

## **Business and Noninstructional Operations**

BP 3600 (a)

### **CONSULTANTS**

The Board of Trustees 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)

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)

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, creed, color, national origin, ancestry, age, religious creed, marital status, pregnancy, physical or mental disability, medical condition, genetic information, military and veteran 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)*

*(cf. 4030 - Nondiscrimination in Employment)*

Independent contractors shall submit a written conflict of interest statement disclosing financial interests as determined necessary by the Superintendent or designee, depending on

## CONSULTANTS

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.

*(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 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(a)

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*