

GUIDELINES FOR EMPLOYING INDEPENDENT CONTRACT CONSULTANTS

IRS Publication SWR 40, "*Public Schools and Employment Taxes*" *, lists workers that the IRS has already determined to be employees. These are individuals performing the duties of:

Administrator	Clerical Staff
Cafeteria Worker	Athletic Coaches
Counselors	Tutors
Examination Monitors	Nurses
Proctors	Psychologists
Librarians	Interim Positions
Teachers/Instructors	Specialty Teachers (art, music, etc)
Substitute	
Tchrs/Instructors	
School Bus Drivers	

In addition, recent IRS school audits have classified the following as employee relationships:

- ASB Workers
- Licensed Clinical Social Workers
- Categorical Program Coordinators
- SAT Prep Teachers
- Attendance/Outreach Consultants

If the individual in question is not being used to perform services in one of the above categories, you may use the questionnaire on the following page to analyze the employment relationship between the district and the individual. The IRS regulations have been considered on developing the questionnaire.

* Note: IRS Publication SWR 40. "*Public Schools and Employment Taxes*" is no longer available to print from the IRS.

**Questionnaire for Hiring Independent Contractors
In Accordance with IRS Regulations**

PART I

1. **Has this category of worker been classified as an "employee" by the IRS?** Yes No
Refer to the Guidelines for Employing "Independent Contractor Consultants" for categories of jobs listed in IRS Publication SWR 40* and others identified during IRS compliance audits to determine if the individual you are contemplating establishing a contractual relationship with has been determined by the IRS to be properly classified as an employee.
2. **Is the individual working as an employee as prescribed by the Education Code?** Yes No
Education Code Sections 45100-45139 and 88000-88040 define what constitutes the classified service. Education Code Sections 44830-44929 and 87400-87488 defines certificated service. The IRS predisposes an employer/employee relationship when state law mandates such a relationship.
3. **Is the individual an employee of the district in another capacity?** Yes No
4. **Has the individual performed substantially the same services for the district as an employee in the past?** Yes No
Watch for former employees who are returning to work.
5. **Are there currently employees of the district doing substantially the same work as will be required of the individual you are hiring?** Yes No
6. **Will the district have the legal right to control the method of performance by this individual?** Yes No
Consider whether the district will train the individual or give instruction as to how the job gets done rather than an end result. Is the individual required to obtain approval before taking action? It doesn't matter if the employer allows freedom of action in the work. Just the fact that the employer has the legal right to control the method and result of the work is enough to show an employer-employee relationship.
7. **Are the services, as provided an integral part of the district's operations?** Yes No
Are the services provided necessary to the operations of the district's programs, projects, etc? This indicates the district has an interest in the method of performance and implies maintenance of legal control.

If the answer to any of the above questions is YES – STOP HERE. Do not complete the rest of the questions. The individual is an employee of the district and must be paid and reported accordingly. Continue to Part III and send this form to Payroll.

If all of the above are NO, continue to Part II.

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PART II

8. **Will all the work be performed by this individual?** Yes No
Consider whether or not the individual has the right to designate someone else to do the work without district approval.

9. **Does the district have a continuing relationship with this individual?** Yes No
If the individual is engaged in the expectation that the relationship will continue indefinitely, rather than for a specific project or period, this is generally considered evidence of their intent to create an employment relationship.

10. **Can this relationship be terminated without the consent of both parties?** Yes No
Independent contractors have contractual obligations to fill.

11. **Does the individual operate an independent trade or business that is available to the general public?** Yes No
The individual should be able to provide a list of clients they have served.

NOTE: Possession of a business license or incorporation does not automatically satisfy this requirement. The determination must be made on the actual relationship between the district and the individual performing the work.

12. **Will the individual provide all materials and support services necessary for the performance of the service?** Yes No
The district should not be providing office space on a regular basis, clerical, secretarial, or other support for the individual such as materials, copying, printing, office supplies, etc. Any necessary assistance should be provided by the individual.

13. **Is the individual paid by the job OR upon completion and acceptance of the work as a whole OR milestones identified in the contract?** Yes No
Performance of a task for a flat fee is generally evident of an independent contractor relationship, especially if the worker incurs the expense of performing the services. When payments are made (daily, weekly, monthly) is not relevant.

14. **Will the individual bear the cost of any travel and business expenses incurred to perform the work?** Yes No
Generally, the individual will pay the cost of any travel and business expenses incurred to perform the work. However, some agreements may be made to provide payment for airfare, mileage, etc for consultants.

If based on the answers to questions 8-14, the individual is determined to be an independent contractor, complete the information in Part III, attach this questionnaire to the independent contractor agreement and submit to Accounts Payable.

PART III

Reviewed by: _____

Date: _____

Contract No. _____

Contractor/Employee Name: _____