

EVALUATION OF EMPLOYER/EMPLOYEE RELATIONSHIP

	YES	NO
1. Has this category of worker been classified as an "employee" by the IRS? Worker categories include: Administrators, Teachers/Instructors, Substitutes, School Bus Drivers, Clerical Staff, Athletic Coaches, Tutors, Cafeteria Workers, Counselors, Examination Monitors, Proctors, Librarians, Nurses, Psychologists, Intern Psychologist, Individuals <u>'filling in'</u> on an interim basis, and specialty teachers (art, poetry, music, etc.).	☐	☐
2. A) Is _____ working as an <u>employee</u> prescribed by the Education Code? Name of individual Education Code Sections 88000-88263 and 87000-87333 define District employees. B) Is the individual working as an <u>employee</u> prescribed by the Government Code? Government Code Sections 53060 et seq. defines what constitutes a consultant.	☐	☐
3. A) Is the individual an employee of the District in a "contract" capacity? B) If hourly (i.e., adjunct, non-academic hourly), would they have a District assignment concurrent (or overlapping) with the anticipated assignment?	☐	☐
4. Has the individual performed substantially the same services for the District as an employee in the past? Is the individual retired, returning to substitute, or <u>train</u>, etc?	☐	☐
5. Are there currently employees of the District doing substantially the same services as will be required of this individual? See classification descriptions in the Personnel Manual.	☐	☐
6. Does the District have the legal right to control the method of performance by this individual? 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 the 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 or advisable.	☐	☐
7. Are the services, as being provided, an integral part of District operations? Are the services being provided necessary to the operation of the college, program, project, etc? This indicates the District has an interest in the method of performance and implies the maintenance of legal control.	☐	☐

If the answer to any of the above questions is **"YES," STOP HERE !**

Do **not** complete the rest of the questions. **The individual is the District's employee** and must be paid and reported accordingly. Therefore, sign and date the reverse of this evaluation and submit a **"Professional Expert/Consultant Authorization"** form, if appropriate, to the Classification & Compensation Office.

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

	YES	NO
8. Must the required services 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.	☐	☐
9. Does the District have a continuing relationship with this individual? Is this a "one shot deal" or has the District used or will the District continue to use this individual in the future? This could be on an infrequent or irregular basis but a continuing relationship exists.	☐	☐
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 and 10 are indicators of District control that, in conjunction with other factors, imply an employment relationship.
 Go back to questions 1-7 and re-evaluate each.

If questions 1-7 are still **all** **"NO,"** continue . . .

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	YES	NO
11. Does the individual operate an <u>independent</u> trade or business that is available to the general public? A determining factor in judging independence is the performance of services to the general public. In evaluating this criteria, 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.		
12. Does the individual have a substantial investment in his/her business (i.e., maintains a facility, equipment, etc.) as it relates to the proposed assignment with the District? This is indicative of economic risk inherent in business enterprises. An independent contractor must be able to make a profit or sustain a loss.		

If **either** 11 or 12 are "**NO**," the individual is the District's employee, **STOP HERE** and process the individual through payroll.

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

	YES	NO
13. Does the individual provide all materials and support services (e.g. mileage, meals, travel, clerical support, copying, etc.) necessary for the performance of this service? 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.		
14. A) Is this paid by the job/project or on a commission? B) Is this paid a fixed rate or a fixed commission?		
15. Does the individual bear the cost of any travel and business expenses incurred to perform this service? Generally, these types of expenses are paid by an employer; however, some contracts provide for payment of air fare, mileage, car rentals, etc., for consultants.		

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 expenses, these should be kept at a minimum to avoid giving the impression of an employment relationship.

After reviewing this evaluation I have concluded that this individual is a(n);

☐ **Employee/Professional Expert** – Submit this evaluation and the "Professional Expert/Consultant Authorization" form with necessary District paperwork and PAS Sheet to the Classification & Compensation Office.

OR

☐ **Consultant/Independent Contractor** – Submit this evaluation and the "Professional Expert/Consultant Authorization" form with a draft of the contract and the Requisition, and submit through appropriate managers, to Purchasing & Contract Services.

MANAGER's Signature

Department/Site

Date

original 10/24/96
 updated 1/20/11