

## Conflicts of Interest: Nepotism

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### 1. What is nepotism?

A public official may not appoint, confirm the appointment of, or vote for the appointment or confirmation of the appointment of an individual to a position that is to be directly or indirectly compensated from public funds if the individual is related to the public official or another member of the board by blood (*consanguinity*) within the third degree or by marriage (*affinity*) within the second degree. Tex. Gov't Code §§ 573.002, .041. School district officials who have the power to appoint or employ these persons are subject to the nepotism rules.

### 2. Which relatives by blood (*consanguinity*) are affected by the nepotism prohibition?

Relatives within the third degree. An individual is related to the public official by blood within the third degree, if the public official is the individual's:

1. Parent or child (first degree)
2. Grandparent, grandchild, sister, or brother (second degree)
3. Great grandparent, great grandchild, aunt, uncle, niece, or nephew (third degree)

### 3. Which relatives by marriage (*affinity*) are affected by the nepotism prohibition?

Relatives within the second degree. The marriage prohibition applies if the public official's spouse is the prospective employee (first degree); or if the public official's spouse is the prospective employee's:

1. Parent or child (first degree)
2. Grandparent, grandchild, sister, or brother (second degree)

The marriage prohibition also applies if the prospective employee's spouse is the public official's:

1. Parent or child (first degree)
2. Grandparent, grandchild, sister, or brother (second degree)

A relationship by marriage extends only to blood relatives of a board member's spouse and the spouses of a board member's blood relatives. It does not include a relative-in-law of a board member's spouse.

### 4. Who is considered a "public official" under the nepotism prohibition?

For nepotism purposes, a *public official* of a school district is a member of the school board or an officer of the school district. Tex. Gov't Code § 573.001(3). Depending on the county population and your district's delegation of hiring authority (see below) the term public official could include school board trustees, the superintendent, and sometimes both.

**5. When is the superintendent a “public official” for the purposes of the nepotism prohibition?**

A superintendent is a *public official* for purposes of nepotism if they have final hiring authority for the employment position. The Texas Education Code permits a school board to delegate some or all of its hiring authority to the superintendent. Tex. Educ. Code § 11.1513(a)(2). Commonly, this delegation of hiring authority is limited to at-will employees.

If the school board has delegated hiring authority, the superintendent is subject to the nepotism laws to the extent of that delegation. If, for example, a board delegated final hiring authority for at-will employees to a superintendent, the superintendent could not hire their spouse for an at-will position at the district. The board, however, could hire the superintendent’s spouse for a contract position.

To the extent the board has retained hiring authority, the superintendent is merely an employee or agent and is not a public official subject to prohibitions under the nepotism statutes. *Pena v. Rio Grande Consol. Indep. Sch. Dist.*, 616 S.W.2d 658 (Tex. Civ. App.—Eastland 1981, no writ).

**6. When is a trustee a “public official” for the purposes of the nepotism prohibition?**

Generally, a trustee is always going to be a *public official* for nepotism purposes. Therefore, the school district in which the trustee serves is not allowed to hire a trustee’s relative within a prohibited degree of relationship.

A limited exception to this definition of *public official* applies only to districts in “small counties,” counties with a population of fewer than 35,000 people. For districts in small counties, the term *public official* does not include a school board trustee when the superintendent is filling an employment position for which the superintendent has hiring authority. Tex. Educ. Code § 11.1513(a), (f)-(g).

**7. What constitutes a “small county” for the purpose of the nepotism prohibition?**

A *small county* is one with a population of fewer than 35,000 people. According to the law, the nepotism prohibition does not apply to a relative of a trustee if the board delegates hiring authority to the superintendent and the school district is either completely within a county with a population of fewer than 35,000, or in more than one county, if the county in which the largest portion of the school district is located has a population of fewer than 35,000. Tex. Educ. Code § 11.1513(g). A school district may continue to employ a person whose initial hiring was exempt from the nepotism prohibition under this exception, even if the population of the county in which the district is located meets or exceeds 35,000 after the initial hiring. Tex. Att’y Gen. Op. No. GA-1064 (2014).

**The charts below explain the application of the nepotism laws in both large and small counties:**

**Large Counties**

Because board members of districts in large counties, those with a population of 35,000 or greater, remain public officials regardless of the delegation of any hiring authority to the superintendent, those districts may not hire **relatives of board members** unless an exception applies.

	If the position is at-will:	If the position is under contract:
The board retains all hiring authority	No	No
The board has delegated hiring authority for at-will employees to the superintendent	No	No
The board has delegated all hiring authority to the superintendent	No	No

This chart shows whether a district in a large county may hire **relatives of the superintendent**.

	If the position is at-will:	If the position is under contract:
The board retains all hiring authority	Yes	Yes
The board has delegated hiring authority for at-will employees to the superintendent	No	Yes
The board has delegated all hiring authority to the superintendent	No	No

**Small Counties**

This chart shows whether a district in a small county, those with a population of fewer than 35,000, may hire **relatives of board members**.

	If the position is at-will:	If the position is under contract:
The board retains all hiring authority	No	No
The board has delegated hiring authority for at-will employees to the superintendent	Yes	No
The board has delegated all hiring authority to the superintendent	Yes	Yes

This chart shows whether a district in a small county may hire **relatives of the superintendent**.

	If the position is at-will:	If the position is under contract:
The board retains all hiring authority	Yes	Yes
The board has delegated hiring authority for at-will employees to the superintendent	No	Yes
The board has delegated all hiring authority to the superintendent	No	No

**8. Are there any employment situations in which the nepotism prohibition is not applicable?**

Yes. The Texas Government Code sets forth several exceptions to the nepotism rules, including continuous employment, substitute teachers, and positions over which the public official does not exercise hiring authority. For example, the Texas attorney general has concluded that the prohibition did not apply to a board member's nephew who was paid with district funds but selected by football coaches to be a game official. Tex. Att'y Gen. LO 95-012 (1995).

The nepotism prohibition also doesn't apply to the appointment or employment of a bus driver by a school district if the school board approves the driver's appointment or employment. The board does not need to approve an appointment or employment if the school district is located in a county with a population of less than 35,000. Tex. Gov't Code § 573.061.

**9. Does the nepotism prohibition apply to temporary or summer employment?**

Yes. The nepotism laws do not recognize exceptions for temporary employment or summer employment.

**10. What is the "continuous employment" exception?**

The nepotism prohibition does not apply to a related individual who was employed for a specified time before the election or appointment of the public official. Tex. Gov't Code § 573.062(a)(1). The related individual's prior employment must be continuous for at least:

1. thirty days if the public official is appointed, or
2. six months if the public official is elected.

Tex. Gov't Code § 573.062(a)(2); *See* Tex. Att'y Gen. Op. No. DM-0002 (1991) (concluding that the 30-day prior continuous employment requirement applies when an officer is appointed to an elective office); *but see* Tex. Att'y Gen. Op. No. KP-0238 (2019) (interpreting the relevant continuous employment period to be determined by whether the office is elective or appointive)).

The attorney general has interpreted this exception to apply only to employment uninterrupted in time, connected, and unbroken. Tex. Att'y Gen. Op. No. JC-0185 (2000). Any separation from employment will break the chain of continuity and make the exception inapplicable. For example, if a teacher who is related to a board member retires, the district cannot rehire that teacher. Tex. Att'y Gen. LO-96-015 (1996); Tex. Att'y Gen. Op. No. JC-0442 (2001).

For board member's spouses who are employed by the school district, the attorney general opined that the continuous employment period begins on the first day the board member's spouse is employed by the school district and ends on the date the board member assumes office. Regarding the date when the spouse's employment begins, the attorney general stated that the day the employee signs or approves the contract may

not necessarily equate to the first day of employment. Rather, the attorney general stated that when employment officially begins will depend on the specific circumstances of the school district, the employee, and the terms of the contract. Therefore, the attorney general noted, the first day of employment is best determined by the school district. Tex. Att’y Gen. Op. No. GA-1016 (2013).

If a board member’s relative works for the district under the continuous employment exception, the related board member must abstain from participating in any deliberations or voting on actions that affect only the board member’s relative. The requirement to abstain does not apply to board decisions involving a class or category of employees to which the board member’s relative belongs. Tex. Gov’t Code § 573.062(b).

**11. Does the nepotism prohibition apply to a trustee’s relative employed by a private corporation?**

No. When a school district does business with a private corporation, and the corporation is responsible for the appointment, supervision, and payment of individual employees placed with the district, the nepotism statute does not prohibit a relative of a board member within a prohibited degree from seeking employment with the corporation. Tex. Att’y Gen. Op. No. LO-95-080 (1995) (concluding that nepotism statute did not prohibit the spouse of a school board member from being employed by a private corporation that provided speech pathology services to the district); Tex. Att’y Gen. Op. No. LO-88-44 (1988) (allowing a contract between a corporation and the university, where the president of the corporation was the brother-in-law of the chairman of the board of regents).

**12. If a trustee resigns can the board then hire the trustee’s relative?**

A former trustee’s relative can be hired only if the trustee’s successor has been sworn into office. The *holdover doctrine* provides that all public officers shall continue to perform the duties of their offices until their successors shall be duly qualified (i.e., sworn in). Until the vacancy created by a trustee’s resignation is filled by a successor, either by appointment or election, the trustee legally continues to serve and have the duties and powers of office. Therefore, a board still may not employ the trustee’s relative until the trustee’s position is filled. Tex. Const. art. 16, Sec. 17; Tex. Att’y. Gen. Op. Nos. DM-0002 (1991), JM-0636 (1987).

**13. What are the consequences of violating the nepotism prohibition?**

An intentional or knowing violation of the nepotism statute is a misdemeanor punishable by a fine not less than \$100 or more than \$1000. Tex. Gov’t Code § 573.084. In addition, an individual who violates the nepotism law may be removed from office, and no compensation may be paid to an ineligible employee-relative. Tex. Gov’t Code §§ 573.081-.083.

**14. What TASB policies apply?**

For more information, please see TASB Policies BBB(LEGAL), DBE(LEGAL), DC(LEGAL), DC(LOCAL), DCD(LEGAL), and BBC(LEGAL).

**15. Where can I get more information on nepotism as applied to board trustees?**

For more information on this or other legal topics, please call the TASB Legal Line at 800-580-5345. The TASB Legal Line is staffed by TASB Legal Services attorneys and is available to all school district trustees and administrators. Additional legal resources are available at the [TASB School Law eSource](#) and for purchase at the [TASB Store](#).

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