

# Perris Union High School – Board Policy

## Business and Noninstructional Operations

BP 3600(a)

### CONSULTANTS

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 contractor ~~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 not be retained as independent contractors. They shall be considered an employee rather than an independent contractor unless employees for all purposes, even if the district is able additional services are not related to demonstrate that all of the following conditions have been met: (Labor Code 2750.3) their regular duties.~~

~~1.~~ 1. The person or entity is free from the control and direction of the district in connection with the performance of the work ~~4117.12/4317.12 – Retirement Consultancy Contracts)~~

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2. The person or entity is performing work that is outside the usual course of the district's business.

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.

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.

(cf. 3311 - Bids)

(cf. 3312 - Contracts)

CONSULTANTS (continued)

~~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.~~

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

All qualified ~~independent contractors~~ firms or resource persons shall be accorded equal opportunity for ~~consultant~~ contracts regardless of ~~actual or perceived~~ race, ~~creed,~~ color, ~~gender,~~ national or ethnic origin, ~~ancestry,~~ age, ~~religious creed,~~ marital status, ~~pregnancy,~~ physical or mental ~~or~~ 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. 3311 - Bids)~~

~~(cf. 3551 - Food Service Operations/Cafeteria Fund)~~

~~(cf. 0410 - Nondiscrimination in District Programs and Activities)~~

~~(cf. 0415 - Equity)~~

~~(cf. 4030 - Nondiscrimination in Employment)~~

~~When formal proposals are deemed necessary, the elements within the written proposal will be incorporated into the contract or purchase order. Proposals will detail the information listed below.~~

~~1. Specific objectives to be accomplished by the consultant.~~

~~2. Specific tasks to be performed.~~

~~3. Procedures to be used in carrying out the tasks.~~

~~4. Target dates for the completion of tasks.~~

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.~~

CONSULTANTS (continued)

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)

*(cf. 9270 - Conflict of Interest)*

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

Legal Reference: (see next page)

CURRENT

**CONSULTANTS (continued)**

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

Management Resources:

INTERNAL REVENUE SERVICE PUBLICATIONS

15-A Employer's Supplemental Tax Guide

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PERRIS UNION HIGH SCHOOL DISTRICT

Perris, CACalifornia

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Adopted/adopted: December 11, 1996

Revised/revised: April 21, 2010

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