



## Frequently Asked Questions about Running for School Board

Published online in [TASB School Law eSource](#)

This article addresses some common questions that arise for individuals seeking election or re-election to a school board of trustees. For more extensive information on issues related to candidacy and the election process, see TASB Policy BB series, the TASB School Law eSource [Elections](#) page, TASB Leadership Team Services' [Resources for Board Candidates](#), the Texas Secretary of State [Elections Division](#) website, including [Candidacy Filing](#) outline, and the [Texas Ethics Commission](#) website, including [First Steps for Candidates Running for School Board Trustee](#).

### **Q: *What are the eligibility requirements to run for school board trustee?***

A: An individual is eligible to be a candidate for, or elected or appointed to, a Texas school board if the individual:

1. is a United States citizen;
2. is 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. has not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote;
4. has not been finally convicted of a felony from which the individual has not been pardoned or otherwise released from the resulting disabilities;
5. has resided continuously in the state for 12 months and in the territory from which the office is elected for six months immediately preceding the following date:
  - a. for an independent candidate, the date of the regular filing deadline for a candidate's application for a place on the ballot;
  - b. for a write-in candidate, the date of the election at which the candidate's name is written in; or
  - c. for an appointee to an office, the date the appointment is made;
6. is registered to vote in the territory from which the office is elected on the date described at 5. above; and
7. satisfies any other eligibility requirements prescribed by law for the office.

Tex. Elec. Code § 141.001.

Additionally, to be elected to a school board, an individual must be a *qualified* voter: 18 years of age or older, a United States citizen, a Texas resident, a registered voter, not determined to be totally or partially mentally incapacitated by an appropriate court, and not finally convicted of a felony. Tex. Educ. Code § 11.061; Tex. Elec. Code § 11.002.

A person is ineligible to serve on a school board if the person has been convicted of an offense under Texas Penal Code section 43.02(b) regarding prostitution. Tex. Educ. Code § 11.066.

**Q: For purposes of the eligibility requirements, what does “residency” mean?**

A: As noted above, to be eligible to run for or be appointed school board trustee, an individual must reside within the state for 12 months and within the district or territory from which the office is elected for six months prior to the applicable date. In addition, a candidate for school board trustee representing a single member district must be a resident of that district. The issue of residency can be a source of confusion and controversy when conflicting opinions and information exist about where an individual resides.

The Texas Election Code defines residency as “domicile, that is, one’s home and fixed place of habitation to which one intends to return after any temporary absence.” A person neither loses residency merely by leaving the person’s home for temporary purposes nor acquires residency in a place where the person has come for temporary purposes without the intention of making that place the person’s home. Tex. Elec. Code § 1.015. The Texas Supreme Court described “residence” as an “elastic” term that is “extremely difficult to define.” *Mills v. Bartlett*, 377 S.W.2d 636, 637 (Tex. 1964). Consequently, the determination of an individual’s true residency for purposes of running for or holding public office can only be made by a court. *State v. Fischer*, 769 S.W.2d 619 (Tex. App.—Corpus Christi 1989, writ dismissed w.o.j.), (rehearing of writ of error overruled 1990). If a candidate’s or trustee’s residency is challenged, a court will review various factors and evidence to determine the individual’s true residency. See *Mills v. Bartlett*, 375 S.W.2d 940 (Tex. Civ. App.—Tyler 1964), *aff’d*, 377 S.W.2d 636 (Tex. 1964) (holding that evidence supported a finding of residency for candidate who lived in county six months before election and subsequently moved elsewhere to finish school).

If the question of an incumbent trustee’s residency is decided by a court, the school district may not expend public funds to pay or reimburse the trustee’s legal costs in connection with the residency challenge. Various restrictions apply to the use of public funds under the Texas Constitution. A school district may not expend public funds to represent the purely personal interests of a trustee. The attorney general has opined that a school district has no legitimate interest in spending public funds to pay a school board trustee’s legal expenses in an election contest. Such a lawsuit typically involves only the trustee’s personal interest in seeking office, even when the school district benefits from the defense. Tex. Att’y Gen. Op. No. GA-104 (2003). For more information, see TASB Legal Services’ [Use of Public Funds](#).

If questions of residency arise, a candidate or trustee should carefully review the requirements to serve on the board and, if necessary, seek the guidance of legal counsel. Likewise, TASB Legal Services recommends that a school district affected by a residency challenge seek the advice of the district's school attorney.

**Q: *May a candidate run for school board trustee if the candidate's spouse or relative is currently employed by the school district?***

A: It depends. The nepotism prohibition generally provides that 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.

Unless an exception applies, a candidate's relative may have to resign from employment with the school district before the candidate may accept the office of school board trustee. Under the *continuous employment exception*, the nepotism prohibition does not apply to the employment of a trustee's or candidate's relative if the following conditions are met:

1. The individual is employed in the position immediately before the election or appointment of the trustee to whom the individual is related in a prohibited degree; and
2. That prior employment has been continuous for at least:
  - a) Thirty days if the trustee is appointed; or
  - b) Six months if the trustee is elected.

Tex. Gov't Code § 573.062(a).

The attorney general has interpreted the continuous employment exception to require employment uninterrupted in time, connected, and unbroken. *See* Tex. Att'y Gen. Op. No. JC-185 (2000) (applying the continuous employment exception to a "permanent substitute"). Consequently, an employee of a school district, who is related to a trustee within a prohibited degree and who had been continuously employed by the district at the time of the trustee's election, is subject to the nepotism prohibition if the employee quits then later seeks re-employment with the district. Tex. Att'y Gen. LO-96-015 (1996); *see also* Tex. Att'y Gen. Op. No. JC-442 (2001) (concluding that retired teacher has broken employment with the district and does not qualify for the continuous employment exception).

For more extensive information, see the TASB School Law eSource website on [Nepotism](#).

**Q: May a candidate run for school board trustee if the candidate's spouse or relative is also running or currently serving on the board?**

A: The nepotism prohibition only applies to the employment relationship; therefore, related board members may run for and serve on a school board together.

**Q: When must a candidate file an application for a place on the school district's ballot? What happens to the application after it is filed?**

A: A school district must post notice of the dates of the application filing period in a public place in a district building not later than the 30th day before the first day on which a candidate may file the application. In a general election, a candidate may file an application for a place on the ballot as early as thirty days before the filing deadline, and not later than 5 p.m. on the 78th day before election day. All candidates, including incumbents, must file a timely application with the school district's filing authority (usually the superintendent's secretary or other designated district employee). Tex. Educ. Code § 11.055; Tex. Elec. Code §§ 1.007(a), 141.040, 144.004, .005.

Once a candidate files an application for a place on the ballot, the district filing authority is responsible for reviewing the application to determine whether it complies with the legal requirements as to *form*, *content*, and *procedure*. In other words, the filing authority confirms that the application was filed correctly in a timely manner, that all required information is provided, and that it is properly signed under oath. The authority has five days to review an application and determine whether it is legally sufficient. If an application does not comply with the applicable requirements, the filing authority must reject the application and immediately deliver to the candidate written notice of the reason for the rejection. A candidate may be able to correct mistakes as to form or content by filing a new application *prior* to the filing deadline. Tex. Elec. Code § 141.032.

**Q: Is a school board candidate required to appoint a campaign treasurer even if the candidate does not plan to raise or spend campaign funds?**

A: Each candidate **must** appoint a campaign treasurer by filing a Form CTA with the district filing authority, regardless of whether the candidate intends to accept campaign contributions or make campaign expenditures. A candidate may appoint him or herself as campaign treasurer. The Form CTA must be filed before accepting or expending campaign funds, even if the expenditure comes from personal funds. The campaign treasurer appointment takes effect when the Form CTA is filed and continues in effect until terminated; therefore, an incumbent running for re-election is not required to file a Form CTA if one is on file and has not been terminated. Tex. Elec. Code §§ 252.001, .004, .005, .011, 253.031.

**Q: *When does a person become a candidate for purposes of campaign finance requirements?***

A: Texas Election Code section 251.001 defines *candidate* as “a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election.” Such affirmative action may include filing a Form CTA or an application for a place on a ballot, publicly announcing intent to run for office, or raising or spending campaign funds.

**Q: *What happens if a candidate does not file a CTA?***

A: There may be civil or criminal penalties associated with the failure to appoint a campaign treasurer or otherwise comply with campaign finance laws. Tex. Elec. Code ch. 253.

For more information on appointing a campaign treasurer and other issues related to campaign finance, see the Texas Ethics Commission’s [Campaign Finance Guide for Candidates and Officeholders Who File with Local Filing Authorities](#).

**Q: *What should a school board candidate know about campaigning?***

A: A school board candidate, including a current trustee running for re-election, must keep certain legal principles in mind while on school property or at school events, including school board meetings. Specifically, district employees and trustees may not knowingly use public funds, directly or indirectly, for political advertising to advocate for or against a candidate or measure that will appear on a ballot. Political advertising is defined generally as a communication that advocates a particular outcome in an election. Tex. Elec. Code §§ 251.001(16), 255.003(a). The Texas Ethics Commission has interpreted this prohibition broadly to apply to the use of any district resources for political advertising. For instance, any use of school district employee time, no matter how minimal, is prohibited, as is any use of school district facilities. *See, e.g.*, Tex. Ethics Comm’n Op. No. 443 (2002) (concluding that Texas Election Code section 255.003 would be violated by using a school employee to place a trustee’s campaign flyers in the teachers’ lounge). Further, Texas Election Code section 255.0031 specifically prohibits an officer or employee of a political subdivision from knowingly using or authorizing the use of an internal mail system for the distribution of political advertising. Tex. Elec. Code § 255.0031(a).

Trustees acting independently, without the use of public funds, have a free speech right to engage in political advocacy, including advocacy for their re-election. In its [Short Guide to the Prohibition against Using School District Resources for Political Advertising](#), the Texas Ethics Commission states, “Although you may not use school district resources for political advertising, you are free to campaign for or against a proposition on your own time and with your own resources.” For example, a school board trustee may attend a community meeting and advocate for re-election. When engaging in advocacy using personal time and resources,

a trustee need not conceal the trustee's position on the board or claim to be acting as a private citizen. *See, e.g.,* Op. Tex. Ethics Comm'n No. 321 (1996) (determining that a sitting judge did not violate the law by sending campaign solicitations on letterhead that she had purchased herself, but that identified her position).

For more extensive information, see TASB Legal Services' [Campaign Speech During Elections](#).

This document is continually updated, and references to online resources are hyperlinked, at [tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/documents/running-for-sch-bd.pdf](https://tasb.org/Services/Legal-Services/TASB-School-Law-eSource/Governance/documents/running-for-sch-bd.pdf). For more information on this and other school law topics, visit TASB School Law eSource at [schoolawesource.tasb.org](https://schoolawesource.tasb.org).

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*Updated December 2018*