

INDEPENDENT CONTRACTOR or EMPLOYEE?

DISTRICT CHECKLIST AND GUIDELINES

NOTE: THIS FORM TO BE FILLED OUT BY DISTRICT OFFICE PERSONNEL ONLY.

Requisition Number: _____

Name of Proposed Contractor: _____ Telephone No. (____) _____

Area Code/Number

Address: _____

Street/Mailing

City

State

Zip

District Person Completing this Form: _____ Extension _____

Print

Signature: _____ Date: _____

PART I

Yes

No

<p>1 Has this category of worker already been classified as an "employee" by IRS? Refer to attachment for individuals listed in IRS Publication SWR-40 and others identified during the IRS compliance studies.</p>		
<p>2. Is the individual working as an employee prescribed by the Education Code? <i>Education Code Sections 88000-88263 define what constitutes classified service</i> <i>Education Code Sections 87000-87333 define certificated services</i> The IRS predisposes an employer/employee relationship when state law mandates such a relationship</p>		
<p>3. Is the individual already an employee of the District in another capacity?</p>		
<p>4. Has the individual performed substantially the same services for the District as an employee in the past? Is the individual retired, returning to substitute or train, etc.?</p>		
<p>5. Are there currently employees of the District doing substantially the same services as will be required of this individual?</p>		
<p>6. Does the District have the legal right to control the method of performance by this individual? Consider whether the District has to train this individual or give instruction as to when, where, how, and in what order to work. Does the District require the individual to submit reports or perform the services at a District site? These factors would indicate the District maintains control sufficient for an employer/employee relationship. However, it is <u>not necessary</u> that the District <u>exercise</u> this right or have the expertise required to do so. In many cases this would not be practical nor advisable.</p>		
<p>7. Are the services being provided an integral part of school business? Are the services being provided necessary to the operation of the school, program, project, etc.? This indicates the District has an interest in the method of performance and implies the maintenance of legal control.</p>		

IF THE ANSWER TO ANY OF THE ABOVE QUESTIONS IS "YES"

STOP

DO NOT COMPLETE the rest of this questionnaire. This individual should be a District employee and must be paid and reported accordingly.

IF ALL of the above are NO, continue.

(over)

PART II

	Yes	No
8. Must the required services be performed by this individual? Consider whether or not the individual may designate someone else to do the work without the District's knowledge or approval		
9 Does the District have a continuing relationship with this individual? Is this a "one shot deal" or will the District continue to use this individual in the future? This could be on an infrequent or irregular basis but a continuous relationship exists.		
10. Can this relationship be terminated by either party?		

If the answer to question 8, 9 or 10 is **YES**, there is a good possibility that an employment relationship exists. Questions 8 and 9 are indicators of District control that, in conjunction with other factors, imply an employment relationship. GO BACK TO PART I and re-evaluate each question. If questions 1 – 7 are still all "NO" continue.

If the answers to 8, 9 and 10 are **ALL "NO"**, then continue. . .

	Yes	No
11. Does the individual operate an <u>independent</u> trade or business that is available to the general public? A determining factor in judging independence is the performance of services to the <u>general public</u> . In evaluating this criteria, school districts are considered to be separate entities. Keep in mind: If the District is utilizing this individual's services on a full-time basis, the individual is <u>not</u> available to the general public. NOTE: Possession of a business license or incorporation does <u>not automatically</u> satisfy this requirement. The determination <u>must</u> be made on the actual <u>relationship</u> between the district and the individual performing services.		
12. Does the individual have a substantial investment in his/her business, i.e. maintains a facility, equipment, etc.? This is indicative of <u>economic risk</u> inherent in business enterprises. An independent contractor must be able to make a profit or sustain a loss.		

If either 11 or 12 are "**NO**", the individual is not an independent contractor and must be paid as a District Employee.

STOP

CONTACT THE HUMAN RESOURCES DEPARTMENT

If 11 and 12 are **BOTH "YES"**, continue

	Yes	No
13. Does the individual provide all materials and support services necessary for the performance of this service? The District should not be providing office space clerical, secretarial, or any other support for this individual such as materials, xeroxing, printing, office supplies, etc. Any necessary assistants would be hired by the individual.		
14. Is this paid by the job or on a commission?		
15. Does the individual bear the cost of any travel and business expenses incurred to perform this service? Generally, these types of expenses are paid by an employer, however, some contracts provide for payment of air fare, mileage, etc. for consultants.		

If 11 and 12 are "**YES**", 13 through 15 should also be "**YES**" and are items that should be written into the contract. This individual is an independent contractor. A "YES" on questions 13 through 15 supports the District's conclusion and substantiates a "reasonable basis" for treatment as an independent contractor. While there are circumstances where the District might pay contractually provided expenses, these should be kept at a minimum to avoid giving the impression of an employment relationship.