

PERALTA COMMUNITY COLLEGE DISTRICT

INDEPENDENT CONTRACTOR/CONSULTANT GUIDELINES

When contracting with an individual for services, the District must establish the nature of the employment relationship. This should occur prior to any services being performed and the issuance of any payment. Once the legal relationship is determined, the method of payment is prescribed by law. The problem occurs in the area of who is or is not an employee. There is no clear-cut definition of what constitutes an employee. Instead, there are the twenty common law factors that must be analyzed to make the determination.

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

- administrators
- instructors
- substitutes
- clerical staff
- athletic coaches
- tutors
- counselors
- examination monitors
- proctors
- librarians

In addition to the categories above, the IRS has reclassified the following categories as employees:

- nurses
- psychologists
- intern psychologists
- individuals "filling in" on an interim basis
- specialty teachers (art, poetry, music, etc.)

What the District calls the individual is irrelevant to the analysis of the employment relationship. The IRS looks at the facts and the relationship on a case by case basis.

If the individual in question is not in one of the above categories, you may use the guidelines on the following page to analyze the employment relationship between the District and the individual. The completed guidelines should be submitted and kept on file with the District contract in the office of the Vice Chancellor, Financial Services, for any future IRS inquiries. The 20 common law factors have all been considered in developing the attached questionnaire.

PERALTA COMMUNITY COLLEGE DISTRICT INDEPENDENT CONTRACTOR/CONSULTANT GUIDELINES

Name of Contractor	YES	NO
Part I		
1. Has this category of worker already been classified an "employee" by the IRS? <i>Refer to Page 1 for individuals listed.</i>		
2. Is the individual working as an employee prescribed by the Education Code? <i>Ed Code §45100-45451/88000-88263 define what constitutes classified service and 44800-45060/87000-87333 define certificated service. The IRS predisposes an employer/employee relationship when State law mandates such a relationship.</i>		
3. Is the individual already an employee of the District in another capacity?		
4. Has the individual performed substantially the same services for the District as an employee in the past? <i>Is the individual retired, returning to substitute, or train, etc.?</i>		
5. Are there currently employees of the District doing substantially the same services as will be required of this individual?		
6. Does the District have the legal right to control the method of performance by this individual? <i>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.</i>		
7. Are the services, as being provided, an integral part of college/district operations? <i>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.</i>		

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If the answer to any of the above questions is "YES",
Do not complete the rest of the questions. The individual is a District employee and must be paid and reported accordingly.

If all of the above are "NO", continue . . .

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Part II	YES	NO
8. Must the required services be performed by this individual? <i>Consider whether or not the individual may designate someone else to do the work without the District's knowledge or approval.</i>		
9. Does the District have a continuing relationship with this individual? <i>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.</i>		
10. Can this relationship be terminated without the consent of <u>both</u> parties?		

If the answer to question 8, 9, or 10 is "YES", there is a good possibility that an employment relationship exists. Questions 8 & 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 . . .

	YES	NO
11. Does the individual operate an <u>independent</u> trade or business that is available to the general public? <i>A determining factor in judging independence is the performance of services to the general public. 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</u> automatically satisfy this requirement. The determination <u>must</u> be made on the actual <u>relationship</u> between the District and the individual performing services.</i>		
12. Does the individual have a substantial investment in his/her business, i.e. maintains a facility, equipment, etc.? <i>This is indicative of economic risk inherent in business enterprises. An independent contractor must be able to make a profit or sustain a loss.</i>		

If either 11 or 12 are "NO", the individual is a District employee

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and process the individual on a PA through payroll.

If 11 and 12 are both "YES", continue . . .

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PART II - Continued

	YES	NO
13. Does the individual provide all materials and support services necessary for the performance of this service? <i>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.</i>	<input type="checkbox"/>	<input type="checkbox"/>
14. Is this paid by the job or on a commission?	<input type="checkbox"/>	<input type="checkbox"/>
15. Does the individual bear the cost of any travel and business expenses incurred to perform this service? <i>Generally, these types of expenses are paid by an employer, however, some contracts provide for payment of air fare, mileage, etc. for consultants.</i>	<input type="checkbox"/>	<input type="checkbox"/>

If 11 and 12 are "YES", 13 through 15 should also be "YES" and are items that should be written into the consultant 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.

I certify that, in accordance with this form, this individual meets IRS criteria as an independent contractor.

Unit Manager

College President/Vice Chancellor