

Comparing Auxiliary and Independent Foundations

AUXILIARY FOUNDATION	INDEPENDENT FOUNDATION
Purpose must be to promote or assist a community college. (Ed. Code, § 72670(d)(1).)	Purpose can be for any charitable purpose consistent with IRC Code 501(c)(3).
Gifts, funds, and property received must be used for the benefit of the community college. (Ed. Code, § 72670(d)(1).)	Expenditures may be for any purpose not prohibited under the IRS Code and not prohibited by the organization's bylaws.
May perform only functions that are an integral part of the community college educational program, such as scholarships, alumni activities, and public relations programs. (Title 5, § 59259)	May carry on any activities not prohibited under the Internal Revenue Code.
Audit must meet Title 5, California Dept. of Finance, and IRS regulations and standards. Must provide audit report to district. (Ed. Code, § 72672; Title 5, § 59270.)	No audit required unless annual gross revenue of \$2 million or more. Not required to provide any audit report to district.
Any of its directors are appointed or approved by the District's Trustees or selected, ex officio, from Trustees, employees, or students. (Ed. Code § 72670(d)(2).)	Selection of board members governed solely by organization's articles of incorporation and bylaws.
District CEO is responsible for ensuring foundation expenditures comply with district policies, propriety of expenditures, and financial reporting integrity. (Ed. Code, § 72672(b).)	Expenditures are subject to approval of foundation's governing board. No district oversight or control.
The foundation must fully reimburse the district for services performed by district employees. Up to 50% of the reimbursement may be in the form of non-monetary benefits that the foundation provides to the district, such as increased community awareness. (Title 5, § 59257(j)(6).)	District cannot provide publicly funded financial support (or services provided by district employees) to independent foundations. (Cal. Const. Art. XVI, § 6.) District can enter into a contract with an independent foundation that provides for a quid pro quo exchange of consideration.
The foundation is responsible for paying rent for use of district facilities, and is responsible for maintenance and payment of operating expenses. (Title 5, § 59257(5)(8).)	The same – must reimburse district the market value for use of public property, services, etc.
Must provide salaries, working conditions, and benefits that are comparable to those provided district employees performing similar services. (Ed. Code, § 72672.)	No requirement for salaries and benefits to be comparable to those provided for district employees.

**Education Code and Title 5 Requirements
Implementing Regulations for Auxiliary Organizations**

A district's board of trustees must adopt implementing regulations applicable to auxiliary organizations prior to designating an organization as an auxiliary organization of the district. (Title 5 § 59255.) The trustees are required to submit the regulations to the State Chancellor for approval. (Ed. Code § 72672(c).) The regulations must include the following requirements for auxiliary organizations and the district:

1. Establish an accounting and reporting system for the management and operation of auxiliary organizations and require annual audits. (Ed. Code § 72675(b), Title 5 § 59257(d).)
2. Establish financial standards and recordkeeping responsibilities that will ensure the fiscal viability of auxiliary organizations, including professional management, adequate working capital, and adequate reserves. (*Ibid.*; Title 5 § 59257(g).)
3. Establish procedures to ensure that transactions of the auxiliary organizations are within the educational mission of the district. (*Ibid.*)
4. Limit auxiliary organizations to performing recognized functions including scholarships, workshops, alumni activities, gifts, and public relations programs. (Title 5 §§ 59257(b), 59257.)
6. Provide for the periodic review of the auxiliary organization by the district for compliance with Education Code and Title 5 requirements, district regulations, the written agreement with the district, and the auxiliary organization's articles of incorporation and bylaws. (Title 5 §§ 59257(h), 59265(d).)
7. Prohibit the district from transferring funds from sources other than gifts to auxiliary organizations for the purpose of avoiding laws or regulations that constrain community college districts or provide the district with an unfair advantage with respect to any state funding mechanism. (Title 5 § 59257(i).)
8. Establish the function of the auxiliary organization, state the reason for the auxiliary to perform the function instead of the district, and specify the respective areas of authority and responsibility of the auxiliary organization and the district. (Title 5 § 59257(j)(1-3).)
9. Establish district facilities to be made available, if any, to the auxiliary and the charge to be paid by the auxiliary organization for use of the facilities. (Title 5 §§ 59257(j)(4-5).)
10. Require auxiliary organization to reimburse the district fully for services performed by district employees under direction of the auxiliary organization. No more than 50 percent of the reimbursement may be made in the form of non-monetary benefits. Non-monetary benefits shall be assigned a good-faith reimbursement value by the district. (Title 5 § 59257(j)(6).)

11. Require the auxiliary organization to pay for maintenance and operating expenses. (Title 5 § 59257(j)(7).)
12. Require a designee named by the trustees to file with the trustees the auxiliary organization's policies on accumulation of public relations funds, the purposes for which the funds will be used, and the procedures for control over expenditures of the funds. (Title 5 § 59257(j)(9).)
13. Require a covenant of the auxiliary organization to maintain its existence throughout the period of the written agreement and to operate in accordance with Education Code and Title 5 requirements, and the district's implementing regulations regarding auxiliary organizations. (Title 5 § 59257(j)(12).)
14. Any of the foundation's board of directors are either appointed or nominated by, or subject to the approval of the governing board of the district, an official of the district, or selected ex officio from the membership of the student body or the faculty or the governing board or the administrative staff of the district. (Ed. Code § 72670(d)(2).)
15. The foundation must retain a certified public accountant to perform an annual audit in accordance with the procedures prescribed by the Board of Governors of the California Community Colleges. (Ed. Code § 72672(a).) The auxiliary must publicly distribute its audited financial statement at a regularly scheduled meeting of the district's board of trustees and submit a copy to the board of governors. (*Ibid.*)
16. The foundation must comply with district regulations requiring the foundation to provide salaries, working conditions, and benefits for its full-time employees comparable to those provided by the district for its employees performing similar services. (Ed. Code § 72672(c).)
17. All foundation expenses must be approved by the foundation's board of directors; however, expenditures outside of the normal business operations of an auxiliary organization must be approved by a district officer designated by the district's board of trustees. (Ed. Code § 72675(a).)