DISTRICT GUIDELINES INDEPENDENT CONTRACTOR VS. EMPLOYEE

ADDITIONAL INFORMATION

1. A continuing relationship between a worker and the District shows that an employee relationship exists.

2. Is the individual retired, returning to substitute, or train, etc.? If so, employee relationship exists.

3. A person hired to do services customarily done by District employees will be considered an employee, despite title. The typical independent contractor is hired to accomplish a result without the supervision given to employees.

4. Consider whether the District has to train this individual or give instruction about when, where, how, and in what order to work. Does the district require the individual to submit reports or do the services at a District site? These factors would suggest the district maintain control sufficient for an employer/employee relationship. However, it is not necessary that the District exercise this right or has the expertise required to do so. Typically this would not be practical nor advisable.

5. Are the services being provided necessary to the operation of the school, program, project, etc.? This suggests the District has an interest in the method of performance and implies the maintenance of legal control.

6. Consider whether the individual may designate someone else to do the work without the District’s knowledge or approval. Can the individual hire someone else to do the work?

7. Is this a “one shot deal” or will the District continue to use this individual in the future? This could be an infrequent or irregular basis but a continuous employee relationship exists.

8. The right to discharge is a factor suggesting the worker is an employee and the District employer. An independent contractor, on the other hand, cannot be fired if he/she produces results that meet contractual specifications.

9. A determining factor in judging independence is the performance of services to the public. In evaluating these criteria, school districts are considered separate entities. 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 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 services.

10. This suggests an economic risk inherent in business enterprises. An independent contractor must be able to make a profit or sustain a loss.

11. The District should not be providing office space, clerical, secretarial, or any other support for this individual such as materials, photocopy, printing, office supplies, etc. Any necessary assistants would be hired by the individual.

12. Generally, these types of expenses are paid by an employer, however, some contracts provide for payment of air fare, mileage, etc. for consultants.

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This questionnaire is to be used to determine if an individual is an independent contractor or employee. The individual should be consulted where necessary to answer all questions. If you believe that the individual qualifies as an independent contractor, submit a requisition, service agreement, checklist, and any explanatory attachments. The contract will not be valid until a Purchase Order is issued, and no agreements should be made nor should work commence before that time. Due consideration should be given to all questions, since the penalty to the originating department for misclassification is approximately 50% of the contract amount. For more information see the District Purchasing Guide. If you have any questions or require assistance, please contact the Director, Accounting Services at the District Office.

Y  N

1. Has this person ever been employed by the District? If so, please explain when and in what capacity____________________________________________________.

2. Does the work include teaching, training, facilitating, counseling, curriculum development, workshops, seminars, or any other function related to education? If so, please explain______________________________________________________.

3. Will the District exercise any control, direction or supervision of the contractor? If so, please explain______________________________________________________.

If the answer to any of the above questions is "Yes" this person should be classified as an employee. If you believe that independent contractor status can still be justified, please attach a statement explaining why, and continue to question #4. If the answer to all of the above questions is "No", continue to question #4.

4. Must this individual perform the services (as opposed to the individual subcontracting or assigning the work to others)? Please explain to what extent the individual may or may not hire/subcontract others to do the work ____________________________.

5. Has this individual worked for the District as an independent contractor in the past? If so, please explain the nature of past services (for what period, continuous vs. intermittent, how many hours, etc.)____________________________ _________.

6. Can the contractor quit for any reason other than the District's breach of contract?

7. Can the District terminate the contract for any reason other than the contractor's breach of contract?

If the answer to three or more of these questions 4 through 7 are "Yes" this person should be classified as an employee. If you believe that independent contractor status can still be justified, please attach a statement explaining why and continue to question #8.

8. Does the individual operate an independent trade or business, offering these same services to the general public? If so, please ask the individual what proportion of their annual revenues are obtained from the District:

   Less than 25%-_____Between 25%  & 50%_____Over 50 %_____

9. Does this individual have a substantial investment in his/her business, maintain facilities, own/rent equipment, etc.?

10. Does the individual provide all materials, supplies, and support services necessary for performance of this service? If no, please explain_______________________.

11. Does the individual bear the cost of any travel and business expenses incurred to perform this service (no District reimbursement)?

If the answer to questions 8 through 11 is "Yes", and the answer to questions 1 through 7 is "No", this individual can be classified as an independent contractor.

The above information has been compiled and reviewed per District Guidelines:

Originator:_______________________________ Date:______________________________

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