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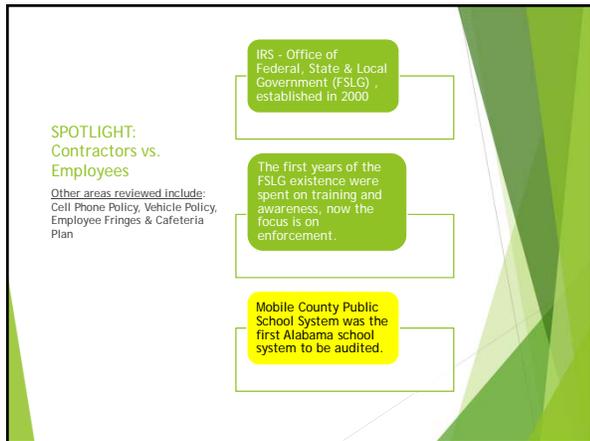
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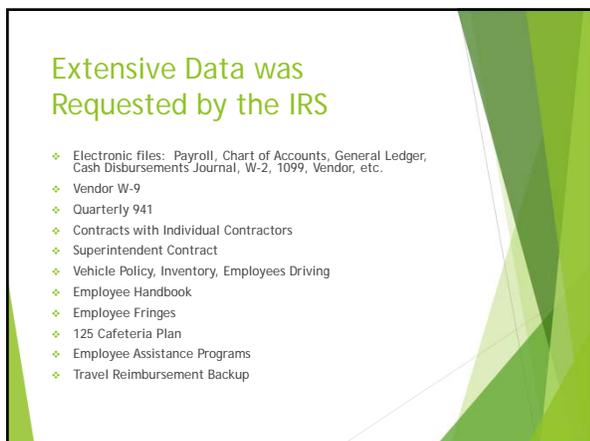
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### IRS Findings

- ▶ A small number of instances were found where a 1099 was not issued and should have been (Vendor not tagged as "1099 Vendor" in NextGen).
- ▶ We had various situations in which we contracted with an individual to perform services rather than adding a fulltime position. These individuals were paid as self-employed contractors via Accounts Payable and issued a 1099. The IRS determined that all of these individuals should be paid via payroll and the applicable taxes should apply.



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The contractor payments which the IRS did not agree with can be broken into the following groups:

- ▶ Parent Organizers
- ▶ Non-Public School Service Providers
- ▶ Tutors
- ▶ Therapists (Speech/Language & OT/PT)
- ▶ Other consultants
- ▶ Known Employees

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### Parent Organizers

- ▶ These individuals were purposefully retained via contract so that they would not become tenured employees.
- ▶ Parent Organizers were individuals who worked with parents to increase parental involvement in schools with a deficiency.
- ▶ We have eliminated these positions and replaced with Parent Managers, who are part time employees paid via payroll.

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### Non-Public School Service Providers

- ▶ Federal guidelines require non-public school access to federal funds but public school systems can not distribute the money directly to the non-public entity. Payment must be made directly to the provider of the materials and services. Therefore, we had contracts with teachers and others providing service to the private schools. Even though federal guidance gives the public school system much control over these service providers, we did not consider them employees. We now pay via payroll, but keep the weekly hours under 19.5 so that tenure and additional benefits do not apply.

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### Tutors

- ▶ We utilize college students and retired teachers as tutors.
- ▶ They provide intermittent services and will be paid via payroll in the same manner as that of a substitute.



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### Therapists

- ▶ This group includes Speech/Language, Occupational, and Physical Therapists
- ▶ In the past we used a mix of agencies and individuals.
- ▶ We now only utilize organized businesses.



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### Other Consultants

- ▶ We will continue to contract with consultants who provide short term workshops and staff development. This is their business and they provide the same service to a number of other clients.
  - ▶ This is the only clear cut reason to pay an individual as a contractor. All other contracts should be with organized businesses.
- ▶ We will no longer contract with an individual to provide long term on-site services, such as managing one of our grants or programs.
- ▶ Utilizing an individual with an organized business, such as and LLC will be reviewed independently by case.

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### Known Employees

- ▶ We unknowingly paid some regular employees for tutoring and/or other extra work via accounts payable. They were turned in by schools/departments as part of a list of contracted individuals. As our number of employees is so great, there is no way for an accounts payable clerk to 'catch' this situation.
- ▶ We have taught our school and central office staff that this procedure is not allowable.



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### Taxes Assessed by IRS

- ▶ If you classify an employee as an independent contractor and you have no reasonable basis for doing so, you may be held liable for employment taxes for that worker.
- ▶ The Board was charged for the employee and employer share of the following taxes on the contracted individuals:
  - ▶ Federal Income Tax
  - ▶ Social Security Tax
  - ▶ Medicare Tax



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### Section 530 Relief

- ▶ To receive relief, you must meet all three of the following requirements:
  1. You had a reasonable basis for not treating the workers as employees.
  2. You must have treated the workers, and any similar workers, as independent contractors. If you treated similar workers as employees, this relief provision is not available.
  3. You must have filed all required federal tax returns (including information returns) consistent with your treatment of each worker as not being employees.

IRS Publication 1976

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### Section 3509 - GOOD NEWS

- ▶ **No Willful Intent**
- ▶ Because the IRS realized there was no willful intent by Mobile County and the system did not intentionally disregard IRS rulings, Section 3509 rates were applied to our assessment.
- ▶ The application of these reduced rates cut the total assessment significantly.



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### Independent Contractor?

- ▶ You are not an independent contractor if you perform services that can be controlled by an employer (what will be done and how it will be done). This applies even if you are given freedom of action. What matters is that the employer has the legal right to control the details of how the services are performed.
- ▶ If an employer-employee relationship exists (regardless of what the relationship is called), you are not an independent contractor.

<https://www.irs.gov/businesses/small-businesses-self-employed/independent-contractor-defined>

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