

# San Dieguito Union High School District

## Consultants

BP 3600

### **Business and Noninstructional Operations**

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.

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 remunerations 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:

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.

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.

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.

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.

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.

Legal Reference:

#### 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 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

**Board Adopted: May 9, 2019**

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**Board Revised: April 20, 2022**