

**TEMECULA VALLEY CHARTER SCHOOL
Board Policy**

Section 3000 Business and Non Instructional Operations

**3006 PROFESSIONAL CONSULTANTS, RESOURCE PERSONS, AND STUDENT
SERVICE PROVIDERS**

Board Action: APPROVED

Effective Date: 11-2-15

Overview

The Board of Directors authorizes the use of consultants from time to time to provide expert professional advice or specialized technical or training services which are not needed on a continuing basis and which cannot be provided by school staff because of limitations of time, experience or knowledge. Individuals, firms, or organizations employed as consultants may assist management with decisions and/or project development related to financial, economic, accounting, engineering, legal, administrative, instructional, or other matters.

Prior to executing any contracts and/or agreements with any consultant, the Executive Director/Principal shall ensure, with the assistance of legal counsel when necessary, that the consultant is properly classified as an independent contractor in accordance with Internal Revenue Service guidelines.

School employees who perform extra-duty consultant services shall not be retained as independent contractors. They shall be considered employees for all purposes, even if the additional services are not related to their regular duties.

The Executive Director/Principal must receive prior approval of the Board for all consultant contracts greater than \$2,500.

All qualified firms or resource persons shall be afforded equal opportunity for consultant contracts regardless of race, creed, color, gender, national or ethnic origin, age, or disability.

Independent contractors applying for a consultant contract shall submit a written conflict of interest statement disclosing financial interests, if any, depending on the range of duties to be performed by the consultant. The Executive Director/Principal shall consider this information when deciding whether to recommend the consultant's employment. Any independent contractor or consultants having disclosed any financial or personal interest in the school must have their contracts presented to the board for prior approval regardless of amount.

When employees of a public university, county office of education, or other public agency serve as consultants or resource persons for the school, they shall certify as part of the consultant agreement that they will not receive salary or remuneration

other than vacation pay from any other public agency for the specific days when they work for this school.

Definitions

- a. **Independent contractors:** Workers, not employees of Temecula Valley Charter School, who are contracted to perform specific services for TVCS and who retain control over how the job is done. Specific criteria for determining whether a worker is an independent contractor (as opposed to an employee of TVCS) are summarized below, but in the event that human resources personnel are not certain whether a person can be classified as an independent contractor then legal counsel shall be consulted. Independent contractors are classified as professional consultants, resource persons, or student service providers.
- b. **Professional consultants:** Independent contractors who are retained to provide opinions, training and advice in financial, economic, accounting, engineering, legal, assessment, accountability, research and evaluation, or administrative matters.
- c. **Resource persons:** Independent contractors who are recognized experts in their field with a level of talent and skill not available with TVCS and who provide services for instructional and instructional support programs.
- d. **Student service providers:** Independent contractors who provide direct pupil services.

Criteria Used to Determine Whether Qualifications of an Independent Contractor

- a. **Instructions.** A contractor may follow provided job specifications but should not be required to follow or be furnished with instructions on how the job should be completed.
- b. **Training.** A contractor should be skilled at the trade and not require any training to complete the job. Contractors should not have expenses paid by TVCS to attend any training or workshops needed to complete the assignment.
- c. **Services rendered personally.** A contractor is hired to provide a result and has the right to hire others to do the task.
- d. **Hiring assistants.** A contractor has the right and responsibility for hiring, supervising, and paying any assistants who are needed for the task.
- e. **Set hours of work.** A contractor will set his/her own hours without any supervision. TVCS does have the right to request that work not be performed during specified hours.
- f. **Work done on premises.** A contractor controls where the work is done. If the work is done on TVCS premises, TVCS does not direct or supervise the contractor in any way.
- g. **Order or sequence set.** A contractor is in control of the order in which the job will be completed. TVCS cannot direct the manner in which the work is performed.
- h. **Reports.** TVCS should not require the contractor to submit reports on the progress of the job. A contractor also should not attend any regular district meetings.

- i. **Payments.** A contractor should be paid as per Performance Agreement instructions. Payments can be periodic. Payment can be based on number of hours and a fixed rate if this is calculated into the contract.
- j. **Expenses.** A contractor will be responsible for all his/her expenses. TVCS should not reimburse for expenses separately from the contract price. Expenses should be estimated and included in the contract fee calculation.
- k. **Tools and materials.** A contractor should have investments in his/her own business that includes any materials and tools needed to offer services. If TVCS equipment or materials are used, TVCS should charge a fee to the contractor for the usage.
- l. **Work for more than one person or firm.** A contractor's services are available to two or more unrelated persons or firms at the same time.
- m. **Offer of services to the general public.** A contractor makes his/her services available to the general public by having an office and assistants, advertising services, and/or being listed in a business directory.
- n. **Right to fire.** A contractor cannot be fired as long as he/she produces a result that meets the specifications of the contract.
- o. **Right to quit.** A contractor usually agrees to complete a specific job. He/she has a responsibility for its satisfactory completion, or is legally obligated to make good for failure to complete the task.

Limitations

- a. **Consultant/resource person/student service provider vs. employer-employee relationship.** A person should not be retained as a professional consultant, resource person, or student service provider if an employer-employee relationship exists (i.e., the employer has complete control over the manner and means of accomplishing the desired result). If such a relationship exists, that person may be regarded as an employee, and TVCS may be liable for withholding state and federal income tax and unemployment taxes. (**Example:** Any person retained on an hourly basis for a semester or an academic year should be employed as a certificated or classified hourly employee.) Employees may not be retained as consultants for the school district because of conflict of interest provisions.
- b. **Conflict of interest.** Disclosure shall be required when, in the opinion of the Board or Director, a consultant/resource person/student service provider is in a position to influence a district decision in which he/she might reasonably be expected to have financial interest. Disclosure shall include investments in, and income from, a business entity or activity involved in selling or leasing property, materials, equipment, supplies, or services in any way related to area(s) in which the consultant is rendering service. *Such a disclosure statement shall be considered by the Director in making a decision on whether or not to retain the consultant.*
- c. **Full-time employees of another public agency** (e.g., public college or university, school district, or County Office of Education). Such employees who serve as professional consultants, resource persons, or student service providers are required to certify as a part of consultant agreements that they will not receive salary or remuneration, other than vacation pay, from any other public agency for the specific calendar days worked.

- d. **Tuberculosis clearance.** Student service providers who work directly with students must demonstrate compliance with tuberculosis clearance as required by law.
- e. **Fingerprinting.** Independent contractors and their employees who are performing services for TVCS must have their fingerprints submitted to the California Department of Justice (DOJ). Such persons may not perform any services for TVCS until their fingerprints have been cleared by the DOJ.
- f. **Qualification as a resource person** shall be based upon background experience and skills in the field in which service is to be provided. Resource persons need not meet specified formal educational standards. It is the responsibility of the Director of the charter school services of resource persons to ensure that such persons meet necessary qualifications for service to be rendered.
- g. **Qualification as a professional consultant or student service provider** shall be determined by the Director requesting these services.

Rates for independent contractors are established as described below:

- a. **Professional consultants.** Rates are established as per the Performance Agreement. Contracts must be approved by the Board prior to services being rendered.
- b. **Resource persons.** Rates are established as per the Performance Agreement. Ratification of resource persons' use is required by the Board.
- c. **Student service providers.** Rates are established by the Performance Agreement. Contracts will be submitted to the Board of Education for ratification.

Federal- or State-Funded Projects

- a. **When a federal- or state-funded project** prescribes rates to be paid to independent contractors for project-related services performed, these rates supersede those prescribed by the Performance Agreement. If no specific rates are prescribed, as per Performance Agreement.
- b. **The Director or designee** charged with administering externally-funded projects shall ensure that the types of independent contractor services requested are permitted within specifications of project grants. Certain federal projects require that a contract be approved by the State Department of Education whenever an independent contractor is to be retained in excess of seven workdays.

Performance Agreement. Whenever payment to any independent contractor will exceed \$2,500 during a fiscal year, the Performance Agreement must be signed and approved by the Board of Directors prior to the performance of services.

Evaluation. The Executive Director/Principal or designee will complete a performance evaluation based upon completion of services rendered by contractor. A copy of the completed form will be kept at the site and a copy maintained in the Business Office

Use of Teachers and Other TVCS Staff. Employees may not be retained as independent contractors for Temecula Valley Charter School because of conflict of interest provisions. The Executive Director/Principal may use teachers and staff outside of their contract day for specific in-service presentations, curriculum writing, and other instructional tasks, using the hourly non-classroom rates.