

Personnel

MOUNT PLEASANT COTTAGE SCHOOL UNION FREE SCHOOL DISTRICT**SUBJECT: DETERMINATION OF EMPLOYMENT STATUS: EMPLOYEE OR INDEPENDENT CONTRACTOR**

Regulations recently promulgated by the Office of the State Comptroller provide guidance to school districts to help them determine whether an individual is an employee, and therefore eligible for membership in the New York State and Local Retirement System (NYSLRS) and for service credit, or an independent contractor who is not eligible for membership.

A certification of the determination that an individual is an employee will now be required when the School District initially reports to the NYSLRS certain covered professionals -- those persons providing services as an attorney, physician, engineer, architect, accountant or auditor.

Employee shall mean an individual performing services for the School District for which the District has the right to control the means and methods of what work will be done and how the work will be done. Independent contractor shall mean a consultant or other individual engaged to achieve a certain result who is not subject to the direction of the employer as to the means and methods of accomplishing the result. (Guidance from the New York State Education Department emphasizes that school districts and BOCES do not have the authority to enter into agreements with independent contractors for instructional services).

When making a determination as to whether an individual is an employee or an independent contractor, the factors set forth below shall be considered by the District.

Factors Supporting the Conclusion that an Individual is an Employee rather than an Independent Contractor

- 1) The District controls, supervises or directs the individual performing the services, not only as to result but as to how assigned tasks are to be performed;
- 2) The individual reports to a certain person or department at the beginning or during each work day;
- 3) The individual receives instructions as to what work to perform each day;
- 4) The individual's decisions are subject to review by the District;
- 5) The District set hours to be worked;
- 6) The individual works at established and fixed hours;
- 7) The District maintains time records for the individual;

(Continued)

Personnel

**SUBJECT: DETERMINATION OF EMPLOYMENT STATUS: EMPLOYEE OR
INDEPENDENT CONTRACTOR (Cont'd.)**

- 8) The District has established a formal job description;
- 9) The District's Board of Education formally created the position with the approval of the local civil service commission where necessary;
- 10) The District prepares performance evaluations;
- 11) The District requires that the individual attend training;
- 12) The District provides permanent work space and facilities (including, but not limited to, office, furniture and/or utilities);
- 13) The District provides the individual with equipment and support services (including, but not limited to, computer, telephone, supplies and/or clerical assistance);
- 14) The individual is covered by a contract negotiated between the union and the District;
- 15) The individual is paid salary or wages through the District's payroll system;
- 16) Tax withholding and employee benefit deductions are made from the individual's paycheck; and
- 17) The individual is entitled to fringe benefits (including, but not limited to, vacation, sick leave, personal leave, health insurance and/or grievance procedures).

Factors Supporting the Conclusion that an Individual is an Independent Contractor rather than an Employee

- 1) The individual has a personal employment contract with the District;
- 2) The District pays the individual for the performance of services through the submission of a voucher;
- 3) The individual is authorized to hire others, at the expense of the individual or a third party, to assist the individual in performing work for the District;
- 4) The individual provides similar services to the public;
- 5) The individual is concurrently performing substantially the same services for other public employers; and

(Continued)

SUBJECT: DETERMINATION OF EMPLOYMENT STATUS: EMPLOYEE OR INDEPENDENT CONTRACTOR (Cont'd.)

- 6) The individual is also employed or associated with another entity that provides services to the District by contract, retainer or other agreement.

Employees to be Reported to NYSLRS

Only persons who are active members of NYSLRS and who have been assigned a registration number shall be included in the reporting requirements. In the case of employees who are in the process of being registered to membership, all service, salary and deductions data and mandatory contributions shall be accumulated by the District and such accumulation shall be included with the first monthly report which is due after the employee's registration number has been assigned.

An individual serving the District as an independent contractor or consultant is not an employee and should not be reported to the retirement system.

The District has the primary responsibility for determining whether an individual is rendering services as an employee or as an independent contractor. When making such a determination the District must consider the factors enumerated in State Regulations.

The District shall also complete, as necessary, a Certification Form for Individuals Engaged in Certain Professions (Form RS2414) as promulgated by the Office of the New York State Comptroller. As noted on the Certification Form instructions, when making a determination as to an individual's status as an employee or independent contractor, no single factor should be considered to be conclusive of the issue. All factors should be considered in making an assessment of an individual's status when engaged to perform services.

Written Explanation by District: Certain Professions

In the case of an individual whose service has been engaged by the School District in the capacity of attorney, physician, engineer, architect, accountant or auditor and the District has determined that the individual is rendering service as an employee and, therefore, may be eligible for credit with a retirement system, the District shall submit to the retirement system, in a form prescribed by the Comptroller and certified by the Chief Fiscal Officer of the District, an explanation of the factors that led to the conclusion that the individual is an employee and not an independent contractor or consultant.

Such certification shall be submitted to the retirement system at the time the individual is registered to membership or, in the case of an individual who is already a member of the retirement system, at the time the individual is first reported by the District to the retirement system. The District shall submit copies of documentation pertaining to the appointment of the individual as an employee,

(Continued)

Personnel

**SUBJECT: DETERMINATION OF EMPLOYMENT STATUS: EMPLOYEE OR
INDEPENDENT CONTRACTOR (Cont'd.)**

including a copy of the minutes of the Board of Education meeting where such individual was appointed an employee by the Board of Education, and the decision to report the individual to the retirement system as well as the acceptance of the appointment by the local civil service commission where necessary.