

MODESTO CITY SCHOOLS

Board Policy

BP 3600

BUSINESS AND NON-INSTRUCTIONAL OPERATIONS

→ Consultants Independent Contractors

→ The Governing Board authorizes the use of ~~consultants~~ **and other independent contractors, including but not limited to consultants,** 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** ~~consultants~~ 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, ~~in accordance with Internal Revenue Service guidelines,~~ that the **individual, firm, or organization consultant** is properly classified as an independent contractor. **A person, firm, or organization District employees who perform extra duty consultant services shall be considered an employee rather than an independent contractor unless the district is able to demonstrate that not be retained as independent contractors. They shall be considered employees for all of the following conditions have been met: (Labor Code 2750.3) purposes, even if the additional services are not related to their regular duties.**

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.**

BP 3600 (a)

BUSINESS AND NON-INSTRUCTIONAL OPERATIONS

Consultants

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. ~~(Reference AR 3312 for Consultant Contracts)~~

~~(cf. 3312 - Contracts)~~

~~The district shall not contract for consulting services that can be performed without charge by a public agency or official unless these services are unavailable from the public source for reasons beyond the district's control.~~

~~All qualified firms or resource persons shall be accorded equal opportunity for consultant contracts regardless of race, creed, color, gender, national or ethnic origin, age or disability.~~

~~(cf. 3311 - Bids)~~

~~(cf. 3312 - Contracts)~~

~~(cf. 4132/4232/4332 - Publication or Creation of Materials)~~

→ **Independent contractors shall be accorded equal opportunity for contracts regardless of actual or perceived race, 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)~~

BP 3600 (b)

BUSINESS AND NON-INSTRUCTIONAL OPERATIONS

Consultants

Independent contractors ~~applying for a consultant contract~~ shall submit a written conflict of interest statement disclosing financial interests as determined necessary by the Superintendent ~~or~~/designee, depending on 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 consultant's employment.**

→ **Any ~~consultant~~ independent contractor hired by the district who is subject to the filing requirements in the district's conflict of interest code shall file a Statement of Economic Interests within the time period required by law. (Government Code 87302)**

(cf. 9270 - Conflict of Interest)

→ When employees of a public university, county office of education or other public agency serve as ~~consultants consultant or~~ **independent contractors in other capacities resource persons** for the district, they shall certify as part of the ~~consultant~~ **independent contractor** 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~~ **this** 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)

BP 3600 (c)

BUSINESS AND NON-INSTRUCTIONAL OPERATIONS

Consultants

Legal Reference:

EDUCATION CODE

220 Prohibition of discrimination

10400-10407 Cooperative improvement programs

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

ADOPTED: June 2, 2008