



## Regulation of the Chancellor

Number: **C-190**

Subject: **UTILIZATION OF CONSULTANTS**

Category: **PEDAGOGICAL PERSONNEL**

Issued: **November 28, 2000**

### SUMMARY OF CHANGES

This regulation supersedes and replaces C-190 dated 1/20/98.

The regulation sets forth the Board of Education's rules and regulations on the use of individuals as consultants.

There are no significant changes in this regulation.



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### I. OBJECTIVES

This regulation sets forth the Board of Education's rules and regulations on the use of consultants and should be read in conjunction with the appropriate chapter of the Standard Operating Procedures Manual, which details the procedures of engaging the services of consultants. Specific limitations on compensation and permissible duration of consultant service are promulgated through annual announcements from the Division of Human Resources. Essentially, persons in this category should be utilized only in cases where there is no member of the regular staff available to perform the assigned duties.

### II. APPLICABILITY

- A. These regulations cover the utilization of all types of consultants other than administrative consultants specified in subdivision 3e, below.
- B. These regulations apply only to the utilization of individuals as consultants. Any formal agreement relating to the services of a group, corporate body, institution or individual who is incorporated must be arranged by contract in accordance with requirements set forth in the applicable chapter of the Standard Operating Procedures Manual (SOPM).
- C. These regulations apply to all types of consultants as specified including any retiree from the Board of Education or a New York City or New York State agency. Any waiver that may have been issued to authorize such consultant service does not exempt the retiree from the general limitations mentioned later in this regulation for all persons serving as consultants.

### III. DEFINITIONS AND GENERAL GUIDELINES

- A. Consultants are temporary, occasional personnel used to assist in the planning and evaluation of a program or in specialized and technical areas which are not accommodated within the duties and responsibilities of any available pedagogical or administrative staff member.
- B. The services of a consultant may be used only on a temporary basis to provide skills and expertise not currently available from the regular staff.
- C. Consultants are not employees of the Board of Education and are, therefore, not entitled to any fringe benefits, e.g., vacation, sick leave, hospitalization, etc. However, they are subject to various Board policies and rules and regulations including Chancellor's Regulation C-110, governing conflicts of interest (please see SOPM Section 2.2 pages 7-10). All consultants will be required to execute

- statements disclaiming such conflicts and, when requested, to furnish information related to such disclaimers or to any other aspect of their assignment to the Office of the Special Commissioner of Investigations or to any Board of Education or New York City regulatory body.
- D. Generally, the assignment of a consultant is not to be done with a view toward subsequent conversion to the status of an annual employee. In exceptional circumstances, where there is a demonstrable benefit to be derived from the individual's employment as a regular member of staff, consideration may be given for such employment. In no case, however, may the individual's employment on an annual basis be backdated to the start of the period of consultant service.
- E. This regulation covers the following categories of consultants:
1. Education Consultants have specific expertise in areas such as program development and implementation, staff development and training, diagnosis of learning disabilities, pupil assessment, development of guidelines and manuals on school personnel administration.
  2. Evaluation Consultants have demonstrable professional and technical skills necessary to assess the success of a program. These skills might include research and development, testing, the collection, processing, preparation and dissemination of reports. The nature and applicability of the consultant's skills should be determined based on the specific tasks necessary to complete the evaluation.
  3. Artistic Consultants function as performing artists or they assist in specialized aspects of a program related to the arts. They offer unusual talents in the areas in which they provide service.  
  
All "consultant" procedures apply to artistic consultants with the following exceptions:
    - The performer's handbill specifying performance credits may be used instead of a resume and will be verified by the purchasing office; and
    - Consideration may be given to rehearsal and other preparation time on other than Board of Education premises when computing pay. Such rehearsal time and preparation time will be reviewed on a case by case basis.
  4. Arbitrators and Expert Witnesses are engaged to render determinations or to furnish authoritative testimony at hearings on matters of employee performance and labor relations. In some cases, the cost of their services is shared, by agreement, with an employee or union.
  5. Legal and Medical Consultants are specialists with expert competencies in their fields of work. They are employed typically on an ad hoc basis for the duration of a particular case.
- F. Consultants may sub-contract only the required incidental services such as typing and computer analysis for which they may lack personal proficiency.

**IV. CONTROLS ON THE UTILIZATION OF CONSULTANT SERVICES**

- A. Consultant services may not be utilized by a community school district or a headquarters office without the prior approval of the Division of Human Resources. The organizational unit utilizing the consultant is responsible for obtaining this approval before the commencement of service. Retroactive approval will be granted only in extreme situations and then only with the approval of the Chancellor. It is also the obligation of that unit to check on the qualifications of the prospective consultant and to take the action necessary to encumber the funds that will be required to compensate the consultant. In addition, it is incumbent upon the utilizing unit to notify the Division of Human Resources of any changes in the length of service or other working arrangements of any person serving as a consultant.
- B. The Division of Human Resources will review the projected utilization of a consultant with respect to the appropriateness of the nominee's qualifications, the proposed rate of compensation and the length of service. In its consideration of these factors, the Division of Human Resources may request additional information or documentation from the nominating authority or the individual who is to serve in this capacity. The Office of the Auditor General may conduct audits to confirm the location and nature of the consultant's assignment and the accuracy of records of dates of service.
- C. If the total expense for a project is anticipated to be \$25,000 or less, no solicitation is required. However, the district/Financial Management Center (FMC) must explain how and why the consultant was identified for the project. It is recommended that a request for proposal (RFP) process be used to secure services at this level.

If the total expense for a project is anticipated to be over \$25,000, a written solicitation and public advertising are required.

Services up to \$50,000 may be secured through the use of the Consultant Encumbrance Document and Change Notice. Services in excess of \$50,000 require the establishment of a formal contract.

Change notices increasing the total expenditure for an individual consultant beyond the \$25,000 threshold will not be approved unless accompanied by evidence of the solicitation and/or advertising procedure outlined above. In the event billing exceeds the \$25,000 threshold and the above procedure involving the solicitation and advertisement has not been followed, the consultant will not be paid.

If the total expense for a project is anticipated to be over \$50,000 but not more than \$100,000, a formal RFP, including public advertising, is required. The Division of Financial Operations must then prepare a formal contract. No central Board resolution is required.

If the total expense for the project is anticipated to be over \$100,000, a formal RFP, including public advertising, is required. A central Board resolution is required and a formal contract must be prepared and executed by the Office of Legal Services.

In those instances over \$25,000 for which there are extenuating circumstances that preclude a competitive solicitation, an exception may be requested of the Chancellor's Exception to Bidding Committee, prior to the onset of the service. Requests are to be submitted in writing to the Deputy Administrator of Contracts, Division of Financial Operations, 65 Court Street, Brooklyn NY 11201, Fax: (718) 935-5117.

- D. Fingerprinting is required for service of more than 10 days. If, however, the consultant is working in a school and/or around children, he/she will be required to be fingerprinted before starting work. Consultants who serve for more than 10 days during the fiscal year must be fingerprinted before starting work. The project coordinator should inform the consultant that after fingerprinting, he/she should personally take the receipt for the fingerprinting to the Division of Human Resources, Consultant Monitoring Unit to expedite the approval process.
- E. The Division of Financial Operations will verify that the necessary funds are available to provide compensation to the individual who is proposed for service as a consultant and will inform the financial management center of such fiscal capability. No consultant may commence service until the Division of Financial Operations has verified that sufficient funds for this purpose have been encumbered and the Division of Human Resources has given its approval.
- F. The Notice of Review of Consultant Qualifications (OP 190R) is sent by the Division of Human Resources, Consultant Monitoring Unit, to the FMC as notification of acceptance or rejection of the consultant nomination. The bottom portion must be completed at the conclusion of the consultant's project and returned to the Consultant Monitoring Unit. Failure to submit the evaluation may jeopardize future consultant nominations for the individual.

## V. COMPENSATION

- A. The maximum daily rate of compensation for education, evaluation and artistic consultants shall be established on an annual basis. The Division of Human Resources will be responsible for notifying all organizational units of any changes in rates.
- B. The compensation level for arbitrators, expert witnesses, legal and medical consultants and other individuals with highly specialized expertise will be established individually on the basis of the value of the specific services and the prevailing rate paid to persons of such stature by other public agencies and industrial organizations. The maximum rate for such services shall be established by the Chancellor. Authority for determination of the specific rates of payment is delegated to the Office of Legal Services in the case of legal consultants, and to the

Executive Director, Division of Human Resources, for arbitrators, expert witnesses, medical consultants and other consultants with unique qualifications.

- C. A record must be maintained of the dates, hours and location of service, and of the duties performed by each consultant. No payment may be authorized where such timekeeping data is not available.

**VI. CONDITIONS AND LIMITATIONS ON THE UTILIZATION OF CONSULTANTS**

- A. Service as an education, evaluation or artistic consultant, in accordance with this regulation, may not be used as a means of providing for responsibilities that are primarily clerical in nature or for services which are not directly supportive of the educational process.
- B. No person whose name appears on any payroll of the Board of Education as a full-time or part-time member of either the pedagogical or administrative staff with a regular work schedule of 20 hours or more per week may serve as a consultant.
- C. No person who is employed on a full-time or part-time basis in any other city agency or public corporation or authority where compensation is derived wholly or in part from city funds may serve as a consultant without written authorization by such agency, including a statement by the agency head that the proposed service as a consultant will not constitute a conflict of interest with the basic work schedule and responsibilities of the nominee.
- D. No person whose work responsibilities include the evaluation of a Board of Education program may serve as a consultant in that program.
- E. The maximum number of days for which a consultant may serve in a single program or activity or a combination of programs or activities will be announced annually by the Division of Human Resources. The Division of Human Resources will monitor compliance with these limits by the community school district or unit in which the consultant is serving.
- F. Ordinarily, a consultant is expected to perform service on the premises of a school or an administrative office. Where the nature of the assignment necessitates performance of duties at a different location or at home, the initial application for approval must note this exception.
- G. The work day is seven hours of actual work time. The standard work day is used to calculate an hourly rate for billing purposes. The standard work day's assignment is generally performed between the hours of 7:30 a.m. and 8:00 p.m., Monday through Friday. Travel time from the home to the work site may not be compensated. It is recommended that an unpaid meal break of a minimum of 1/2 hour be taken after five hours of service. In no case may a consultant's workday exceed ten hours. However, in cases of dire urgency, exceptions may be granted but only with the approval of the Executive Director of the Division of Human Resources.

Any variation in the length of the standard working day must be indicated in advance on the Consultant Nomination Request form and approved by the Division of Human Resources as noted in the "Remarks" section of the Consultant Approval Form.

Education consultants may not work beyond the school day or when schools are not in session (e.g., Saturdays, Sundays or holidays), unless a specific session outlined in the narrative of the program is scheduled on that day. If service is performed at the District/FMC Office, the consultant may work during the standard work hours at that location.

All other categories of consultants may work beyond the standard workday only with the express written approval of the Division of Human Resources and should include prior approval by a Board of Education supervisor.

The maximum that may be paid in one day (based on the standard seven hour work day) is the agreed upon per diem rate, unless otherwise indicated on the Consultant Nomination Request Form and approved by the Division of Human Resources as noted in the "Remarks" section of the Consultant Approval Form.

In cases where legal or medical consultants or arbitrators and expert witnesses have been engaged for a day of service, the per diem rate may be payable even if the service during the day takes fewer than seven hours.

- H. Logs indicating a consultant's date(s), hours and types of services are to be completed and signed by the individual consultant and approved by the responsibility center. Under no circumstances is this log to be completed by the personnel of the responsibility center at which site service was rendered.

#### **VII. AUDITS OF COMPLIANCE WITH PROCEDURES**

The Office of the Auditor General shall conduct audits of compliance with the procedures set forth in this regulation and the appropriate chapter of the Standard Operating Procedures Manual.

#### **VIII. REQUESTS FOR VARIANCES AND QUESTIONS CONCERNING THE UTILIZATION OF CONSULTANT SERVICES**

Except in those very limited circumstances which can be demonstrated to constitute an extreme emergency where retroactive approval is sought, all requests for variances by the Chancellor or Deputy Chancellor from the normal conditions and limitations on the utilization of consultant services must be submitted prior to the commencement of service of the affected individual and should be addressed to the Executive Director of the Division of Human Resources. Inquiries relating to the interpretation of the provisions of this regulation should be addressed in writing to the Division of Human Resources, Consultant Monitoring Unit, 65 Court Street, Brooklyn, New York 11201. Questions with respect to specific fiscal procedures should be directed to the Division of Financial Operations, Bureau of Accounts Payable, 65 Court Street, Brooklyn, New York 11201.

**IX. INQUIRIES**

Inquiries concerning this regulation should be directed to:

Director, Per Session Consultant Monitoring Unit

NYC Department of Education

65 Court Street - Room 405G

Brooklyn, NY 11201

Telephone:

718-935-2323