

EMPLOYMENT PROCESS FOR OBTAINING CONSULTANT SERVICES

Attachment A

**Questionnaire for Engaging Independent Contract Consultants
in Accordance with IRS Regulations**

Part 1

Check

- 1. Has this category of worker been classified as an "employee" by the IRS?

YES	NO

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:

- | | | |
|-------------------|--------------------------|-------------------------------------|
| administrators | nurses | substitute teachers/instructors |
| athletic coaches | proctors | teachers/instructors |
| cafeteria workers | psychologists | tutors |
| clerical staff | school bus drivers | individuals "filling in" on interim |
| counselors | specialty teachers (art, | basis |
| librarians | poetry, etc.) | examination monitors |

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.

- 2. Is the individual working as an employee as prescribed by the Education Code?

YES	NO

- 3. Is the individual already 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

- 5. Are there currently employees of the District doing substantially the same work as will be required of the individual?

YES	NO

- 6. Does 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 instructions as to when, where, how, and in what order the work will be performed.

- 7. Are the services, as being provided, an integral part of District 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**

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Do not complete the rest of the questions. The individual must be an employee of the district and must be paid and reported accordingly through District Payroll.

If **ALL** of the above are **NO** , continue...

8. Will all of the work 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. _____
YES NO
9. Does the District have a continuing relationship with this individual? _____
YES NO
- Is this a one-time need, 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 without the consent of both parties? _____
YES NO

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. **STOP HERE**

11. Does the individual operate an independent trade or business that is available to the general public? _____
YES NO
- A determining factor in judging independence is the performance of services to the general public. In evaluating these criteria, the District is considered to be a separate entity. Keep in mind that if the District is using this individual's services on a full-time basis, the individual is not available to the general public.

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.

If the answer to question 11 is **NO**, the individual is an employee. **STOP HERE** and process the individual through the Personnel Commission or Personnel Support Services.

If the answer to question 11 is **YES**, continue...

12. Does the individual provide all materials and support services necessary for the performance of the service? _____
YES NO
- The individual should not be provided District 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.

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13. Is the individual paid by the job OR upon completion and acceptance of the work as a whole OR by milestones identified in the contract?
YES NO

A yes answer to any of the above alternatives is indicative of an independent contractor.

14. Does 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 arrangements may be made to provide for payment of airfare, mileage, etc., for consultants.

If the answer to question 11 is YES, the answers to questions 12 through 14 should also be YES and are items that will be included in the written agreement with the individual.

A YES answer to questions 12 through 14 supports the district's conclusion that the individual is a service provider and substantiates a "reasonable basis" for treatment as a service provider.