



2026 ANNUAL CONFERENCE OAKLAND, JANUARY 11 - 13

AUXILIARY ORGANIZATIONS ASSOCIATION

**THE NEXT ERA OF AUXILIARIES
SHAPING TOMORROW**

WHO'S IN CHARGE HERE?

Understanding the Relationship
Between Stateside and Auxiliary
Organizations



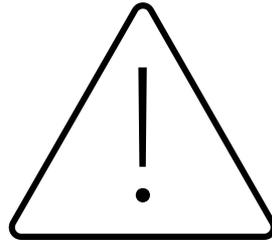
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PRESENTATION OVERVIEW

The purpose of this workshop is to provide an overview of the relationship and power dynamic between Stateside and the auxiliary organizations.

Disclaimer

This presentation is designed to be a general guide and should not be considered legal advice. For questions about specific situations, please consult an attorney.



STRUCTURE AND PURPOSE



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STRUCTURE AND PURPOSE

Auxiliary organizations of the CSU are organized and operated for the benefit of the CSU.

- Specifically, CSU auxiliary organizations “promote and assist” the CSU Board of Trustees by “engaging in activities that are essential and integral to the mission and purpose of the California State University.”

(Educ. Code § 89913(b); 5 CCR §§ 42401, 42500.)

- Although essential and integral to the activities of the CSU, and closely related, these functions are not normally included as a part of, the regular instructional program of the university.

(See *Associated Students v. Board of Trustees* (1976) 56 Cal.App.3d 667, 669; see also 5 CCR § 42401(b)-(d).)

(Educ. Code § 89913(b); see also 5 CCR § 42401.)

STRUCTURE AND PURPOSE

Under the Education Code, California State University auxiliary organizations are “independently governed corporations that are legally separate from the California State University.”

(Educ. Code § 89913(c).)



STRUCTURE AND PURPOSE

The structure and operation of CSU auxiliary organizations such as SDSURF are subject to many statutory frameworks, including those governing:

- ✓ Tax-exempt corporations, i.e., federal Internal Revenue Code and California's Revenue and Taxation Code;
- ✓ Nonprofit public benefit corporations, i.e., California Corporation Code; and
- ✓ CSU auxiliary organizations, i.e., California Education Code and its implementing regulations in Title 5 of the California Code of Regulations.

STRUCTURE AND PURPOSE

Typically, auxiliary organizations are organized and operate as a tax-exempt nonprofit public benefit corporation formed for charitable and scientific purposes. (Corp. Code § 5111.)



STRUCTURE AND PURPOSE



Under federal and State law, an organization is exempt from taxation if it is organized and operated for exempt purposes, including charitable, religious, educational, scientific, or literary purposes.

(Internal Revenue Code (IRC) § 501(c)(3); Revenue and Taxation Code (RTC) § 23701d(a).)

STRUCTURE AND PURPOSE

An exemption organization must not be organized or operated to benefit private interests. (IRC § 501(c)(3); RTC § 23701d(a).)

The assets of the organization must be irrevocably dedicated to exempt purposes, including upon dissolution or if it becomes impossible to perform the organization's specific purposes. (Id.)

STRUCTURE AND PURPOSE

Unlike many other nonprofit public benefit corporations that determine the number, composition, and if appropriate, voting membership of their respective boards (Corp. Code §§ 5150-5153), a CSU auxiliary organization's board of directors is required to include in its voting membership university administrators, staff, faculty, non-campus personnel, and students. (Educ. Code § 89903(a)(1); 5 CCR § 42602(b)(2).)



STRUCTURE AND PURPOSE

Moreover, where an auxiliary organization is primarily funded by student fees collected on a campus or system-wide basis, Education Code section 89903 requires that at least a majority of the board be students with full voting privileges, unless the Trustees determine that there are legal or contractual barriers. (Educ. Code § 89903(a)(2).)



AUTHORITY TO ACT



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AUTHORITY TO ACT



As a California nonprofit public benefit corporation, the activities and affairs of an auxiliary are “conducted and all corporate powers [are] exercised by or under the direction of the board [of directors].”

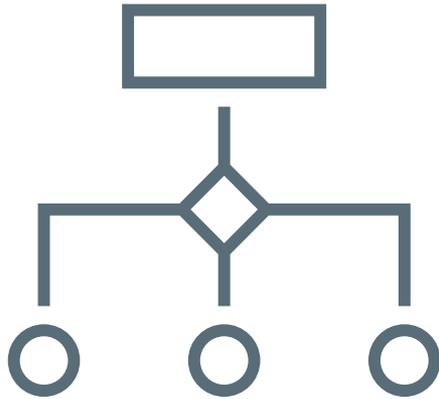
(Corp. Code § 5210(a).)

AUTHORITY TO ACT

Corporate powers include the ability to enter into contracts, bring or defend a legal action, or transfer property. (Corp. Code § 5140.)



AUTHORITY TO ACT



The auxiliary Board of Directors may further delegate the management of the corporation's activities and day-to-day operations, however its function to govern cannot be delegated. (Kennerson v. Burbank Amusement Co. (1953) 120 Cal.App.2d 157.)

AUTHORITY TO ACT

Although independently governed and legally separate entities, CSU auxiliary organizations are prohibited from operating outside the regulation and oversight of the CSU system.

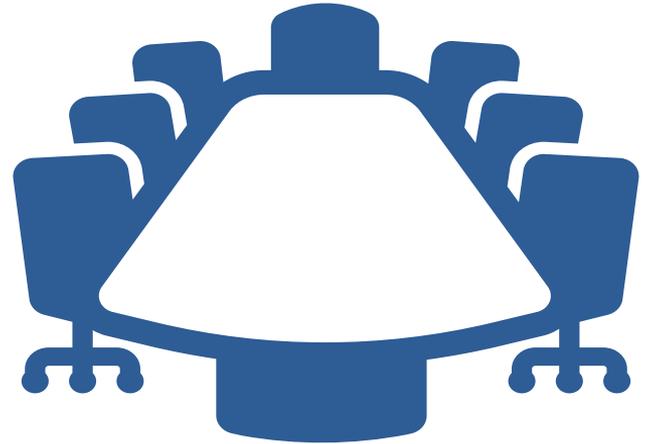
Specifically, auxiliary organizations must comply with the regulations and policies established by the CSU Trustees, the executive orders (EO) of the CSU Chancellor and, if serving a single campus, the policies and procedures governing the campus. (5 CCR § 42402; Executive Order (EO) 698.)

AUTHORITY TO ACT

As indicated above, the CSU Trustees have determined that it is appropriate for auxiliary organizations to perform certain “essential functions” that are “integral part[s] of the educational mission of a campus” and the CSU.

These functions include managing, operating and administering externally funded projects, and instructionally-related programs and activities, so long as they are conducted in accordance with applicable policies, rules and regulations.

(5 CCR § 42500(a).)



AUTHORITY TO ACT



Nevertheless, an auxiliary's Board remains responsible for directing the business, activities and affairs of the organization, including but not limited to, planning the year's programs and activities, adopting corporate policies and long-term plans, and approving all expenditures and fund appropriations. (Educ. Code § 89904.)

OVERSIGHT AND RESPONSIBILITIES OF UNIVERSITY IN RELATION TO THE AUXILIARY



Oversight and Responsibilities of University in Relation to the Auxiliary

Although CSU auxiliaries are legally separate corporations from the CSU system and the campuses they serve, they are designed to provide essential campus services consistent with the educational mission of the university.



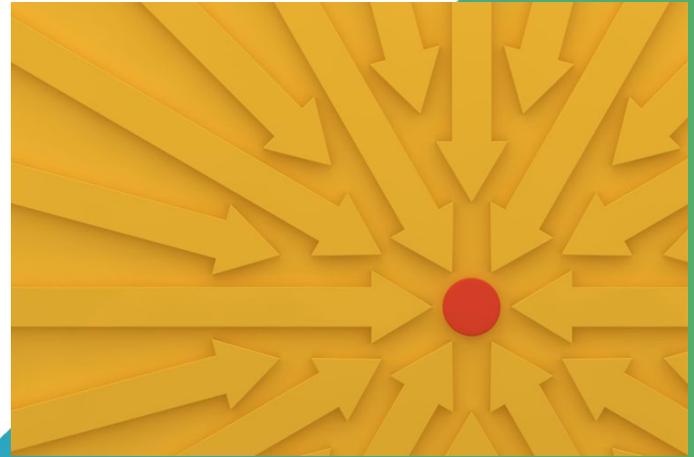
Oversight and Responsibilities of University in Relation to the Auxiliary

Pursuant to the Education Code, Title 5 and subsequent delegations of authority or responsibility, numerous entities and positions have the ability to impact the operations of a campus auxiliary organization, including the CSU Trustees, CSU Chancellor, campus president, campus chief financial officer (CFO), and the auxiliary's governing board.

Each has oversight responsibilities and, in some instances, the authority to significantly limit or impair the operations, including the employees, of an independently governed and legally separate corporate entity.

Oversight and Responsibilities of University in Relation to the Auxiliary

An auxiliary organization that primarily serves a single campus is required to report to the campus president and CFO in a variety of instances.



Oversight and Responsibilities of University in Relation to the Auxiliary

CFO

The operations and activities of the auxiliary are required to be integrated with Campus operations and policies and shall be overseen by the campus CFO or designee so as to assure compliance with objectives stated in Section 42401 of Title 5 (5 CCR § 42401.)



Oversight and Responsibilities of University in Relation to the Auxiliary

CFO

The oversight duties of the CFO include:

Providing the fiscal means and the management procedures that allow the campus to carry on activities providing those instructional and service aids not normally furnished by the State budget;

Providing effective operation and to eliminate the undue difficulty which would otherwise arise under the usual governmental budgetary, purchasing, and other fiscal controls; and

Providing fiscal procedures and management systems that allow effective coordination of the auxiliary activities with the campus in accordance with sound business practices.

(5 CCR § 42401.)

Oversight and Responsibilities of University in Relation to the Auxiliary

Campus President

The campus president “is responsible for the educational effectiveness, academic excellence, and general welfare of the campus, over which he [or she] presides.” (5 CCR § 42402.)



Oversight and Responsibilities of University in Relation to the Auxiliary

Campus President

With regard to a campus auxiliary organization, the campus president is responsible for:

- Ensuring the propriety of the auxiliary's expenditures (Educ. Code § 89900(b));
- Ensuring the integrity of the auxiliary's financial reporting (Id.);
- Requiring auxiliaries submit programs and budgets for review at a time and in a manner determined by the president (5 CCR § 42402);
- Reviewing the programs and appropriations of the auxiliary and ensuring compliance with CSU and campus policy (5 CCR § 42402)

Oversight and Responsibilities of University in Relation to the Auxiliary

Campus President (Continued)

With regard to a campus auxiliary organization, the campus president is responsible for:

- Requiring discontinuance of a program or appropriation if the campus president determines it to be inconsistent with CSU or campus policy (Id.);
- Compiling and submitting to the CSU Chancellor the public relations policies of campus auxiliaries (5 CCR § 42502(i); and
- As part of the oversight authority, a campus president also has the authority to utilize campus auxiliaries.

Oversight and Responsibilities of University in Relation to the Auxiliary

Campus President

As delegated by and through the CSU Chancellor's Executive Order 1059, a campus president is "responsible and accountable for prudent judgment in the utilization of campus auxiliaries ..."

(EO 1059(I)(C).)



Oversight and Responsibilities of University in Relation to the Auxiliary

Campus President

Included within that responsibility is the authority to determine whether the campus or an auxiliary should have ownership of a campus program or activity. (EO 1059(II)(C); “CSU Auxiliary Organization Compliance Guide,” Sec. 10.6.2(a).)

For a campus president to assign certain campus activities or programs to an auxiliary, the approval of the CSU Chancellor or designee is required, as well as the execution of a written agreement. (Attachment A, Operating Agreement, “CSU Auxiliary Organization Compliance Guide,” Sec. 10.6.)

When an auxiliary accepts ownership of a program or activity, “it also assumes the associated legal obligations and liabilities, fiscal liabilities, and fiduciary responsibilities.” (EO 1059(II)(C).) Indications of ownership include:

Oversight and Responsibilities of University in Relation to the Auxiliary

Campus President

Authority and discretion to contract for services or materials required by the activity;

- ✓ Responsibility for business losses;
- ✓ Legal liability as an owner or principal entity;
- ✓ Fiduciary obligations associated with the activity;
- ✓ Responsibility for establishment of operating and administrative policies; and
- ✓ Primary control or discretion over the expenditure of funds.

(EO 1059(II)(C).)

Oversight and Responsibilities of University in Relation to the Auxiliary

Campus President

Notwithstanding the foregoing, there is no law or regulation that expressly authorizes a campus president to remove a campus activity or program from an auxiliary.

Given that the assignment of an activity to an auxiliary that is a willing-recipient requires the approval of the CSU Chancellor, it is reasonable to assume that the removal of a contracted function from an auxiliary in good standing with the CSU Chancellor's Office would, at minimum, also require the approval of the CSU Chancellor or designee. (See 5 CCR § 42406.)



Oversight and Responsibilities of University in Relation to the Auxiliary

Campus President

An auxiliary that fails to meet one or more of the basic criteria for remaining in good standing may be placed on probation or suspended. This process requires that the CSU Chancellor follow specific procedures, including providing the auxiliary with notice of the violations and opportunity to respond. (Id.)



Oversight and Responsibilities of University in Relation to the Auxiliary

University Generally

Every five years, the campus must review an auxiliary to ensure the operating agreement between the auxiliary and the CSU is current and the auxiliary's activities are in compliance with the agreement. (Id.) The CFO's review is confirmed by either updating the operating agreement or submitting a letter to the campus president with a copy to the CSU Chancellor's Office certifying that the review was conducted. (5 CCR § 42401.)



Oversight and Responsibilities of University in Relation to the Auxiliary

University Generally

To exercise responsibility over the entire campus program, all campus auxiliaries must submit annual budgets and programs to the university president for review and approval. (5 CCR § 42402.)

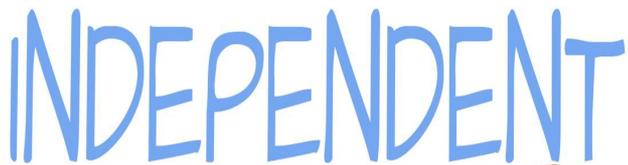
Once the auxiliary board approves an annual budget, it is required to submit the budget to the university president for approval. If the President determines the auxiliary's budget, expenditures or a program is not consistent with CSU or campus policies, the President may instruct the auxiliary to refrain from a specific program or appropriation until further review and, if necessary an appropriate adjustment is made. (Id.)

EXCESSIVE CONTROL



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EXCESSIVE CONTROL



INDEPENDENT

However, where a campus controls and dominates the programs or activities of an auxiliary organization, the campus effectively disregards the auxiliary organization's independent corporate existence.

EXCESSIVE CONTROL

Under California laws governing parent and subsidiary corporations, if there is evidence that corporate formalities are not maintained, or that the subsidiary is held out as the agent of the parent, the subsidiary may appear to be an “alter ego” of the parent corporation. (Sammons, supra, 205 Cal.App.3d 1427.)



EXCESSIVE CONTROL

Factors indicating control include, but are not limited to, the following:

Parent prepares the subsidiary's annual sales plan and budget;

Both parent and subsidiary are engaged in same or similar services;

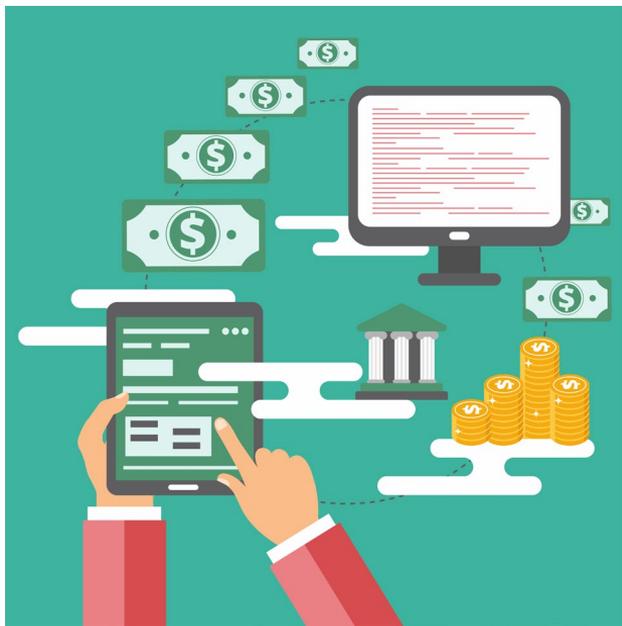
Salary checks for subsidiary's employees are drawn in the parent's corporate offices;

The parent corporation frequently exercises the power to change the subsidiary's general manager; and

The parent's advertising describes services of the subsidiary without mentioning that these services were performed by the subsidiary.

(Mathes v. National Utility Helicopters Ltd. (1977) 68 Cal.App.3d 182, 190-191 [the court found jurisdiction over the California parent company].)

EXCESSIVE CONTROL



If a campus violates the indicators of ownership identified in EO 1059, its actions likely have the effect of treating the auxiliary organization as an agent of the university, and both the campus and CSU may be found responsible for the legal and fiscal obligations of the auxiliary organization and its activities. (Sammons Enters v. Superior Court (1988) 205 Cal.App.3d 1427, 1433.)

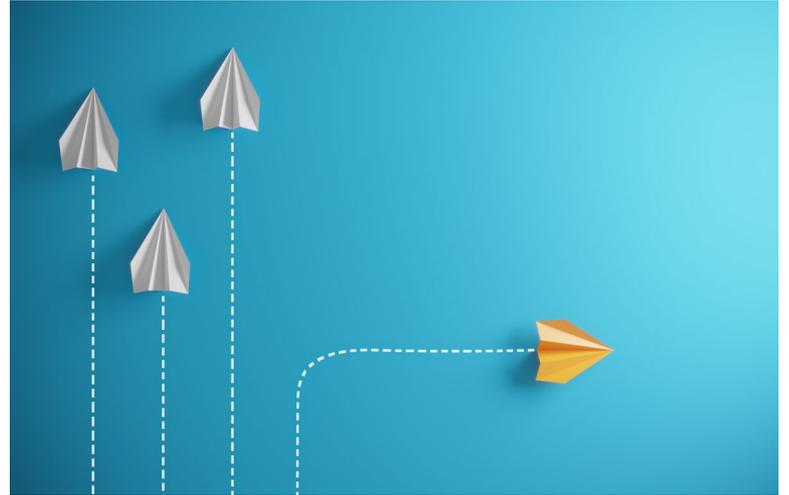
EXCESSIVE CONTROL



While an auxiliary organization must submit its programs and budget to the campus “at a time and in a manner specified by the president” (5 CCR § 42402), the campus does not have the authority to authorize its CFO to act as an agent of the auxiliary organization.

EXCESSIVE CONTROL

By doing so, the campus risks appearing to have pervasive power and control over the auxiliary organization, in violation of the separate corporate status of the auxiliary organization and the powers of the Board of Directors that make the auxiliary organization legally separate from the campus.



Any Questions?





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