of directors shall be provided reasonable notice that a conference 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's notice to prepare a response to the issues that have been raised.
- D. Based upon such conference, the Chancellor shall decide whether the particular organization shall be removed from the list of auxiliary organizations in good standing. The District Board of Trustees may, in its sole discretion, remove such an auxiliary from said list, and may make such other provisions consistent with law as may be appropriate with respect to an auxiliary organization not included on said list.
- E. An organization so removed shall not be permitted to do any of the following:
 - 1. Use the name of the District or college;
 - 2. Have as a director any official in the District acting in her/his official capacity;
 - 3. Operate a commercial service for the benefit of the District or any of its colleges; and
 - 4. Receive gifts, property or funds to be used for the benefit of the District or any of its colleges.
- F. 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, or the auxiliary organization's bylaws.

XVI. COMPLIANCE REVIEW BY CHANCELLOR

- A. All auxiliary organization procedures and practices shall be reviewed to determine compliance with Education Code Sections 72670 *et seq.*, the regulations of Title 5, and the policies, rules, and regulations of the Board of Governors, and of the District. The Chancellor designates the District's Internal Auditor as 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.
- B. When the Internal Auditor 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 Trustees and the District, a recommendation concerning the items of noncompliance shall be communicated in writing to the Chancellor and to the board of directors of the auxiliary organization. The board of directors shall reply in writing

Adopted: 06-28-10
Revised: 05-09-19
Revised: 09-10-20

within one month, either describing the actions that will be taken, including timetable, to bring said procedures and practices into compliance; or describing the reasons why the board considers the procedures already to be in compliance.

- C. If the Internal Auditor 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 Chancellor and to the board of directors.
- D. 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 Chancellor shall inform the board of directors of such further action as he/she considers appropriate, which may include a recommendation to the Board of Trustees for termination of the contract.

XVII. REVISION OF RULES AND PROCEDURES AND REPORTS TO THE CCC
SYSTEM OFFICE

- A. Rules and regulations for the administration of auxiliary organizations may be revised as necessary by the Chancellor 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.
- B. Changes made to written agreements, articles of incorporation, bylaws or other governing instruments pertaining to any established auxiliary organization must be submitted to the California Community College Chancellor's Office pursuant to Title 5, Section 59265(c).
- C. The District shall report, as may be required from time to time, on the operation of its auxiliary organizations.

References:

Education Code Sections 72670 et seq.;
Government Code Sections 12580 et seq.;
Title 5, Sections 59250 et seq.

Adopted: 06-28-10
Revised: 05-09-19
Revised: 09-10-20