

SUBJECT: DETERMINATION OF EMPLOYMENT STATUS: EMPLOYEE OR INDEPENDENT CONTRACTOR

The BOCES 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 BOCES must consider the factors enumerated in Commissioner's Regulations Sections 315.2 and 315.3. An individual serving the BOCES as an independent contractor or consultant is not an employee and should not be reported to the New York State and Local Retirement System (NYSLRS).

A certification of the determination that an individual is an employee will now be required when the BOCES 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 BOCES for which the BOCES 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.

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 BOCES and such accumulation shall be included with the first monthly report which is due after the employee's registration number has been assigned.

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The BOCES 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 BOCES: Certain Professions

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

Charging for Professional Services

A lawyer shall not simultaneously be an independent contractor and an employee of the BOCES for the purpose of providing legal services to the BOCES.

A lawyer who is not an employee of the BOCES shall not seek to be or be considered, treated or otherwise reported by the BOCES as an employee thereof for purposes of compensation, remuneration, health insurance, pension and all employment-related benefits and emoluments associated therewith [Education Law Section 2051(2)].

Enforcement

Any person who shall knowingly:

- a) Violate the provisions of Education Law Section 2051(2);
- b) Make a false statement of material fact; or
- c) Falsify or permit to be falsified any record or records of the retirement system in an attempt to defraud the retirement system as a result of such act for the purpose of obtaining a credit towards pension benefits, or a benefit or payment in excess of \$1000 from such retirement system for a professional services provider to which such professional services provider would not be entitled, shall be guilty of a Class E felony.

Reports Regarding Lawyers

The BOCES shall, on or before the 45th day after the commencement of its fiscal year, file with the State Education Department, the State Comptroller and the Attorney General a report specifying those requirements enumerated in Education Law Section 2053.

Protection Against Fraud

Any person who shall knowingly make any false statement, or shall falsify or permit to be falsified any record or records of the retirement system in any attempt to defraud the system as a result of such act, shall be guilty of a misdemeanor, and shall be punishable under the laws of New York State.

Any violation of applicable law that results in a member or beneficiary of the retirement system receiving a benefit or payment in excess of \$1000 more than he/she would have been entitled to shall be a class E felony. Any violation of applicable law that results in a member or beneficiary of the retirement system receiving a benefit or payment in excess of \$3000 more than he/she would have been entitled to shall be a class D felony.

Retirement and Social Security Law Sections 11, 34, 111, 311, 334 and 411
2 New York Code of Rules and Regulations (NYCRR) Sections 315.2 and 315.3
Education Law Sections 525, 2050-2054
8 New York Code of Rules and Regulations (NYCRR) Sections 315.2 and 315.3

Adopted: November 12, 2008
Revised: September 9, 2009