

Policy 3600: Consultants

Status: ADOPTED

Original Adopted Date: 01/01/1985 | Last Revised Date: 03/01/2021 | Last Reviewed Date: 10/01/1996

The Governing Board 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.

CSBA NOTE: Labor Code 2775, as added by AB 2257 (Ch. 38, Statutes of 2020), is a recodification of the three-part "ABC" test established in *Dynamex Operations West, Inc. v. Superior Court of Los Angeles* to determine whether a person providing services for remuneration should be classified as an employee or an independent contractor. Pursuant to Labor Code 2775, a person is considered to be an independent contractor rather than an employee if the person (1) is free from the control and direction of the district in connection with the performance of the work, (2) performs work that is outside the usual course of providing educational services, (i.e. services provided by the person's own independent business and not services that ordinarily would be performed by district employees), and (3) is customarily engaged in an independently established trade, occupation, or business.

As this area of law is complex and may alter the legal and financial obligations of the district to particular workers (e.g., eligibility for workers compensation, unemployment and disability insurance benefits, and district health and welfare benefits), legal counsel should be consulted when questions arise regarding the status of those who provide services to the district for remuneration.

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 providing labor or services for remuneration 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 2775)

1. The person is free from the control and direction of the district in connection with the performance of the work.
2. The person is performing work that is outside the usual course of the district providing educational services.
3. The person is customarily engaged in an independently established trade, occupation, or business of the same nature as the work to be performed.

CSBA NOTE: Labor Code 2775-2785, as added by AB 2257 and amended by AB 323 (Ch. 341, Statutes of 2020), establishes exceptions to the use of the three-part ABC test, including (1) when a person's status as an employee or independent contractor is expressly made by the Labor Code, Unemployment Insurance Code, or an applicable wage order of the Industrial Welfare Commission, in which case the status remains in effect for purposes set forth in those provisions; (2) when a court rules that the three-part test cannot be applied to a particular context; or (3) when specifically exempted from the three-part test by Labor Code 2776-2785. Under the second and third scenarios, with the exception of exemptions pursuant to Labor Code 2779, the determination of whether a person is an employee or independent contractor is made pursuant to the court's decision in *S.G. Borello & Sons, Inc. v. Department of Industrial Relations*, which found employment status to be a fact-dependent ruling based on the extent to which the employer had a right to control the work that was being done. Pursuant to Labor Code 2776, the rule in *Borello* applies to "business-to-business" exceptions (including when a sole proprietor or business entity contracts to provide services to a public agency) when specified conditions are met. Additionally, tutors are potentially excepted from the three-part test in Labor Code 2775 if they develop and teach their own curriculum, but not if they teach a curriculum created by a public school or contract with a public school through a referral company.

The determination of whether an individual acting as a sole proprietor or a firm or other business organization is an independent contractor shall be made in accordance with Labor Code 2775-2785, as applicable.

All consultant contracts shall be brought to the Board for approval.

CSBA NOTE: Government Code 12940, as amended by AB 3364 (Ch. 36, Statutes of 2020), changes the term "military and veteran status" to "veteran or military status."

All qualified independent contractors shall be accorded equal opportunity for contracts regardless of actual or perceived race, ethnicity, color, national origin, ancestry, age, religious creed, marital status, pregnancy, physical or mental disability, medical condition, genetic information, veteran or military 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)

Independent contractors 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.

Any consultant 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)

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.

CSBA NOTE: Pursuant to Government Code 12940, certain protections afforded to employees are extended to independent contractors; see BP/AR 4030 - Nondiscrimination in Employment. Government Code 12940 also provides that the district may be held liable for sexual harassment committed against employees by nonemployees, including independent contractors, if the district knew, or should have known, of the harassment and failed to take immediate and appropriate corrective action to stop the harassment.

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)

Policy Reference Disclaimer: These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State References

2 CCR 18700-18760

Description

[Conflicts of Interest](#)

Ed. Code 10400-10407

[Cooperative improvement programs](#)

Ed. Code 17596

[Limit on continuing contracts](#)

Ed. Code 220

[Prohibition of discrimination](#)

Ed. Code 35010

[Control of district; prescription and enforcement of rules](#)

Ed. Code 35172

[Promotional activities](#)

Ed. Code 35204

[Contract with attorney in private practice](#)

Ed. Code 44925

[Part-time readers employed as independent contractors](#)

Ed. Code 45103

[Classified service in districts not incorporating the merit system](#)

Ed. Code 45103.5

[Contracts for management consulting services; restrictions](#)

Ed. Code 45134-45135

[Employment of retired classified employee](#)

Ed. Code 45256

[Merit system districts; classified service; positions established for professional experts on a temporary basis](#)

Gov. Code 12940-12952

[Unlawful employment practices](#)

Gov. Code 53060

[Special services and advice](#)

Gov. Code 82019

[Definition, designated employee](#)

Gov. Code 87300-87313

[Conflict of interest code](#)

Lab. Code 2750.3
Unemp. Ins. Code 606.5
Unemp. Ins. Code 621

[ABC three-part test: employees and independent contractors](#)
[Determination of employment status](#)
[Employer and employee defined](#)

Management Resources References

Court Decision

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[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](#)

Cross References

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