

SUBJECT: SPECIAL PROJECTS CONTRACTS

Special Projects Contracts are agreements between the BOCES and persons who provide services of a specialized, unique or immediate nature. While engaged in such projects, individuals will not be considered employees of BOCES.

Special Projects Contracts shall be used to facilitate the delivery of services to divisions within BOCES and agencies served by BOCES in cases where assistance is needed.

Such services normally fall into one or more of the following categories:

- ❑ Individuals or groups that provide advisory, guidance, planning or program assistance,
- ❑ Individuals or groups that enhance the awareness, knowledge and/or skills of participants,
- ❑ Individuals or groups that plan or develop new curricula, instructional methodologies and/or materials.

Persons engaged under a Special Projects Contract must meet the Internal Revenue Service 20 Factor Control Test attached to this policy. (See page 2 of 5)

The District Superintendent of Schools or designee is authorized to enter into Special Projects Contracts. Such approval must be on a prescribed form prior to the activity.

If the estimated total contract cost exceeds the guidelines, as prescribed by applicable laws and regulations, advance approval must be obtained from the Board. As a general rule, activities conducted under Special Projects Contracts are exempt from the New York State laws relative to competitive bidding.

Adopted: February 13, 2002

EMPLOYEE OR INDEPENDENT CONTRACTOR?

INTERNAL REVENUE SERVICE THE 20 - FACTOR CONTROL TEST

The determination of whether a worker is an employee or an independent contractor depends primarily on the extent to which the person receiving the service has the right to direct and control the service provider with regard to what is to be done and how it is to be done. An employer generally has the right to control how an employee performs the service. Independent contractors determine for themselves how the work is to be performed.

The 20-factor control test is a set of guidelines to be used to indicate the extent of direction and control present in any situation. These factors have been developed by the Internal Revenue Service and are used in connection with IRS audits concerning worker status. Not all factors need to be present in any given situation, and no single factor is controlling. The importance of each factor may vary depending on the situation. The greater the degree of control that exists based on these factors, the more likely it is that the individual will be an employee.

THE 20-FACTOR CONTROL TEST

1. Instructions

Is the individual required to comply with instructions about when, where, and how work is to be performed? This suggests employee status.

2. Training

Individuals who are trained to perform a job in a particular method or manner are usually considered employees. Training can include that provided by an experienced worker, requiring the worker to attend meetings, or by corresponding with the worker or other methods. An independent contractor, on the other hand, usually uses his or her own methods and doesn't receive training from the purchaser of his or her services.

3. Integration

Are the services performed integrated into the operations of the business? This usually shows the individual is subject to control and direction, thus classifying him or her as an employee.

4. Personal Services

If the business requires that the services be performed in person and the employer has substantial interest in how the results will be achieved, this suggests control over an employee.

5. **Use of Assistants**

An independent contractor hires, directs, and pays for his or her own assistants; supplies his or her own materials; and works under a contract providing that the worker is responsible only to achieve certain results. If the business hires, pays or supervises assistants to help the individual performing the services under contract, it suggests an employer-employee relationship.

6. **Ongoing Relationship**

Whether part time, seasonal, or just regular, ongoing work suggests the worker is likely to be an employee.

7. **Fixed Hours of Work**

Independent contractors set their own work hours while employees' hours are determined by the employer.

8. **Full Time Work**

This suggests employee status because the employer controls the time of work and restricts the worker from taking other jobs.

9. **Work Location**

The place where the individual performs his/her work or services is another factor considered by the IRS. If the worker performs services away from the employer's premises ("off-site"), this may suggest independent contractor status. Of course, many properly classified independent contractors will work on the employer's premises.

10. **Work Flow**

Routines, schedules, and patterns established by the employer for a worker indicate employee status.

11. **Reports**

Whether written or oral, requiring regular reports usually suggest employee status.

12. **Manner of Payment**

Being paid by the hour, week, or month suggests being an employee, while being paid an agreed upon lump sum for a job suggests being an independent contractor. In addition to lump-sum payments, employers may also utilize a straight commission basis of compensation without necessarily affecting the worker's status as an independent contractor.

13. **Payment of Expenses**

If an employer pays expenses, this usually means he or she has the right to regulate and direct business activities and indicates employee status.

14. **Providing Tools and Equipment**

Independent contractors usually provide their own equipment while employees use those belonging to the employer.

15. **Investment**

If the worker has a significant investment in his or her own work facilities, this implies being an independent contractor.

16. **Profit or Loss**

Independent contractors can realize a profit or incur a loss. This risk of loss may be a result of investments in equipment or due to a liability for other expenses.

17. **Multiple Clients**

Working for multiple clients usually indicates independent contractor status.

18. **Marketing**

Employees don't normally market their services to the public on a regular basis, while independent contractors might.

19. **Right to Discharge**

If the employer can discharge the worker at any given time, this suggests employment. An independent contractor cannot be dismissed (without legal liability) unless the contract specifications are not met.

20. **Right to Quit**

An independent contractor may be liable for failure to perform according to contractual terms, while an employee may quit at any time without liability.