

**INDEPENDENT CONTRACTOR OR EMPLOYEE?  
Office of Education Guidelines**

<b>PART I</b>	<b>YES</b>	<b>NO</b>
<p>Has this category of worker already been classified an “employee” by the IRS? <i>(Refer to Administrative Regulation 3600 for individuals listed in IRS Publication SWR 40 and others identified during the IRS compliance studies in San Diego County.)</i></p>		
<p>Is the individual working as an employee prescribed by the Education Code? <i>(Education Code Sections 45100-45451/88000-88263 define what constitutes classified service and 44800-45060/87000-87333 define certificated service. The IRS predisposes an employer/employee relationship when state law mandates such a relationship.)</i></p>		
<p>Is the individual already an employee of the Office of Education in another capacity?</p>		
<p>Has the individual performed substantially the same services for the Office of Education as an employee in the past? <i>(Is the individual retired, returning to substitute, or train, etc.?)</i></p>		
<p>Are there currently employees of the Office of Education doing substantially the same services as will be required of this individual?</p>		
<p>Does the Office of Education have the legal right to control the method of performance by this individual? <i>(Consider whether the Office of Education has to train this individual or give instruction as to when, where, how, and in what order to work. Does the Office of Education require the individual to submit reports or perform the services at an Office of Education site? These factors would indicate the office maintains control sufficient for an employer/employee relationship. However, it is <u>not necessary</u> that the office <u>exercise</u> this right or have the expertise required to do so. In many cases this would not be practical or advisable.)</i></p>		
<p>Are the services, as being provided, integral to Office of Education operations? <i>(Are the services being provided necessary to the operation of the school, program, project, etc.? This indicates the Office of Education has an interest in the method of performance and implies the maintenance of legal control.)</i></p>		
<p>If the answer to <u>any</u> of the above questions is “YES,” <b>STOP HERE</b>. Do not complete the rest of the questions. The individual is the Office of Education’s employee and must be paid and reported accordingly.</p> <p>If all the above are “NO,” continue. . .</p>		

Contractors Name \_\_\_\_\_

Guidelines Completed By \_\_\_\_\_

<b>Part II</b>	<b>YES</b>	<b>NO</b>
<p>Must the required services be performed by this individual? <i>(Consider whether or not the individual may designate someone else to do the work without the Office of Education’s knowledge or approval.)</i></p>		
<p>Does the individual have a continuing relationship with the Office of Education? <i>(Is this a “one shot deal” or will the Office of Education continue to use this individual in the future? This could be on an infrequent or irregular basis but a continuous relationship exists.)</i></p>		
<p>Can this relationship be terminated without the consent of <u>both</u> parties?</p>		
<p>If the answer to question 8, 9, or 10 is “YES,” there is a good possibility that an employment relationship exists. Questions 8 &amp; 9 are indicators of Office of Education control that, in conjunction with other factors, imply an employment relationship. Go back to PART I and re-evaluate each question. If questions 1-7 are still all “NO,” continue. . .</p>		
<p>Does the individual operate an <u>independent</u> trade or business that is available to the general public? <i>(A determining factor in judging independence is the performance of services to the general public. In evaluating this criteria, school districts are considered to be separate entities. Keep in mind: if the Office of Education 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 Office of Education and the individual performing services.)</i></p>		
<p>Does the individual have a substantial investment in his/her business, i.e., maintains a facility, equipment, etc.? <i>(This is indicative of economic risk inherent in business enterprises. An independent contractor must be able to make a profit or sustain a loss.)</i></p>		
<p>If <u>either</u> 11 or 12 are “NO,” the individual is an Office of Education employee. <b>STOP HERE</b> and process the individual through payroll. If 11 and 12 are <u>both</u> “YES,” continue. . .</p>		
<p>Does the individual provide all materials and support services necessary for the performance of this service? <i>(The Office of Education 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.)</i></p>		
<p>Is this individual paid by the job or on a commission?</p>		
<p>Does the individual bear the cost of any travel and business expenses incurred to perform this service? <i>(Generally, these types of expenses are paid by an employer; however, some contracts provide for payment of air fare, mileage, etc., for consultants.)</i></p>		
<p>If 11 and 12 are “YES,” 13 through 15 should also be “YES” and are times that should be written into the consultant contract. This individual is an independent contractor. A “YES” on questions 13 through 15 supports the Office of Education’s conclusion and substantiates a “reasonable basis” for treatment as an independent contractor. While there are circumstances in which the Office of Education might pay contractually provided expenses, these should be kept at a minimum to avoid giving the impression of an employment relationship.</p>		