



ADMINISTRATIVE PROCEDURE

SAN DIEGO UNIFIED SCHOOL DISTRICT

NO: 1550

PAGE: 1 OF 11

CATEGORY: **General Administration**

EFFECTIVE: **11-28-94**

SUBJECT: **Professional Consultants, Resource Persons,
and Student Service Providers**

REVISED: **2-01-2002**

A. PURPOSE AND SCOPE

1. To outline administrative procedures for obtaining professional consultants, resource persons, and student service providers.
2. **Related Procedures:**
 - Additional hourly assignments for contract teachers 7236
 - Conflict of interest code 7040
 - District contracts 1570
 - Externally-funded projects 1320

B. LEGAL AND POLICY BASIS

1. **Reference:** Board policy: B-1170, C-6500, I-1050, I-1200; Education Code Sections 45103, 45125.1; Government Code Section 53060.
2. No person or agency may be retained as a professional consultant, resource person, or student service provider if such person or agency will directly or indirectly influence decisions which will benefit him/her financially.
3. Current employees of the district or employees on leave of absence may not be retained as professional consultants, resource persons, or student service providers.
4. Retired district employees must be regarded as “employees” and processed through the Payroll Unit, Employee Services Department, Human Resource Services Division, Administrative Operational Support, and the payroll system. As employees they are subject to their retirement systems’ earning limitations.
5. In accordance with the principle of equal opportunity and consistent with the law, all professional consultants, resource persons, and student service providers shall be accorded equal opportunity in gaining contracts from the district regardless of race, religion, creed, color, marital status, veteran status, sex, sexual orientation, national or ethnic origin, age, and disability.

C. GENERAL

1. **Originating Office.** Suggestions or questions concerning this procedure should be directed to the Accounting Department, Finance Division, Administrative Operational Support.

2. **Definitions**

- a. **Independent contractors:** Workers, not employees of the district, who are contracted to perform specific services for the district and who retain control over how the job is done. Specific criteria for determining whether a worker is an independent contractor (as opposed to an employee of the district) are listed in C.3. Independent contractors are classified as professional consultants, resource persons, or student service providers.
- b. **Professional consultants:** Independent contractors who are retained to provide opinions and advice in financial, economic, accounting, engineering, legal, assessment, accountability, research and evaluation, or administrative matters.
- c. **Resource persons:** Independent contractors who are recognized experts in their field with a level of talent and skill not available in the district and who provide services for instructional and instructional support programs.
- d. **Student service providers:** Independent contractors who provide direct pupil services.

3. **Criteria Used to Determine Whether a Person Qualifies as an Independent Contractor**

- a. **Instructions.** A contractor may follow provided job specifications but should not be required to follow or be furnished with instructions on how the job should be completed.
- b. **Training.** A contractor should be skilled at the trade and not require any training to complete the job. Contractors should not have expenses paid by the district to attend any training or workshops needed to complete the assignment.
- c. **Services.** A contractor's services should not be necessary to the operation of the district. There should not be any employees within the district doing substantially the same services as the contractor.
- d. **Services rendered personally.** A contractor is hired to provide a result and has the right to hire others to do the task.
- e. **Hiring assistants.** A contractor has the right and responsibility for hiring, supervising, and paying any assistants who are needed for the task.

- f. **Continuing relationship.** A contractor will not work on a continuous basis for one employer. The work required by the district should be for projects at irregular intervals. Part-time or short-term relationships with the district do not necessarily mean the worker is an independent contractor.
- g. **Set hours of work.** A contractor will set his/her own hours without any supervision. The district does have the right to request that work not be performed during specified hours.
- h. **Full-time work.** A contractor must have time to pursue other gainful work for his/her business. Working full-time for the district does not provide the contractor with available time to work for other clients.
- i. **Work done on premises.** A contractor controls where the work is done. If the work is done on district premises, the district does not direct or supervise the contractor in any way.
- j. **Order or sequence set.** A contractor is in control of the order in which the job will be completed. The district cannot direct the manner in which the work is performed.
- k. **Reports.** The district should not require the contractor to submit reports on the progress of the job. A contractor also should not attend any regular district meetings.
- l. **Payments.** A contractor should be paid by the job, not by the time worked. Payments can be periodic, based on a formula or a percentage of the completed job. Payment can be based on number of hours and a fixed rate if this is calculated into the contract.
- m. **Expenses.** A contractor will be responsible for all his/her expenses. The district should not reimburse for expenses separately from the contract price. Expenses should be estimated and included in the contract fee calculation.
- n. **Tools and materials.** A contractor should have investments in his/her own business that includes any materials and tools needed to offer services. If district equipment or materials are used, the district should charge a fee to the contractor for the usage.
- o. **Investment.** A contractor must have a financial profit and loss investment related to the services provided. A profit or loss is shown if the contractor has liabilities and has agreed to perform a specific job for an agreed price in advance.

- p. **Work for more than one person or firm.** A contractor's services are available to two or more unrelated persons or firms at the same time.
- q. **Offer of services to the general public.** A contractor makes his/her services available to the general public by having an office and assistants, advertising services, and/or being listed in a business directory.
- r. **Right to fire.** A contractor cannot be fired as long as he/she produces a result that meets the specifications of the contract.
- s. **Right to quit.** A contractor usually agrees to complete a specific job. He/she has a responsibility for its satisfactory completion, or is legally obligated to make good for failure to complete the task.

These criteria are listed in the "Guidelines for Classifying a Worker as Independent Contractor or Employee" (questionnaire) (E.3.). The district employee requesting to hire the independent contractor shall determine the status of the worker using these criteria and indicate his/her standings on the guideline questionnaire.

- 4. **Limitations** (Exceptions must be approved by General Counsel.)
 - a. **Consultant/resource person/student service provider vs. employer-employee relationship.** A person should not be retained as a professional consultant, resource person, or student service provider if an employer-employee relationship exists (i.e., the employer has complete control over the manner and means of accomplishing the desired result). If such a relationship exists, that person may be regarded as an employee, and the district may be liable for withholding state and federal income tax and unemployment taxes. (**Example:** Any person retained on an hourly basis for a semester or an academic year should be employed as a certificated or classified hourly employee.) Employees may not be retained as consultants for the school district because of conflict of interest provisions. District managers may use teachers and staff outside of their contract day for specific inservice presentations, curriculum writing, and other instructional tasks, using the hourly nonclassroom rates (Procedure 7236).
 - b. **Conflict of interest.** Disclosure shall be required when, in the opinion of the Board of Education or responsible official of the district, a consultant/resource person/student service provider is in a position to influence a district decision in which he/she might reasonably be expected to have financial interest. Disclosure shall include investments in, and income from, a business entity or activity involved in selling or leasing property, materials, equipment, supplies, or services in any way related to area(s) in which the consultant is rendering

service. (Procedure 7040) *Such a disclosure statement shall be considered by the responsible district official in making a decision on whether or not to retain the consultant.* Normally this will be the management employee requesting the service. Disclosure statements are not required on total amounts under \$100.

- c. **Full-time employees of another public agency** (e.g., public college or university, school district, or County Office of Education). Such employees who serve as professional consultants, resource persons, or student service providers are required to certify as a part of consultant agreements that they will not receive salary or remuneration, other than vacation pay, from any other public agency for the specific calendar days worked. This is accomplished through signing of the affidavit noted in C.5.
 - d. **Tuberculosis clearance.** Student service providers who work directly with students must demonstrate compliance with tuberculosis clearance as required by law.
 - e. **Fingerprinting.** Independent contractors and their employees who are performing services for the district must have their fingerprints submitted to the California Department of Justice (DOJ). Such persons may not perform any services for the district until their fingerprints have been cleared by the DOJ.
5. **Affidavits.** The principal or department head requesting the services of a professional consultant, resource person, or student service providers shall have the recommended person(s) or agency(ies) complete an affidavit certifying compliance with limitations expressed in C.4., including tuberculosis clearance for student service providers who work directly with students. If payment for services is involved, the consultant or resource person signs the affidavit on back of the consultant service request form. The administrator/office retaining the consultant has sole responsibility for affidavit signatures.
 6. **Qualification as a resource person** shall be based upon background experience and skills in the field in which service is to be provided. Resource persons need not meet specified formal educational standards. It is the responsibility of the management employee requesting service of resource persons to ensure that such persons meet necessary qualifications for service to be rendered.
 7. **Qualification as a professional consultant or student service provider** shall be determined by the division head requesting these services. Selection criteria used must be documented based upon the needs of the division.

8. **Rates for independent contractors** are established as described below:
 - a. **Professional consultants.** Rates are established and justified by the management employee contracting with the professional consultant. Contracts must be approved by the Board of Education prior to services being rendered.
 - b. **Resource persons.** Rates are established by the Classification and Recruitment Unit, Classified Personnel Department, Human Resource Services Division, Administrative Operational Support. Site administrators have the authority to contract for resource person services directly up to \$1,000 for each person in a single fiscal year. Site administrators are responsible for verifying that consultants' cumulative assignments throughout the district do not exceed \$10,000 in a single fiscal year. Ratification of resource persons' use is required by the Board of Education.
 - c. **Student service providers.** Rates are established and justified by the management employee contracting with the student service provider, with approval of the division head. Site administrators have the authority to contract for student service provider services directly up to \$1,000. Site administrators are responsible for verifying that the consultant's cumulative assignments throughout the district do not exceed \$10,000 in a single fiscal year. Contracts will be submitted to the Board of Education for ratification.
9. **Federal- or State-Funded Projects**
 - a. **When a federal- or state-funded project** prescribes rates to be paid to independent contractors for project-related services performed, these rates supersede those prescribed by the district. If no specific rates are prescribed, coordinators of externally-funded projects shall use district-prescribed rates.
 - b. **Management employees** charged with administering externally-funded projects shall ensure that the types of independent contractor services requested are permitted within specifications of project grants. Certain federal projects require that a contract be approved by the State Department of Education whenever an independent contractor is to be retained in excess of seven workdays.
10. **Need for Formal Contract.** Whenever payment to any independent contractor will exceed \$10,000 during a fiscal year, a formal contract drawn by the Office of General Counsel must be approved by the Board of Education prior to the performance of services. The hiring administrator must complete the "Guidelines for Classifying a Worker as Independent Contractor or Employee" (questionnaire) (E.3.) prior to the execution of the formal contract and must attach the completed questionnaire to the "Contract Routing Form."

11. **Evaluation.** The district employee most directly using the independent contractor will complete an evaluation section on the “Professional Consultant/Resource Person/Student Service Provider” (contract) form (E.1.). A copy of the completed form will be kept at the site and a copy maintained in the Accounts Payable Unit, Accounting Department. A database file will be maintained by the Budget Department, Finance Division, Administrative Operational Support, of all independent contractors hired by the district, including their performance evaluations, for a period of five years.
12. **Use of Teachers and Other District Staff.** Employees may not be retained as independent contractors for the school district because of conflict of interest provisions. Principals may use teachers and staff outside of their contract day for specific inservice presentations, curriculum writing, and other instructional tasks, using the hourly nonclassroom rates.
13. **The Accounting Director or designee** will review contracts to determine compliance with the district guidelines in classifying workers as independent contractors.

D. IMPLEMENTATION

1. **Contracts up to \$1,000 with Resource Persons and Student Service Providers.** Administrator has authority to contract for these services directly up to \$1,000 per person per year within his/her budget for the current fiscal year.
 - a. **Management employee desiring service**
 - (1) Reviews request for compliance with this procedure; completes “Guidelines for Classifying a Worker as Independent Contractor or Employee” (questionnaire) (E.3.) prior to performance of service.
 - (a) If worker is determined to be an employee, prepares an “Assignment Authorization” (AA) form and briefly describes duties to be performed and any commitment regarding salary. Routes AA in usual manner. Worker will be paid through the Payroll Unit, Employee Services Department.
 - (b) If worker is determined to be an independent contractor, completes “Professional Consultant/Resource Person/Student Service Provider” (contract) form (E.1.) and attaches completed “Guidelines for Classifying a Worker as Independent Contractor or Employee” (questionnaire) (E.3.) and documentation supporting determination of independent contractor status (e.g., advertisement in phonebook/professional journals/brochure, business license) to contract form.

- (2) Confirms with Budget Department that independent contractor's total amount to be paid for the year will not exceed \$10,000.
 - (3) When service is completed, approves form for payment, indicates date service was completed, completes evaluation, and indicates total amount to be paid. Total for the year must not exceed \$1,000 and cumulative total across the district must not exceed \$10,000. Managers should submit payment request form after each rendering of service.
 - (4) Sends original (white), green, and blue copies of form and completed guideline questionnaire to the Budget Department, and pink copy to the professional consultant/resource person/student service provider. Keeps yellow copy for site's file.
- b. **Budget Department**
- (1) Reviews request for availability of funds, use of proper account number, and that cumulative payment to independent contractor does not exceed \$10,000.
 - (2) Enters data into consultant database.
 - (3) Forwards approved contract form (E.1.--white, blue, and green copies) with completed guideline questionnaire (E.3.) to the Accounting Director.
- c. **Accounting Director** reviews guidelines for classifying a worker as independent contractor or employee. Forwards approved contract form (E.1--white, blue, and green copies) with completed guideline questionnaire (E.3.) to the Accounts Payable Unit.
- d. **Accounts Payable Unit** reviews and processes for payment all approved contract forms (E.1.); uses original (white) copy of contract form as payment document, indicates payment information on blue copy of contract form, and forwards contract form to the Budget Department. Authority to pay is by annual board-approved resolution.
- e. **Budget Department** summarizes contract forms (E.1.) and submits to the Board of Education for ratification.

2. Contracts with Professional Consultants and Contracts in Excess of \$1,000 with Resource Persons and Student Service Providers

a. Management employee desiring service

- (1) Reviews request for compliance with this procedure; completes guideline questionnaire (E.3.) prior to performance of service.
 - (a) If worker is determined to be an employee, prepares an "Assignment Authorization" (AA) form and briefly describes duties to be performed and any commitment regarding salary. Routes AA in usual manner. Worker will be paid through the Payroll Unit.
 - (b) If worker is determined to be an independent contractor, determines whether professional consultant, resource person, or student service provider should be used.
- (2) Completes contract form (E.1.) three weeks prior to the Board of Education meeting. Attaches completed guideline questionnaire (E.3.) to form.
- (3) Completes affidavit and obtains required signature.
- (4) Ensures conflict of interest disclosure in appropriate cases (payment of \$100 or more).
- (5) Determines rate of pay and reimbursement per C.9.
- (6) Ensures sufficient funds are available.
- (7) Secures signature of person(s) requested as independent contractor(s).
- (8) Forwards all copies of contract form (E.1.) and guideline questionnaire (E.3.), as well as documentation supporting determination of independent contractor status (e.g., advertisement in phonebook/professional journals/brochure, business license) to division head.

b. Division head

- (1) Reviews request, guideline questionnaire (E.3.), affidavit, conflict of interest, amount, and justifications.
- (2) Returns materials to management employee if not approved.

(3) If desired, develops a formal umbrella contract to cover student service providers for division.

(4) If request is approved, forwards all copies to the Budget Department.

c. **Budget Department**

(1) Reviews request for availability of funds and use of proper account number.

(2) Determines whether independent contractor limit of \$10,000 has been exceeded; returns contract form (E.1.) for independent contractor exceeding \$10,000 to originator.

(3) Enters data into consultant database.

(4) Forwards approved contract form (E.1.) with completed guideline questionnaire to the Accounting Director for review.

(5) Summarizes all requests, and submits for Board of Education approval. Keeps original (white) copy.

(6) Prepares and forwards invoice(s) along with board-approved contract forms (E.1.--blue, yellow, and pink copies) with attached guideline questionnaire (E.3.) to management employee requesting service. If payments are to be made in increments, prepares and forwards multiple invoice forms to management employee requesting service.

(7) Encumbers funds for total amount of contract.

d. **Management employee requesting service**

(1) As payments are due, obtains independent contractor's signature on invoice form(s) and forwards form(s) to the Accounts Payable Unit for payment.

(2) Upon completion of work by independent contractor, completes evaluation section of contract form (E.1.), attaches blue copy of contract form and guideline questionnaire (E.3.) to invoice (if incremental payments are made to final invoice), and sends to the Accounts Payable Unit; forwards pink copy of contract form to the independent contractor; retains yellow copy for site's file.

- e. **Accounts Payable Unit** processes invoice for payment and encumbrance reversal when payment has been made, indicates payment information on blue contract form (E.1.) and forwards contract form to the Budget Department.
 - f. **Budget Department** enters evaluation data into database and, after final payment has been made, reverses any outstanding encumbrance.
3. **Office of General Counsel** assists with contract and with conflict of interest disclosures as required.

E. FORMS AND AUXILIARY REFERENCES

- 1. Professional Consultant/Resource Person/Student Service Provider (contract) form (with affidavit on reverse side), Stock Item 22-C-5740
- 2. Statement of Economic Interests, available from the Office of General Counsel
- 3. Guidelines for Classifying a Worker as Independent Contractor or Employee (questionnaire), Stock Item 22-C-5740

F. REPORTS AND RECORDS

- 1. "Professional Consultant/Resource Person/Student Service Provider" forms, including completed evaluation section, filed at site and at the Accounts Payable Unit. A computer database file on all independent contractors is maintained in the Budget Department.
- 2. Statements of Economic Interests (when conflict of interest disclosure is required) filed at the Office of General Counsel.

G. APPROVED BY



Chief of Staff, Terrance L. Smith
For the Superintendent of Public Education