

TEXAS SCHOOL FOR THE DEAF

**EMPLOYMENT REQUIREMENTS AND RESTRICTIONS:
NEPOTISM**

DBE

DEFINITION

In this policy, the term “appoint” includes hiring, employing, 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 the Board and the person is related to another member of the Board by blood or marriage within a prohibited degree.

Gov’t Code 573.002, .041; Atty. Gen. Op. JC-184 (2000)

**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)

SUPERINTENDENT

To the extent the Board delegates final authority to select School personnel (see DC), the following applies:

1. The superintendent is a public official for purposes of the nepotism prohibitions only with respect to a decision made under that delegation of authority; and
2. Each member of the Board remains subject to the nepotism prohibitions with respect to all school employees.

For purposes of this provision, a person hired by the School before September 1, 2007, is considered to have been in continuous employment (see CONTINUOUS EMPLOYMENT, below) and is not prohibited from continuing employment with the School subject to the abstention requirements.

Education Code 11.1513(f)-(h)

**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. For this purpose, an adopted child is treated as a natural child of the adoptive parents. *Gov’t Code 573.022*

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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); and
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**

Half-blood relationships fall within the same degree as those of the full blood.

Atty. Gen. Op. LO-90-30 (1990)

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 death of a spouse terminates relationships by affinity created by a marriage unless a child of the marriage is living. If a child of the marriage is living, the marriage is considered to continue until the youngest child of that marriage reaches the age of 21.

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 relationship by 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

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EFFECT OF TRUSTEE RESIGNATION

All TSD Governing Board Members 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. See Tex. Const., Art. XVI, Sec. 17; Atty. Gen. Ops. JM-636 (1987), DM-2 (1991)

EXCEPTIONS

CONTINUOUS EMPLOYMENT

The nepotism prohibitions described in this policy shall not apply to the confirmation or appointment of an individual to a position if the individual is employed in the position immediately before the appointment of the Board Member to whom the individual is related in a prohibited degree and that prior employment is continuous for at least thirty days.

See Gov't Code 573.062(a)

RETIREEES

A teacher who has retired from a full-time, certified teacher position has broken his or her employment with the Board, does not qualify for the continuous-employment exception to the nepotism laws. *Atty. Gen. Op. JC-442 (2001)*

For purposes of calculating the appropriate date for the applicability of the continuous-employment exception, the Superintendent is an appointed public official. *Atty. Gen. Op. GA-177 (2004)*

ABSTENTION

If a person continues in a position under this exception, the Board Member who is related to the employee shall 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 employee.

Gov't Code 573.062(b)

A "change in status" includes a reassignment within the School, whether or not a change in salary level accompanies the reassignment. *Atty. Gen. Op. JC-193 (2000)*

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)*

SUBSTITUTE TEACHER

The nepotism prohibitions in Government Code 573.041 do not apply to appointment or employment of a substitute teacher.

Gov't Code 573.061

TRADING

A Board member or the Superintendent 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

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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. 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. *Gov't Code 573.081, .082*

An individual who violates Government Code 573.041 [see NEPOTISM PROHIBITED], 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*

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