

CONSULTANTS AND OTHER INDEPENDENT CONTRACTORS

The Board of Education authorizes the use of consultants and other independent contractors to provide expert professional advice or specialized technical or training services, which are not needed on a continuing basis and which cannot be provided by district staff because of limitations of time, experience, or knowledge. Individuals, firms, or organizations employed as independent contractors may assist management with decisions and/or project development related to financial, economic, accounting, engineering, legal, administrative, instructional, or other matters.

~~(cf. 3551—Food Service Operations/Cafeteria Fund)~~

As part of the contract process, the Superintendent or designee shall determine that the individual, firm, or organization is properly classified as an independent contractor. ~~A person, firm, or organization shall be considered an employee rather than an independent contractor unless the district is able to demonstrate that all of the following conditions have been met:~~

~~(Labor Code 2750.3)~~

A person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the district is able to demonstrate that all of the following conditions have been met: (Labor Code 2775)

1. The person ~~or entity~~ is free from the control and direction of the district in connection with the performance of the work
2. The person ~~or entity~~ is performing work that is outside the usual course of the district providing educational services
3. The person ~~or entity~~ is customarily engaged in an independently established trade, occupation, or business of the same nature as the work to be performed

~~Specific statutory exceptions to this analysis for the determination of whether a person, firm, or organization is an independent contractor may apply. (Labor Code 2750.3)~~

The determination of whether an individual acting as a sole proprietor or a firm or other business organization is an independent contractor shall be made in accordance with Labor Code 2775-2785, as applicable.

All consultant contracts shall be brought to the Board for approval.

~~(cf. 3311—Bids)~~

~~(cf. 3312—Contracts)~~

~~(cf. 4132/4232/4332—Publication or Creation of Materials)~~

All qualified independent contractors shall be accorded equal opportunity for contracts regardless of actual or perceived race, **ethnicity**, color, national origin, ancestry, age, religious creed, marital status, pregnancy, physical or mental disability, medical condition, genetic information, veteran and military status, sex, sexual orientation, gender, gender identity, gender expression, immigration status, or association with a person or group with one or more of these actual or perceived characteristics. (Education Code 220; Government Code 12940)

~~(cf. 0410—Nondiscrimination in District Programs and Activities)~~

~~(cf. 0415—Equity)~~

CONSULTANTS AND OTHER INDEPENDENT CONTRACTORS (continued)

Independent contractors shall submit a written conflict of interest statement disclosing financial interests as determined necessary by the Superintendent or designee, depending on the range of duties to be performed by the consultant. The Superintendent or designee shall consider this statement when deciding whether to recommend approval of the contract.

Any consultant hired by the district who is subject to the filing requirements in the district's conflict of interest code shall file a Statement of Economic Interests within the time period required by law. (Government Code 87302)

~~(cf. 9270—Conflict of Interest)~~

When employees of a public university, county office of education or other public agency serve as consultants or independent contractors in other capacities for the district, they shall certify as part of the consultant-agreement that they will not receive salary or remuneration other than vacation pay from any other public agency for the specific days when they work for the district.

The Board prohibits the harassment of an independent contractor by any district employee or by any other person with whom the independent contractor comes in contact during the course of employment with the district. Additionally, the Board prohibits the harassment of a district employee by an independent contractor. Any complaint of harassment shall be investigated and resolved in accordance with applicable district complaint procedures. (Government Code 12940)

~~(cf. 4119.11/4219.11/4319.11—Sexual Harassment)~~

Legal References:**EDUCATION CODE**

~~220 Prohibition of discrimination~~

~~10400-10407 Cooperative improvement programs 17596 Limit on continuing contracts~~

~~35010 Control of districts; prescription and enforcement of rules 35172 Promotional activities~~

~~35204 Contract with attorney~~

~~44925 Part-time readers employed as independent contractors~~

~~45103 Classified service in districts not incorporating the merit system 45103.5 Contracts for food service consulting services~~

~~45134 45135 Employment of retired classified employee~~

~~45256 Merit system districts; classified service; positions established for professional experts on a temporary basis~~

GOVERNMENT CODE

~~12940 Unlawful employment practices~~

~~53060 Contract for special services and advice 82019 Designated employee~~

~~87302 Conflict of interest code~~

LABOR CODE

~~2750.3 ABC three-part test: employees and independent contractors~~

UNEMPLOYMENT INSURANCE CODE

~~606.5 Determination of employment status 621 Employer and employee defined~~

CODE OF REGULATIONS, TITLE 2

~~18700.3 Consultant~~

COURT DECISIONS

~~Dynamex Operations West, Inc. v. Superior Court of Los Angeles (2018) 4 Cal. 5th 903~~

~~S.G. Borello & Sons, Inc. v. Department of Industrial Relations (1989) 48 Cal. 3d 341~~

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