

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).

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.

(Continued)

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

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.

Retirement and Social Security Law Sections 11, 34, 311, and 334
2 New York Code of Rules and Regulations (NYCRR) Sections 315.2 and 315.3

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