

**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 this determination, the BOCES must consider the factors set forth in state regulations.

A certification of the determination that an individual is an employee is required when the BOCES initially reports to the New York State and Local Retirement System (NYSLRS) certain covered professionals, including those persons providing services as an attorney, physician, engineer, architect, accountant, or auditor.

**Definitions**

"Employee" means 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" means a consultant or other individual engaged to achieve a certain result for the BOCES, but who is not subject to the direction of the BOCES as to the means and methods of accomplishing the result. The BOCES will not enter into agreements with independent contractors for instructional services except under the limited circumstance permitted by the New York State Education Department (NYSED).

**Employees to be Reported to NYSLRS**

All persons employed by the BOCES will be included in the reporting requirements. The BOCES will provide the information deemed necessary by the retirement system for all employees except those who actively participate in another public retirement system or program. In the case of employees who are in the process of being registered to membership, all service, salary, and deduction data and mandatory contributions will be accumulated by the BOCES and the accumulation will be included with the first monthly report which is due after the employee's registration or identification number has been assigned.

An individual serving the BOCES as an independent contractor or consultant is not an employee and should not be reported to the retirement system.

**Employer Reporting of 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 will 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.

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When making a determination as to an individual's status as an employee or independent contractor, no single factor will be considered to be conclusive of the issue. All factors will be considered in making an assessment of an individual's status when engaged to perform services.

The BOCES will also complete, as necessary, a Certification Form for Individuals Engaged in Certain Professions (Form RS 2414) as promulgated by the Office of the New York State Comptroller.

**Legal Services**Charging for Legal Services

An attorney will not simultaneously be an independent contractor and an employee of the BOCES for the purpose of providing legal services to the BOCES.

An attorney who is not an employee of the BOCES will not seek to be or be considered, treated or otherwise reported by the BOCES as an employee for purposes of compensation, remuneration, health insurance, pension, and all associated employment-related benefits and emoluments.

Reports Regarding Attorneys

The BOCES will, on or before the 45th day after the commencement of its fiscal year, file with NYSED, the State Comptroller, and the Attorney General a report specifying:

- a) All attorneys who provide legal services to the BOCES or Board;
- b) Whether the BOCES or Board hired those attorneys as employees; and
- c) All remuneration and compensation paid for legal services.

Protection Against Fraud

Any person who knowingly makes any false statement, or falsifies or permits to be falsified any record or records of the retirement system in any attempt to defraud the system, or who receives certain benefits or payments in excess of statutory limits, as a result of those acts, will be guilty of criminal conduct, and will be punished under the laws of New York State.

Education Law Sections 525, 2050-2054  
Retirement and Social Security Law Sections 11, 34, 311, and 334  
2 NYCRR Sections 315.2 and 315.3

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Personnel

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NOTE: Refer also to Policy #1337 -- Duties of the School Attorney

Adoption Date: 12/12/24