

**WASHINGTON-SARATOGA-WARREN-HAMILTON-ESSEX  
BOARD OF COOPERATIVE EDUCATIONAL SERVICES**

**ADMINISTRATIVE REGULATION**

**EMPLOYMENT OF SCHOOL DISTRICT STAFF (OR RETIREES) ON A TEMPORARY BASIS**

Any school district staff who are members of the New York State Teachers' Retirement System who take part in any BOCES CO-SER and obtain a stipend generally will receive such payment through the payroll, unless they are otherwise determined to be a consultant by completing the "Guidelines to Assist Reportability for Consultants, Independent Contractors and Casual Employees".

Earnings and service for an active NYSTRS Member who is determined to be a consultant is not reportable to NYSTRS.

Earnings and service for a NYSTRS retiree who is determined to be a consultant is reportable to NYSTRS, along with the consultant agreement.

Employees:

The following procedure will ensure payment through the payroll:

- Each year, at the Board of Education Organizational meeting, the District Superintendent of Schools will receive authorization to employ such staff on a temporary basis without further action by the Board of Education.
- The responsible hiring administrator will receive written approval from the appropriate Administrative Cabinet Administrator before making an offer of employment (Recommendation for Employment form).
- Upon completion of the task, the following will be forwarded to the payroll office:
  - Copy of approved Recommendation for Employment form \*
  - Time sheet
  - Form I-9 \*
  - Form W-4 \*
  - Form IT-2104 \*
  - Payroll Data Sheet/Retirement Option

Payroll checks will be issued pursuant to the published schedule of payroll dates.

\* (Unless previously filed during the same school year - W-4 within six months.)

Consultants/Casual Employees:

The following procedure will ensure payment through accounts payable for consultants:

- Completion of the Special Projects Agreement
  
- Completion of the “Guidelines to Assist Reportability for Consultants, Independent Contractors and Casual Employees”

Contractors and Casual Employees:

- W-9 (DBA)
  
- Claim Voucher

Revised 1/16/19

**SPECIAL PROJECT AGREEMENT**

Service Provider: \_\_\_\_\_  
(Type or Print)

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Fed ID #: \_\_\_\_\_

**I hereby agree to provide the following service for the Washington-Saratoga-Warren-Hamilton-Essex BOCES:**

Description of Service: \_\_\_\_\_  
\_\_\_\_\_

Location: \_\_\_\_\_

Date(s): \_\_\_\_\_ Time: \_\_\_\_\_

Stipend: \_\_\_\_\_

**It is understood that stipends are subject to certain regulations set forth by the Internal Revenue Service and will be reported accordingly at the end of each calendar year.**

Other Expenses: (Estimated)

Travel: @ \_\_\_\_\_ cents per mile Est. # of miles: \_\_\_\_\_

Lodging: \_\_\_\_\_ \$ \_\_\_\_\_

Other: (please specify) \_\_\_\_\_

Special Conditions/Equipment: \_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_  
\_\_\_\_\_ (Service Provider)

**BOCES Use Only**

The approving Assistant Superintendent/Director must complete and attach a TRS or ERS decision tree to determine:

Employment Status:

Payment Type:

Employee (HR/Payroll)

Payroll paperwork required. Timesheet for payment

Consultant/Vendor (Accounts Payable)

W-9 required if not previously submitted. Claim Voucher for payment

Total Estimated Cost: \_\_\_\_\_

Source of Funding: General Fund Budget Code: \_\_\_\_\_

Special Aid Fund Code: \_\_\_\_\_

Project Code: \_\_\_\_\_

Approval: \_\_\_\_\_  
Authorized Administrator

Date: \_\_\_\_\_

Chief School Administrators  
College and University Presidents  
School Contacts

## Administrative Bulletin

Issue No. 2007-3

March 2007

### NYSTRS Publishes *Guidelines to Assist Reportability for Consultants, Independent Contractors and Casual Employees*

In an effort to help NYSTRS' participating employers determine how to correctly classify non-regular employees and retirees who return to work — and how to report salary and service information for them — the Retirement System has created the *Guidelines to Assist Reportability for Consultants, Independent Contractors and Casual Employees* (RMS-96).

The enclosed *Guidelines* will assist employers in determining if the duties performed by an individual qualify him or her to be considered a regular employee or a consultant. A consultant is an independent contractor who is not performing a function that is ordinarily performed by a teacher or administrator of the school district. Consequently, all professional service providers must be hired by participating employers as consultants.

As a reminder, for all NYSTRS retirees, districts must submit consultant agreements to the System's Retired Member Services Unit prior to the agreements taking effect, or as soon as they are signed. Failure to do so may result in a substantial loss of a retiree's pension benefits. A final determination will be issued once the consultant agreement is reviewed by the Retirement System.

The glossary accompanying the *Guidelines* provides several important definitions and covers key concepts about consultant agreements, employer reporting and earnings limits in retirement.

Additional copies of the *Guidelines* are available in the "Forms and Publications" section of the Employers page at [www.nystrs.org](http://www.nystrs.org), or by calling our Hotline at (800) 782-0289.

Enclosure



NEW YORK STATE TEACHERS' RETIREMENT SYSTEM  
10 Corporate Woods Drive, Albany, NY 12211-2395

## GUIDELINES TO ASSIST REPORTABILITY FOR CONSULTANTS, INDEPENDENT CONTRACTORS AND CASUAL EMPLOYEES

### Part 1

1. Is the person providing educational instruction to children?  Yes  No
2. Is the person performing a substantial portion of the duties of a full-time school administrator?  Yes  No

If the answer to question 1 or 2 is **YES**, this person would be considered a **regular employee** and the service/salary is reportable to NYSTRS. If you answered **NO** to both of the above questions, please continue.

### Part 2

1. Is the person scheduled to work fewer than 20 days?  Yes  No
2. Is the person performing the same duties for multiple districts?  Yes  No
3. Is the person responsible for his or her own work materials and/or setting his or her own work schedule?  Yes  No
4. Is the pay rate higher than the pay rate of full-time employees under contract?  Yes  No
5. Is there a special level of knowledge or skill required for this position?  Yes  No

If you answered **YES** to three or more questions in Part 2, the person would be considered a consultant.\* If you answered **YES** to fewer than three questions in Part 2 and have questions, please call (800) 348-7298, Ext. 2908.

### For Active NYSTRS Members

- If it is determined that the individual is a consultant, the earnings and service resulting from the duties above would not be reportable.

### For All NYSTRS Retirees

- The earnings and service should be reported as post-retirement pay.
- Districts must submit all consultant agreements to NYSTRS' Retired Member Services Unit **prior** to the agreements taking effect, or as soon as they are signed. Failure to do so may result in a substantial loss of a retiree's pension benefits.

\*For all NYSTRS retirees, a final determination will be issued once the consultant agreement is reviewed by the Retirement System.

## Glossary

**Casual Employee** — The term “casual employee” is defined differently among employers. Use these *Guidelines* to determine if the earnings and service of your casual employee(s) are reportable to NYSTRS.

**Consultant** — NYSTRS defines a consultant as someone who is not an employee of the district. For NYSTRS active members, earnings and service resulting from consultant duties are not reportable to the System, and consequently, are not usable in any benefit calculation.

**Not Reportable** — Earnings or service that should not be reported to NYSTRS via employer reports.

**Post-Retirement Pay** — Money earned and paid to a member who has previously retired from a NYS public retirement system.

### **FOR ALL NYSTRS RETIREES:**

**Consultant Agreements** — If the System does not approve the consultant agreement or an employee falls into category “2.” noted below, the employee’s earnings in retirement will be limited by Sections 212 and 211 of the Retirement and Social Security Law.

1. A retiree whose date of membership is **before** May 31, 1973, with a consultant agreement approved by NYSTRS, may have unlimited earnings.
2. A retiree whose date of membership is **on or after** May 31, 1973, is subject to the Section 212 or 211 earnings limit even if the employer considers him or her a consultant and NYSTRS approved the consultant agreement.

#### **Section 212**

Most retirees under age 65 who work in public employment in retirement meet the provisions of this section of law. Under Section 212, retirees may return to New York State public employment on a temporary or occasional basis (not full-time contractual employment) and earn a designated amount per calendar year, as established by the State Legislature. For the current limit, visit the Retirees page of the System’s Web site ([www.nystrs.org](http://www.nystrs.org)).

#### **Section 211**

Retirees who *plan* to earn more than the Section 212 limit within a calendar year can work under Section 211 with approval from whichever entity has jurisdiction over their employment. If continuing work in education, the approval would be required from the Commissioner of Education. **The employer must initiate the approval.**

#### **Third-Party Employment**

Retirees hired and paid by a private agency to fill a position on an interim basis with a New York State public school or other New York State public employer may be subject to the earnings provisions of Sections 212 and 211 noted above. It is the participating employer’s responsibility to report to NYSTRS any monies earned by a retiree as post-retirement pay, even if paid to a third-party employer. Retirees employed via a third party should be instructed to contact NYSTRS to determine the possible impact on their retirement benefit.

#### **Unlimited Earnings**

Retirees can have unlimited earnings in the following types of employment: private, out-of-state, federal government, holding elected public office in New York State, working as a consultant for a public employer if their date of membership is prior to May 31, 1973 (**all contracts must be reviewed by NYSTRS before employment begins**), or all employment beginning in the calendar year in which the retiree turns age 65.