



May 16, 2003

MEMORANDUM

TO: Presidents, State-operated Campuses

FROM: Brian T. Stenson *Brian*

SUBJECT: Foundation, Auxiliary Services Corporation (ASC), and Alumni Association Guidelines

*Office of the
Vice Chancellor for
Finance and Business*

*State University Plaza
Albany, New York
12246*

At its April 2003 meeting, the State University of New York Trustees approved a resolution adopting revised guidelines for campus-related foundations and ASCs, and new guidelines for Alumni Associations. The guidelines address the respective roles of each of the three campus-related entities in assisting the campus in meeting its goals and objectives. These guidelines and the Trustees resolution are enclosed for your reference.

As you know, the guidelines were developed with the help of a task force established by the Chancellor for this purpose and also through the help of various State University constituency groups. Each specific campus was also given an opportunity to provide input as the guidelines were being developed. We thank you for your significant contribution in bringing these guidelines to fruition.

Pursuant to the resolution, implementation of these guidelines is to begin July 1, 2003. As you can appreciate, with their implementation will come the need to address certain transition issues. Therefore, we ask you to distribute these guidelines to those organizations on your campus that are affected and begin to address changes that may be necessary to conform to the new guidelines. Organizing documents such as articles of incorporation and bylaws may be affected and require change. The activities currently conducted by one organization may need to be transferred to another organization authorized to conduct such activities under the new guidelines. Because of the nature of certain activities and arrangements, it may be necessary for those activities to be grandfathered on an exception basis. While we would expect that the need for exceptions would be limited, if a

campus feels it is necessary, a written request to do so should be sent to my office for review.

To assist campuses in the overall process, we are also working on changes to the model contracts that campuses use in contracting with the campus-related organizations. If current contracts are expected to expire in the near future, we recommend that the campus wait until the new model contract becomes available to renew the contract with the affected organization. The model contracts need to be reviewed by the Office of the State Comptroller, so once that process is complete, we will forward them to each campus.

Thank you again for your assistance with this important initiative. If you have any questions or have identified implementation issues, please feel free to contact Andy Edwards or me.

Attachments

Copy: Chancellor King
Campus Business Officers
W. Diesel
A. Edwards
D. Richter
M. Ellerman
J. Fazioli
P. Wiater

Resolved that the Chancellor, or designee be, and hereby is authorized to develop supplementary Guidelines, not inconsistent herewith, in the implementation of these Guidelines.

Background

The Task Force on Campus-Related Entities was established to examine the roles of and interrelationships among the three different types of organizations that operate as legally independent corporate entities in association with State University of New York campuses. These entities, specifically Campus-Related Foundations, ASCs, and Alumni Associations, were authorized to enable the campuses to engage in activities in support of the campus mission but outside of the traditional strictures governing finances and operations of public entities in New York State.

The objectives of the study were to reassess the respective roles of each of these entities, to examine the extent to which each provides the State University campuses with the powers and flexibility they need to achieve the goals set out in RETHINKING SUNY and other Policy documents, and to review the oversight mechanisms available to campuses, System Administration and the Trustees.

The Task Force included campus officers and representatives of the entities. The Faculty Senate and Student Assembly were also represented. Several meetings were held to investigate the history, evolution and activities of each Campus-Related entity. A report incorporating findings and recommendations was issued by the Task Force.

Policies governing the establishment and operation of these three entities are outdated, and have not kept pace with rapid developments in the higher education environment. As a result, the lines of distinction between, for instance, ASCs and Foundations, have become blurred. Foundations are now engaged in activities that, in some cases, far transcend their original charge of supporting the fundraising activities of the campus, including development, bookstores, parking operations, continuing education programs, and other nontraditional business ventures such as exclusivity arrangements with vendors (e.g., pouring rights, cell tower leases, etc.). There is also a real concern that, at least at some campuses, these wide-ranging operations may be diluting the Foundation's ability to focus on campus development and fundraising support efforts.

ASCs have been encouraged to become more entrepreneurial resulting in the expansion of services beyond traditional ASC activities such as food service, vending and bookstore operations. Campuses increasingly look to ASCs to fully fund the renovation of facilities (e.g., dining, bookstore). With

expanding operations, the ASCs are becoming more complex, multi-million dollar corporations relying on a Board of Directors limited to faculty, students, and staff.

Formal policies governing Alumni Associations have never been adopted by the State University Board of Trustees, and there is no established linkage between Alumni Association activities and campus and Foundation fundraising.

Finally the Policies regarding the governance of all three entities, and their relationship to the campus President, do not effectively underscore the role of these entities as one of support to the campus mission.

Accordingly, significant changes are warranted in the Policies and Guidelines governing these entities to ensure that each operates as effectively as possible to support the overall campus mission and priorities, and that they do so in a structure that provides strong and appropriate oversight and accountability. As campuses become more entrepreneurial and search for alternative sources of revenues, effective and efficient Campus-Related entities will help the State University reach the next level in its drive to become a premier institution of American public higher education. This resolution formally adopts revised Guidelines for Campus-Related Foundation and ASCs and new Guidelines for Alumni Associations. Campuses should begin to implement the new Guidelines effective July 1, 2003 with the understanding that a transition period may be required for full implementation. In certain limited cases, exceptions to the Guidelines will be granted.

The State University of New York Guidelines for Campus-Related Foundations

I. Authority

On April 29, 2003, the State University Board of Trustees adopted the following Guidelines for Campus-Related Foundations (Trustees' Resolution 2003-39). These Guidelines supercede Guidelines established originally by Trustees' Resolution 75-151, dated May 28, 1975, amended by Trustees' Resolution 82-141, dated May 26, 1982, and further amended by Trustees' Resolution 01-17, dated June 19, 2001. These Guidelines were developed as a result of the work of a Task Force established by the Chancellor to clarify the role of campus-related organizations (Foundations, Auxiliary Services Corporations (ASC), and Alumni Associations) operating in support of the overall campus mission. These Guidelines are effective July 1, 2003. The Chancellor is also authorized by Trustees' Resolution 2003-39 to develop supplementary guidelines, not inconsistent herewith, in the implementation of these Guidelines.

II. Transitional Provisions

It is understood that as of the effective date of these Guidelines, a Campus-Related Foundation may be structured or engaged in activities that would be inconsistent with the letter of the Guidelines. In such cases this entity may maintain its current structure or continue providing such services, following a case-by-case review by, and with the approval of, the campus President and the Chancellor or designee. If such variances to these University-wide Guidelines are to continue, appropriate provisions must be included in any relevant contract executed between the campus and the Foundation.

III. Mission and Responsibilities

As part of a coordinated fundraising effort led by the President, the Foundation supports the fundraising efforts of the campus. The Foundation and the State University provide the campus with mechanisms to receive and manage gifts and make these revenues available to the campus to support approved campus programs and activities. The Foundation also is the primary entity that manages real property and other assets not managed by the campus. **Foundations should become the major entity charged with activities and functions not specifically vested with the campus or other entities on campus.**

Accordingly, a Foundation may engage in the following activities:

- Receive and manage gifts in support of campus programs. In the exercise of this responsibility the Foundation shall:

- ensure that the proceeds of campus fundraising are appropriately recorded, credited, acknowledged, and administered based on legal requirements and donor stewardship parameters, where applicable, as defined in the nationally adopted “Donor Bill of Rights” and the Association of Fundraising Professionals “Code of Ethical Principles and Standards of Professional Practice”; and
 - develop, administer, and communicate a policy on endowment funds management, including asset allocation, the selection of investment managers and the spending formula.
- Receive and acquire, on behalf of the campus, real and personal property that supplement State investments and provide a mechanism to meet campus facility requirements in areas such as student housing that are self-funding in nature.
 - When a campus ASC does not exist or is not actively engaged in the activities for which it was established, perform the “typical” ASC responsibilities, with appropriate student and faculty participation and subject to other conditions required by the State University, at the discretion of the campus President. These activities could also be conducted through a campus Income Fund Reimbursable (IFR) structure.
 - Provide administrative support (payroll, purchasing, etc.) to the ASC and the Alumni Association, at the discretion of the campus President.

Foundations are prohibited from engaging in the following activities: 1) instructional and credit-bearing programs, 2) sponsored programs (which are administered by The Research Foundation of State University of New York), and 3) in general, activities that generate revenue from the use of State property (e.g., cell tower leases and pouring rights), or that are prohibited by law/policy/regulation. The use by the Foundation of the campus name and marks for fundraising purposes may be authorized pursuant to the contract between the Foundation and the campus.

Exceptions to these restrictions must be approved by the Chancellor or designee.

IV. Structure

The Charter or Certificate of Incorporation of the Foundation should relate to the State University campus it will benefit in terms of purposes, objectives and programs. The primary Foundation must be a non-profit corporation organized and existing under the laws of the State of New York, tax-exempt under §501(c)(3) of the Internal Revenue Code (IRC), and classified as a “supporting organization” to the campus under §509(a)(3) of the IRC, unless a different §509 classification would be more appropriate under the circumstances particular to the purpose of the corporation.

The Foundation is authorized to establish one or more affiliates or, under special circumstances, single member Limited Liability Corporations (the single member must be a tax-exempt entity) to the extent that it is involved in activities other than fundraising. Any affiliate or single member Limited Liability Corporation should also be a 501(c)(3) corporation and classified as a "supporting organization" to the primary Foundation under §509(a)(3) of the IRC, unless a different §509 classification would be more appropriate under the circumstances particular to the purpose of the corporation. The majority of the members of the board of directors of each affiliate should be members of the board of directors of the primary Foundation. No members of the campus council may serve on the board of the Foundation. Any exceptions to this structure require the campus President's written approval in consultation with the Chancellor or designee.

V. Linkage to Campus

A formal contract, in substantial accord with the model contract developed by the State University, terminable in whole or part with 45 days written notice given by the State University, extending for a period of no more than 10 years, and subject to the review and approval of the Chancellor or designee (and external State agencies when required), must be executed between the campus and the primary Foundation, authorizing it to operate on campus, and enumerating its activities and those of each affiliate or single member Limited Liability Corporation it establishes, and providing that each such organization is bound by the same guidelines governing the primary Foundation. Each activity category authorized to the Foundation should be identified in the contract, with written contract amendments required for new activities.

The campus President or designee will be an *ex officio*, voting member of the Board of Directors of the primary Foundation, but may not serve as President of the Foundation.

VI. Accountability and Reporting

Each Foundation must prepare annual financial statements in conformity with generally accepted accounting principles and have them audited by an independent certified public accounting firm or sole practitioner (independent auditor) in accordance with generally accepted auditing standards. To enable the State University to include pertinent information in its annual financial statements, the audit must be completed within 90 days after the close of the Foundation's fiscal year. The independent auditor may be appointed for no more than a five-year term, after which each Foundation must resolicit these services through a competitive procurement process. No certified public accounting firm or sole practitioner can serve as the independent auditor for more than two consecutive five-year terms, after which the firm is not eligible to serve again as the independent auditor until not less than a three-year intervening period has elapsed. The books and records, financial condition, operating results, and program activities of the Foundation are also subject to periodic audit by the University Auditor. The primary Foundation (and affiliate(s) and single member Limited Liability Corporation(s)) may

also be subject to audits by outside regulatory bodies to the extent allowed by law. All audit reports from whatever source, including the certified (consolidated) financial statements and management letter of the primary Foundation (and affiliate(s) and single member Limited Liability Corporation(s)) must be transmitted to the campus President and the Offices of the Vice Chancellor for Finance and Business and University Auditor for review and acceptance.

The articles of incorporation and other organizing documents of a Foundation (and any affiliate or single member Limited Liability Corporation) must provide that the net assets of the organization be distributed to the campus or other campus-approved entity organized for similar purposes in the event that the Foundation (or affiliate or single member Limited Liability Corporation) is dissolved. Dissolutions and dispositions of related net assets are subject to all applicable laws, regulations, and restrictions and unless otherwise stated, the net assets revert to the campus or campus-approved organization.

The State University of New York Guidelines for Auxiliary Services Corporations

I. Authority

On April 29, 2003, the State University Board of Trustees adopted the following Guidelines for Auxiliary Services Corporations (ASCs) (Trustees' Resolution No. 2003-39). These Guidelines supercede Guidelines originally established by Trustees' Resolution 75-330, dated December 17, 1975 and amended by Trustees' Resolution 92-104, dated May 27, 1992. These Guidelines were developed as a result of the work of a Task Force established by the Chancellor to clarify the role of campus-related organizations (Foundations, ASCs, and Alumni Associations) operating in support of the overall campus mission.

These Guidelines are effective July 1, 2003. The Chancellor is also authorized by Trustees' Resolution 2003-39 to develop supplementary administrative guidelines, not inconsistent herewith, in the implementation of these Guidelines.

II. Transitional Provisions

It is understood that as of the date of implementation of the Guidelines, an (ASC) may currently be structured or engaged in activities that would be inconsistent with the letter of the Guidelines. In such cases, it may be possible for these entities to maintain their current structure or continue providing such services, following a case-by-case review by and approval of the campus President and the Chancellor or designee. If such variances to these University-wide Guidelines are to continue, appropriate provisions must be included in the contract executed between the campus and the ASC.

III. Mission

ASCs are generally authorized to operate a defined set of auxiliary services where students and faculty/staff have a significant interest in the quality and price of the services provided (excluding residence halls). An ASC may also provide services to campus entities, University hospitals, clinics, long-term care facilities (e.g., Long Island Veterans Home), and members of the public at events that have an educational purpose or that are social events whose purpose will directly benefit the campus.

IV. Responsibilities

The ASC is authorized to provide the campus with a defined set of services, as follows:

- Food service including concessions and pouring and similar rights.
 - Bookstores, campus stores, and computer stores.
 - Amusements, vending, and laundry operations.
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- Other student/faculty-related services as defined by the ASC contract. Some examples are: ID card operations, cable television, banking services, telecommunication services, hair salon.
- Administrative support (payroll, purchasing, etc.) provided to independent third-parties related to the campus, including, but not limited to student government organizations, and alumni associations, but not including campus-based foundations.
- Except in concert with and under the direct supervision of the campus development office, the ASC would be prohibited from active solicitation of gifts or bequests.

The use by the ASC of the campus name and marks for fundraising purposes would be permitted pursuant to provisions contained in its contract with the campus.

V. Structure

The ASC (the primary corporation) must be a non-profit corporation organized and existing under the laws of the State of New York, tax-exempt under §501(c)(3) of the Internal Revenue Code (IRC), and classified as a “supporting organization” to the campus under §509(a)(3) of the IRC, unless a different §509 classification would be more appropriate under the circumstances particular to the purpose of the corporation. The primary corporation would be authorized to establish one or more affiliates or, under special circumstances, single member limited liability corporations (the single member must be a tax-exempt entity) to the extent that it is involved in auxiliary enterprises of a nature other than as defined above. Any affiliate or single member limited liability corporation would also be a 501(c)(3) corporation and classified as a “supporting organization” to the campus under §509(a)(3) of the IRC, unless a different §509 classification would be more appropriate under the circumstances particular to the purpose of the corporation. The majority of the members of the board of directors of any affiliate or single member limited liability corporation would be comprised of and supervised by members of the board of the primary corporation. The campus will oversee the activities of the ASC through a contract with the campus and representation on the board of directors of the ASC. Any exceptions to this structure would require the campus President’s written approval in consultation with the Chancellor, or designee.

The ASC will continue to be the main campus entity representing students and faculty in the management of services where these constituencies have the dominant interest. As such, the Board of Directors of the ASC would consist of faculty, students, and officers of the administration of the campus, and may further include alumni and local business leaders. No members of the campus council, other than the student representative, may serve on the board of the ASC. The student constituency shall have not less than 1/3, but no more than 1/2 of the voting membership on the Board, including any student serving in the capacity of a campus council representative. Any faculty members shall be appointed by the campus faculty governance organization. The campus President may appoint no more than two voting members from the local business community who have management expertise in areas related to the services provided by the ASC.

VI. Linkage to Campus

The campus President or designee is an *ex officio*, voting member of the Board of Directors of the primary corporation. A formal contract, terminable in whole or part with 180 days written notice given by either party, extending for a period of not more than 10 years and subject to the review and approval of the Chancellor or designee (and external State agencies when required), must be executed between the campus and the primary ASC, authorizing it to operate on campus, and enumerating its activities and those of each affiliate or single member limited liability corporation it establishes, and providing that each such organization is bound by the same guidelines governing the primary ASC. Each activity category authorized to the corporation would be identified in the contract, with written contract amendments required for new activities.

VII. Accountability and Reporting

Each ASC must prepare an annual financial statement in conformity with generally accepted accounting principles and have an audit conducted by an independent certified public accounting firm or sole practitioner (independent auditor) in accordance with generally accepted auditing standards. To enable the State University to include pertinent information in its annual financial statements, the audit must be completed within 90 days after the close of the ASC's fiscal year. The independent auditor may be appointed for no more than a five-year term, after which the ASC must resolicit these services through a competitive procurement process. No certified public accounting firm or sole practitioner can serve as the independent auditor for more than two consecutive five-year terms, after which the firm or sole practitioner is not eligible to serve again as the independent auditor until not less than a three-year intervening period has elapsed. The books and records, financial condition, operating results, and program activities of the ASC would also be subject to periodic audit by the Office of the University Auditor. The primary ASC (and any affiliate(s) and single member limited liability corporation(s)) may also be subject to audits of outside regulatory bodies to the extent allowed by law. All audit reports from whatever source, including the certified (consolidated) financial statements and management letter of the primary ASC (and any affiliate(s) and single member limited liability corporation(s)) must be transmitted to the offices of the campus President and the Vice Chancellor for Finance and Business and University Auditor for review and acceptance.

Provisions in the articles of incorporation and other organizing documents of the ASC (and any affiliate(s) or single member Limited Liability Corporation(s)) must provide that the net assets of the organization shall be distributed to the campus or other campus approved entity organized for similar purposes in the event that the ASC (or affiliate or single member Limited Liability Corporation) is dissolved. Dissolutions and dispositions of related net assets are subject to all applicable laws, regulations, and restrictions, and unless otherwise stated, the net assets revert to the campus or campus-approved organization.

The State University of New York Guidelines for Campus-Related Alumni Associations

I. Authority

On April 29, 2003, the State University Board of Trustees adopted the following Guidelines for Campus-Related Alumni Associations (Trustees' Resolution 2003-39). These Guidelines were developed as a result of the work of a Task Force established by the Chancellor to clarify the role of campus-related organizations (Foundations, Auxiliary Services Corporations, and Alumni Associations) operating in support of the overall campus mission.

These Guidelines are effective July 1, 2003. The Chancellor is also authorized by Trustees' Resolution 2003-39 to develop supplementary guidelines, not inconsistent herewith, in the implementation of these Guidelines.

II. Transitional Provisions

It is understood that as of the effective date of these Guidelines, an Alumni Association may currently be structured or engaged in activities that would be inconsistent with the letter of the Guidelines. In such cases, this entity may maintain its current structure or continue providing such services, following a case-by-case review by the campus President and the Chancellor or designee. If such variances to these University-wide Guidelines are to continue, appropriate provisions must be included in the contract executed between the campus and the Alumni Association.

III. Mission

The Alumni Association serves as the liaison between the campus (or faculty/school) and its alumni in order to foster and maintain close and mutually beneficial ties. The Alumni Association:

- Is a partner in the recruitment of students and in career placement of graduating students.
 - Stimulates the interest of the alumni and community in the campus (faculty/school).
 - Helps extend the reputation and influence of the campus (faculty/school).
 - Is an advocate for the campus with key partners in the public and private sectors.
 - Assists in and supports the activities of the campus in fundraising as directed by the campus for student recruitment, governmental affairs, and other areas which will advance the goals and objectives of the campus.
 - Solicits and receives selected income to meet the needs of the Alumni Association.
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IV. Responsibilities

The Alumni Association should have defined powers and duties, which may include:

- Developing programs that support the goals and objectives of the campus, especially in campus fundraising, as directed by the campus.
- Programming in support of alumni, including organizing on- and off-campus events such as reunions and homecoming activities, travel opportunities, networking, printed and electronic communications, etc.
- Contracting with the campus to provide residence halls, under the provisions of §355(2)(i) of the State Education Law. However, in doing so, the Alumni Association must contract with the campus Foundation or an affiliate thereof, or receive prior written approval from the campus to contract with another entity for construction, financing, and development of residence halls.

The use by the Alumni Association of the campus name and marks for fundraising purposes is permitted pursuant to the contract with the campus.

V. Structure

Alumni activities under these Guidelines must be organized and conducted under one of two alternative structures, at the option of the campus president. Any exceptions to this structure would require the campus President's written approval in consultation with the Chancellor or designee:

1. A campus's Alumni Association(s) may be a non-profit corporation organized and existing under the laws of the State of New York, tax-exempt under §501(c)(3) of the Internal Revenue Code (IRC), and classified as a "supporting organization" to the campus under §509(a)(3) of the IRC. If there are multiple Alumni Associations on campus (e.g., associations for different colleges or schools), each should be similarly incorporated. No members of the campus council may serve on the board of the Alumni Association(s).

2. Alternatively, a campus may choose to conduct and finance the alumni affairs program under the auspices and financial and operational oversight of its development office. Under this latter structure, (a) an advisory panel(s) representing the alumni constituencies on campus may be constituted to support alumni affairs of the campus, and (b) the campus will maintain books and records of such program, subject to audit.

VI. Linkage to Campus

A formal contract, terminable in whole or in part with 45 days written notice given by the State University, extending for a term of no more than 10 years (and subject to the review and approval of the Chancellor or designee and external State agencies when required), must be executed between the campus and each Alumni Association,

including an umbrella association, authorizing it to operate on campus, and enumerating its activities, and providing for the sharing of and access to alumni information. Each activity category authorized to the Alumni Association would be identified in the contract, with written contract amendments required for new activities.

If the campus has elected a separately incorporated Alumni Association to carry out the bulk of its alumni activities, the campus President or designee and the campus development officer should be ex officio voting members of the Board of Directors of such non-profit corporation.

VII. Accountability and Reporting

Each incorporated Alumni Association must prepare an annual financial statement in conformity with generally accepted accounting principles and have an audit conducted by a certified public accounting firm or sole practitioner (independent auditor) in accordance with generally accepted auditing standards. To enable the State University to include pertinent information in its annual financial statements, the audit must be completed within 90 days after the close of the Alumni Association's fiscal year. The independent auditor may be appointed for no more than a five-year term, after which each Alumni Association must resolicit these services through a competitive procurement process. No certified public accounting firm or sole practitioner can serve as the independent auditor for more than two consecutive five-year terms, after which the firm or sole practitioner is not eligible to serve again as the independent auditor until not less than a three-year intervening period has elapsed. The books and records, financial condition, operating results, and program activities of the Alumni Association would also be subject to periodic audit by the Office of the University Auditor. The Alumni Association(s) may also be subject to audits by outside regulatory bodies to the extent allowed by law. All audit reports from whatever source, including the certified (consolidated) financial statements and management letter of the Alumni Association(s) must be transmitted to the offices of the campus President and the Vice Chancellor for Finance and Business and University Auditor for review and acceptance.

Provisions in the articles of incorporation and other organizing documents of the Alumni Association must provide that the net assets of the organization shall be distributed to the campus or other campus-approved entity organized for similar purposes in the event that it is dissolved. Dissolutions and dispositions are subject to all applicable laws, regulations, and restrictions and unless otherwise stated, the net assets revert to the campus or campus approved organization.