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: ____________________ Date: ________________

Authorized Administrator

Copies:
Original – Business Office
Copy – Program Office
Copy – Service Provider
01/2019
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, 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).

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.

Additional specifics can be found in Administrative Bulletin 2007-3 and in our pamphlet Working in Retirement. Both are available at www.nystrs.org.