

NOTICE PUBLICATION/REGULATION SUBMISSION

PRINT

(See instructions on reverse)

STD. 400 (REV. 01-2013)

For use by Secretary of State only

OAL FILE NUMBERS	NOTICE FILE NUMBER	REGULATORY ACTION NUMBER	EMERGENCY NUMBER
Z-		2020-08-19-01P	

For use by Office of Administrative Law (OAL) only

2020 AUG 19 A 10:18

OFFICE OF
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY

Board of Governors of the California Community Colleges

AGENCY FILE NUMBER (if any)

A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE N/A		TITLE(S) N/A	FIRST SECTION AFFECTED N/A	2. REQUESTED PUBLICATION DATE N/A
3. NOTICE TYPE Notice re Proposed Regulatory Action		4. AGENCY CONTACT PERSON N/A	TELEPHONE NUMBER N/A	FAX NUMBER (Optional) N/A
OAL USE ONLY	ACTION ON PROPOSED NOTICE Approved as Submitted Approved as Modified Disapproved/ Withdrawn			NOTICE REGISTER NUMBER PUBLICATION DATE

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Auxiliary Organizations		1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)	
2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)			
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT	
		AMEND	
		59257, 59265	
TITLE(S) 5		REPEAL	
3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §§11349.3, 11349.4) <input type="checkbox"/> Emergency (Gov. Code, §11346.1(b))		<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §§11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))		<input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input checked="" type="checkbox"/> Effective other (Specify) 30 days after filed w/Secretary of State	
4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)			
5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs. title 1, §100)			
<input type="checkbox"/> Effective January 1, April 1, July 1, or October 1 (Gov. Code §11343.4(a))		<input type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> §100 Changes Without Regulatory Effect <input checked="" type="checkbox"/> Effective other (Specify) 30 days after filed w/Secretary of State	
6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY			
<input checked="" type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)		<input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal	
<input type="checkbox"/> Other (Specify)			

7. CONTACT PERSON Tanya Bosch - Regulations Coordinator	TELEPHONE NUMBER (916) 445-4826	FAX NUMBER (Optional)	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

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SIGNATURE OF AGENCY HEAD OR DESIGNEE

Marc LeForestier (Aug 13, 2020 10:13 PDT)

DATE

8-18-2020

TYPED NAME AND TITLE OF SIGNATORY

Marc A. LeForestier, General Counsel

Final Revisions to Title 5 Auxiliary Reimbursement Regulation

8-17-20

1. TITLE 5, SECTION 59257

Section 59257 of Article 2 of Subchapter 4.5 of Chapter 10 of Division 6 of Title 5 of the California Code of Regulations is amended to read:

§ 59257. Implementing Regulations.

Each district governing board wishing to establish an auxiliary organization must adopt implementing regulations, and submit such regulations to the Chancellor for approval. The implementing regulations must contain provisions which address at least the following subjects:

- (a) Provisions which set forth the district's method for recognizing an auxiliary organization, which procedure must include a public hearing prior to such recognition;
- (b) Provisions which limit authorized auxiliary organizations to those performing recognized functions described in section 59259;
- (c) Provisions which implement section 72674 of the Education Code, regarding composition and meetings of boards of directors of auxiliary organizations;
- (d) Provisions which implement subdivision (a) of section 72672 of the Education Code, regarding the audit of auxiliary organizations;
- (e) Provisions which implement subdivision (c) of section 72672 of Education Code, regarding salaries, working conditions, and benefits for full-time employees of auxiliary organizations;
- (f) Provisions which implement section 72675 of the Education Code, regarding expenditures and fund appropriations by auxiliary organizations. In implementing subdivision (b)(2) of section 72675, the district regulations may specify different standards for different types of auxiliary organizations;.
- (g) Provisions which establish recordkeeping responsibilities of auxiliary organizations;
- (h) Provisions which establish a procedure for periodic review of each auxiliary organization by the district to ensure that it is complying with sections 72670-, 72670.5, 72671, 72672, 72673, 72674, 72675, 72676, 72677, 72678, 72679, 72680, and 72682 of the Education Code; district implementing regulations; any written agreement with the district; and its articles of incorporation or bylaws; and

(i) Provisions which prohibit the district from transferring any of its funds or resources other than funds or resources derived from gifts or bequests, to any of its auxiliary organizations, when the purpose of such transfer is either to avoid laws or regulations which constrain community college districts or to provide 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 students with disabilities.

(j) Provisions which shall specify the following:

- (1) The function or functions which 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 college under usual district procedures;
- (3) The areas of authority and responsibility of the auxiliary organization and the college;
- (4) The facilities to be made available, if any, 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 specified shall not require involved methods of computation, and should be identified in sufficient time before its incurrence so that the auxiliary organization may determine to what extent it shall be liable therefor;
- (6) ~~The district~~ ~~Full reimbursement to the district~~ ~~may provide for services performed by~~ ~~district employees to perform services~~ under the direction of the auxiliary organization as ~~part of a documented exchange of value~~. ~~No more than 50% of t~~ ~~The form and manner of~~ ~~district reimbursement by an auxiliary organization~~ ~~must be agreed to by the district and~~ ~~auxiliary, and~~ ~~may be made in the form of non-monetary~~ ~~include tangible or intangible~~ benefits, that the auxiliary organization provides to a community college district, such as increased community awareness or other such benefits that are agreed upon by district officials and the auxiliary organization. Such non-monetary benefits shall be assigned a good faith reimbursement value by the district. Methods of proration where services are performed by district employees for the auxiliary organization shall be simple and equitable;

(a) Tangible benefits are financially quantifiable and may include: financial support to the college, student scholarships, and tuition waiver programs; contributions to student, athletic, and instructional programs; unrecovered costs; use of auxiliary services, products, or facilities; marketing or promotional events; cash payments; or similar benefits.

(b) Intangible benefits are non-monetary and qualitative in nature, and may include: promotion of the college's brand; maintenance and growth of donor data and protection of donor privacy; growth of college endowments and assets; social media engagement; enrollment growth due to funding support; in-kind services of auxiliary board members and executive staff; the performance of functions assigned to the auxiliary; improved relations with college constituencies; and other forms of good will, or similar benefits.

(7) A simple and stable method of determining in advance to what extent the auxiliary organization shall be liable for indirect costs relating to federally-sponsored programs;

(8) The responsibility for maintenance and payment of operating expenses;

(9) The proposed expenditures for public relations or other purposes which would serve to augment district appropriations for operation of the college. With respect to expenditures for public relations or other purposes which would serve to augment district appropriation for the college, 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 governing board shall name a designee who shall file with the governing board a statement of auxiliary organizations' policies on accumulation and use of public relations funds. The statement will 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 facilities owned or leased by the auxiliary organization and provisions for reserves;

(11) The disposition to be made of net assets on cessation of the operations under the agreement; and

(12) Provisions which require a 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 this subchapter as well as district implementing regulations.

In addressing the requirements of this subdivision in its district implementing regulations, a district may provide for such requirements in a written agreement or agreements with an auxiliary organization. The agreement shall provide for all requirements of this subdivision which have not been addressed in the district implementing regulations. Notwithstanding subdivision (e) of section 59255, if the requirements of this subdivision are provided for in the written agreement rather than the district's implementing regulations, the auxiliary organization may not be recognized by the district until the agreement is submitted to the Chancellor for approval.

Note: Authority cited: Sections 66700, 70901 and 72672, Education Code. Reference: Article 6 (commencing with Section 72670), Chapter 6, Part 45, Education Code. Sections

72670, 72670.5, 72671, 72672, 72673, 72674, 72675, 72676, 72677, 72678, 72679, 72680, and 72682, Education Code.

2. TITLE 5, SECTION 59265

Section 59265 of Article 2 of Subchapter 4.5 of Chapter 10 of Division 6 of Title 5 of the California Code of Regulations is amended to read:

§ 59265. Ongoing Responsibilities.

Each district governing board which establishes one or more auxiliary organizations shall:

- (a) ~~Ensure that an audit on each auxiliary organization is performed annually in the manner prescribed by subdivision (a) of section 72672 of the Education Code; and that a copy of said audit is submitted to the Chancellor;~~
- (b) ~~Ensure that each auxiliary organization publicly discloses, on an annual basis, the value of services performed by district employees under the direction of the auxiliary organization and a description of the commensurate benefits provided to the district by the auxiliary organization pursuant to subdivision (j)(6) of section 59257;~~
- (c) Submit any changes in district implementing regulations to the Chancellor for approval;
- (d) Submit to the Chancellor any changes made in any written agreement, articles of incorporation, bylaws or other governing instrument pertaining to any established auxiliary organization;
- (e) Periodically review each auxiliary organization for compliance with Education Code sections ~~72670-, 72670.5, 72671, 72672, 72673, 72674, 72675, 72676, 72677, 72678, 72679, 72680, and 72682;~~ the regulations contained in this subchapter and district implementing regulations; any written agreement; and the auxiliary organization's articles of incorporation, by-laws or other governing instrument. Such review shall be conducted in accordance with the procedure specified in the district implementing regulations;
- (f) Prepare and keep current a list of auxiliary organizations in good standing in the manner provided for in section 59263. A copy of the initial list of auxiliary organizations in good standing, as well as any updated version of such list shall be forwarded to the Chancellor; and
- (g) Report to the Chancellor, as may be required from time to time, on the operations of its auxiliary organizations.

Note: Authority cited: Sections 66700, 70901 and 72672, Education Code. Reference: Article 6 (commencing with Section 72670), Chapter 6, Part 45, Division 7, Title 3,

Education Code. Sections 72670, 72670.5, 72671, 72672, 72673, 72674, 72675, 72676, 72677, 72678, 72679, 72680, and 72682, Education Code.