ELIGIBILITY

To be eligible to be a candidate for, or elected or appointed to, the office of College District Board member, a person must:

1. Be a United States citizen.

2. Be 18 years of age or older on the first day of the term to be filled at the election or on the date of appointment, as applicable.

3. Have not been determined by a final judgment of a court exercising probate jurisdiction to be:
   a. Totally mentally incapacitated and the person’s mental capacity has not subsequently been completely restored by a final judgment of a court exercising probate jurisdiction; or
   b. Partially mentally incapacitated without the right to vote and the person’s guardianship has not been modified to include the right to vote or the person’s mental capacity has not been completely restored by a subsequent final judgment of a court exercising probate jurisdiction.

4. Have not been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities.

5. Be a resident of Texas.

_Election Code 1.020, 141.001(a)_

6. Reside in the territory from which the office is elected. _Tex. Const. Art. XVI, Sec. 14; Education Code 130.082(d)_

QUALIFIED VOTER

A person may not be elected a Board member unless the person is a qualified voter. _Education Code 130.082(d)_

“Qualified voter” means a person who:

1. Is 18 years of age or older;

2. Is a United States citizen;

3. Has not been determined by a final judgment of a court exercising probate jurisdiction to be:
   a. Totally mentally incapacitated and the person’s mental capacity has not subsequently been completely restored by a final judgment of a court exercising probate jurisdiction; or
   b. Partially mentally incapacitated without the right to vote and the person’s guardianship has not been modified to
include the right to vote or the person's mental capacity has not been completely restored by a subsequent final judgment of a court exercising probate jurisdiction;

4. Has not been finally convicted of a felony or, if so convicted:
   a. Has fully discharged his or her sentence, including any term of incarceration, parole, or supervision;
   b. Has completed a period of probation ordered by any court; or
   c. Has been pardoned or otherwise released from the resulting disability to vote.

For purposes of determining a qualified voter, a person is not considered to have been finally convicted of a felony if criminal proceedings are deferred without an adjudication of guilt.

5. Is a resident of this state; and

6. Is a registered voter.

Election Code 1.020, 11.002

SINGLE-MEMBER DISTRICTS
A candidate for Board member representing a single-member district must be a resident of the trustee district he or she seeks to represent. Board members shall, during their term of office, reside within the trustee district from which they were elected. Education Code 130.0821(b)

OFFICIAL OATHS
A member of the Board must take the proper oath of office before taking up the duties of office, Education Code 130.082(d)

CANDIDATE'S RESIDENCY TERM
An individual seeking election to the office of Board member by having his or her name placed on the ballot must have been a resident of the state for 12 months, and a resident of the territory from which the office is elected for six months, prior to the last date on which the candidate could file to be listed on the ballot.

Election Code 141.001(a)(5)

PREFILED CANDIDACY
An individual seeking election to the office of Board member by write-in vote must have been a resident of the state for 12 months and a resident of the territory from which the office is elected for six months, prior to the day of the election.

APPOINTMENT TO OFFICE
An individual appointed to the office of Board member must have been a resident of the state for 12 months and a resident of the territory from which the office is elected for six months, prior to the day on which the appointment is made. A person appointed to fill a
vacancy in a trustee district must be a resident of that trustee district. *Election Code 141.001(a)(5); Education Code 130.082(d)*

**'RESIDENCE' DEFINED**

"Residence" shall mean domicile, one's home and fixed place of habitation to which one intends to return after any temporary absence; one does not lose one's residence status by leaving to go to another place for temporary purposes only. A person does not acquire a residence in a place to which the person has come for temporary purposes only and without the intention of making that place the person's home. Residence shall be determined in accordance with the common-law rules, as enunciated by the courts of this state, except as otherwise provided by the Election Code. *Election Code 1.015*

**Note:** The issue of whether a candidate has satisfied residency requirements should be judicially determined. *State v. Fischer, 769 S.W.2d 619* (Tex. App.—Corpus Christi 1989, writ dism'd w.o.j)
EMPLOYMENT REQUIREMENTS AND RESTRICTIONS
NEPOTISM

DEFINITION
In this policy, the term "appoint" includes appointing, confirming the appointment of, and voting to appoint or confirm the appointment of, a person.

NEPOTISM PROHIBITED
Except as provided by this policy, a public official may not appoint a person to a position that is to be directly or indirectly compensated from public funds or fees of office if:

1. The person is related to the public official by consanguinity (blood) within the third degree or by affinity (marriage) within the second degree [see below]; or

2. The public official holds the appointment or confirmation authority as a member of a local Board and the person is related to another member of the Board by blood or marriage within a prohibited degree.


INDEPENDENT CONTRACTOR
The nepotism law governs the hiring of an individual, whether the employee is hired as an individual or an independent contractor. Atty. Gen. Op. DM-76 (1992)

COMPENSATION OF PROHIBITED EMPLOYEE
A public official may not approve an account or draw or authorize the drawing of a warrant or order to pay the compensation of an ineligible person if the official knows the person is ineligible. Gov’t Code 573.083

CONSANGUINITY
Two persons are related to each other by consanguinity (blood) if one is a descendant of the other or if they share a common ancestor. An adopted child is considered to be a child of the adoptive parents for this purpose. Gov’t Code 573.022

An individual’s relatives within the third degree by consanguinity are the individual’s:

1. Parent or child (first degree);

2. Brother, sister, grandparent, or grandchild (second degree);

3. Great-grandparent, great-grandchild, aunt or uncle (who is a sibling of a parent of the person), nephew or niece (who is a child of a brother or sister of the person) (third degree).

Gov’t Code 573.023(c)

[See DBE(EXHIBIT)]

HALF-BLOOD RELATIVES
There is no distinction under the nepotism statute between half-blood and full-blood relations. Thus, half-blood relationships fall

AFFINITY

Two persons are related to each other by affinity (marriage) if they are married to each other or if the spouse of one of the persons is related by consanguinity to the other person.

The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of the marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

Gov't Code 573.024

A husband and wife are related to each other in the first degree by affinity. For other relationships, the degree of affinity is the same as the degree of the underlying relationship by consanguinity. For example, if two persons are related to each other in the second degree by consanguinity, the spouse of one of the persons is related to the other person in the second degree by affinity.

A person’s relatives within the second degree by affinity are:

1. The person’s spouse;
2. Anyone related by consanguinity to the person’s spouse within the first or second degree; and
3. The spouse of anyone related to the person by consanguinity within the first or second degree.

Gov't Code 573.025

EFFECT OF BOARD MEMBER RESIGNATION

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 Board member’s resignation is filled by a successor, the Board member continues to serve and have the duties and powers of office, and a relative within a prohibited degree of relationship is barred from employment. Tex. Const., Art. XVI, Sec. 17; Atty. Gen. Op. JM-636 (1987)

EXCEPTIONS CONTINUOUS EMPLOYMENT (‘GRANDFATHER CLAUSE’)

The nepotism prohibitions do not apply to the appointment of a person to a position if the person is employed in the position immediately before the election or appointment of the public official to whom the person is related in a prohibited degree and that prior employment is continuous for at least:

1. Thirty days, if the public official is appointed; or
2. Six months, if the public official is elected.

Gov't Code 573.062(a)
ABSTENTION

If an employee continues in a position under this exception, the public official to whom the employee is related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, employment, reemployment, change in status, compensation, or dismissal of the employee, if the action applies only to the employee and is not taken regarding a bona fide class or category of employees. Gov't Code 573.062(b) [See DBE (EXHIBIT)]


For an action to be "taken with respect to a bona fide category of employees," the officeholder's action must be based on objective criteria, which do not allow for the preference or discretion of the officeholder. Atty. Gen. Op. DM-46 (1991)

TRADING

A public official may not appoint a person to a position in which the person's services are under the public official's direction or control and that is to be compensated directly or indirectly from public funds or fees of office if:

1. The person is related to another public official within the prohibited degree; and

2. The appointment would be carried out in whole or in partial consideration for the other public official's appointing a person who is related to the first public official within a prohibited degree.

Gov't Code 573.044

FEDERAL FUNDS

The rules against nepotism apply to employees paid with public funds, regardless of the source of those funds. Thus, the rules apply in the case of a teacher paid with funds from a federal grant. Atty. Gen. L.A. No. 80 (1974)

PENALTIES

An individual who violates the nepotism prohibitions shall be removed from his or her position. Tex. Gov't Code 573.081, 082

An individual who violates Government Code 573.041 (Prohibition on Public Officials), 573.062(b) [see CONTINUOUS EMPLOYMENT and ABSTENTION] or 573.083 [see COMPENSATION OF PROHIBITED EMPLOYEE] commits an offense involving official misconduct. Gov't Code 573.084
These illustrations depict the relationships that violate the nepotism law.

**CONSANGUINITY** (Blood) Kinship

- **First Degree**
  - Parent
  - Child

- **Second Degree**
  - Grandparent
  - Grandchild
  - Sister/Brother

- **Third Degree**
  - Great-Grandparent
  - Great-Grandchild
  - Aunt/Uncle
  - Niece/Nephew

**AFFINITY** (Marriage) Kinship

- Public official's spouse is the prospective employee.

  **OR**

  Public official's spouse is prospective employee's:

  **OR**

  Prospective employee's spouse is the public official's:

- **First Degree**
  - Parent
  - Child

- **Second Degree**
  - Grandparent
  - Grandchild
  - Sister/Brother

**NOTE:** The spouses of two persons related by blood are not by that fact related. The affinity chart supposes only one affinity relationship between the public official and prospective employee through either of their spouses.