
SCHOOL DISTRICT BREAKOUT SESSION

**Secretary of State Elections Conference
November 30, 2023
Lindsey McPheeters, Senior Attorney
TASB Legal Services**



AGENDA

1. RESOURCES

2. FOUNDATIONS

3. COMMON QUESTIONS

4. YOUR QUESTIONS

1

RESOURCES

SECRETARY OF STATE

Welcome to Texas Elections

The Secretary of State is the chief election officer for the State of Texas. The Secretary of State's **Elections Division** provides assistance and advice to election officials on the proper conduct of elections. This includes municipal, state, and county elections, providing a calendar of all the major elections for a jurisdiction, state and local, to election officials. We also provide assistance to the general public on voter registration and other election issues through our 1-800 toll-free number, 1-800-252-VOTE (6886), and via the [Internet](https://www.sos.state.tx.us/elections/index.shtml).

[SOS.STATE.TX.US/ELECTIONS/INDEX.SHTML](https://www.sos.state.tx.us/elections/index.shtml)



Voters



Candidates



Election Officials



Voting Technology



Election Results/Data

Upcoming Statewide Elections



May 6, 2023
Uniform Election



November 7, 2023
Constitutional Amendment Election



March 5, 2024
Primary Election



TEXAS ETHICS COMMISSION



Texas Ethics Commission
Promoting Public Confidence in Government

ENHANCED BY Google

Resources ▾ Opinions/Statutes/Rules ▾ Filing Reports ▾ Training ▾ Forms/Instructions ▾ Search ▾ Home

ETHICS.STATE.TX.US/

Legislature Training TBD

▶ Play || Pause

Home

Quick Help **To Be Rescheduled!** Campaign Finance Training for Legislators is being rescheduled due to the inclement weather. Watch this space for the new date and time. Preview the agenda.

LOGIN to Electronic Filing Application

Upcoming Deadlines

Filing Schedules

Enforcement & Compliance

Commission Meetings

Customer Satisfaction Survey


Job Opportunities

Calendar

88th Legislature Bill Tracking

About Us

I want to ...

 <p>File a Report</p>	 <p>Know When My Report is Due</p>	 <p>Campaign in Texas</p>
 <p>Lobby in Texas</p>	 <p>Start or Dissolve a PAC</p>	 <p>Find a Common Form</p>

TASB LEGAL LINE

800-580-5345



TASB LEGAL SERVICES



Joy
Baskin



Leslie
Story



Mark
Tilley



Jasmine
Wightman



Lindsey
McPheeters



Chris
Jones



Nicolas
Nemeth



Jacy
Selcoe

eSource TASB School Law

- Governance
- Business
- Personnel
- Instruction
- Students
- Community

Students Community Governance

- Open Meetings Act
- Elections
- Conflicts of Interest
- Board Roles and Responsibilities
- Superintendents and more...

myTASB login

User ID

Password

[Forgot user ID or password?](#) | [Request access?](#) | [Need help?](#)

SCHOOL LAW ESOURCE.TASB.ORG

Tweets by @tasblegal


Districts of Innovation

Welcome to TASB School Law

This resource was developed and school officials and the school community and is organized by subject matter based on the structure of TASB's Policy Reference Manual.

TASB Legal Services
@tasblegal

Fall Legal Seminars begin next week! Click here to find out about registration information and legal topics. buff.ly/2qakIAA



School Safety

TASB Resources

Religion in the Public Schools

Sarah Orman, Staff Attorney
TASB Legal Services

Watch and learn how to use eSource from a TASB staff attorney in this [brief tutorial](#).

We hope you find these online resources helpful, but please note that they are not intended to substitute for the advice of an attorney. Learn more about our [Terms and Conditions of Use](#).



TASB SCHOOL LAW eSOURCE

- [Deadlines for ___ Trustee Election](#)
- [Notice of Candidate Filing Period](#)
- [New Trustee Checklist](#)
- [Student Participation in Elections](#)
- [FAQ About Running for School Board](#)
- [Dual Office Holding Issues for Trustees](#)
- [After the School Board Election](#)
- [Officer’s Statement and Oath of Office](#)
- [Campaign Speech During Elections](#)
- [FAQ About Legislative Advocacy](#)
- [Surprising Answers to the Question, “Who Can Run for School Board?”](#)
- [Resignations and Vacancies](#)
- [Schools as Polling Places](#)

FOUNDATIONS

ELECTION LAWS

Texas Election Code

Over 100 Chapters, not all of which apply to school districts

Texas Education Code

Primarily Chapter 11, Subchapter C

District Policy Manual

Compilation of relevant laws and local policy choices

- BBA: Board Members – Eligibility/Qualifications
- BBB: Board Members – Elections
- BBBA: Elections – Conducting Elections
- BBBB: Post-Election Procedures
- BBBC: Elections – Campaign Finance
- BBBD: Elections – Campaign Ethics
- BBC: Board Members – Vacancies and Removal from Office
- CCA: Local Revenue Sources – Bond Issues
- CCG: Ad Valorem Taxes

ELECTIONS POLICIES

BOARD MEMBERS ELECTIONS

BBB
(LOCAL)

Membership

The Board shall consist of seven members.

Method of Election

Election of Board members shall be by position.

Election Date

General election of Board members shall be on the November uniform election date.

Terms and Election Schedule

Board members shall be elected for four-year terms, with elections conducted biennially, as follows:

Positions 3, 4, 5,
and 6

The election for positions 3, 4, 5, and 6 shall be held in 2018, 2022, 2026, and in four-year intervals thereafter.

Positions 1, 2, and
7

The election for positions 1, 2, and 7 shall be held in 2020, 2024, 2028, and in four-year intervals thereafter.

Method of Voting

Plurality

To be elected, a candidate must receive more votes than any other candidate for the position.

TERM LENGTHS

**3 YEARS WITH
1/3 ELECTED
ANNUALLY**

**4 YEARS WITH
1/2 ELECTED
BIENNIALLY**

METHODS OF ELECTION

Pure At-Large

At-Large By Place/Position

Single Member District (SMD)

Combination of Single Member District/At-Large

PURE AT-LARGE

- All candidates run as **one group** on the ballot.
- **All qualified voters** in the political subdivision may vote in the race.
- The **top vote-getters win** the number of positions available.
- **Default** method of elections for school districts. It takes an action by the board or a court order to change the method of election.

Demo ISD General Election	
Vote for none, one, or two	
<input type="radio"/>	Candidate A
<input type="radio"/>	Candidate B
<input type="radio"/>	Candidate C
<input type="radio"/>	Candidate D
<input type="radio"/>	Candidate E

Election Results	
Votes	Candidate
100	Candidate A
50	Candidate B
112	Candidate C
118	Candidate D
90	Candidate E

AT-LARGE BY PLACE

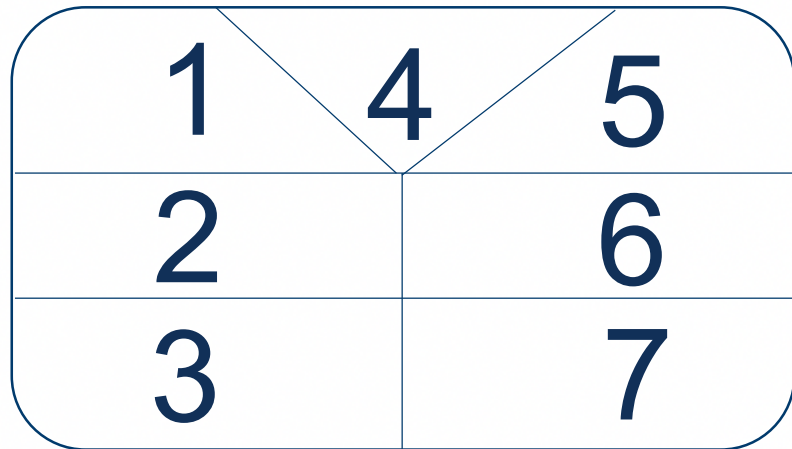
- Candidates run in **separate groups** on the ballot for each available position.
- All voters within the political subdivision get to **vote in all races.**

Demo ISD General Election	
Board of Trustees, Place 1	
<input type="radio"/>	Candidate A
<input type="radio"/>	Candidate B
Board of Trustees, Place 2	
<input type="radio"/>	Candidate C
<input type="radio"/>	Candidate D
<input type="radio"/>	Candidate E

Election Results	
Board of Trustees, Place 1	
102	Candidate A ←
100	Candidate B
Board of Trustees, Place 2	
112	Candidate C
118	Candidate D ←
90	Candidate E

SINGLE MEMBER DISTRICT

- The school district's territory is divided into districts and candidates must run in their district of residence.

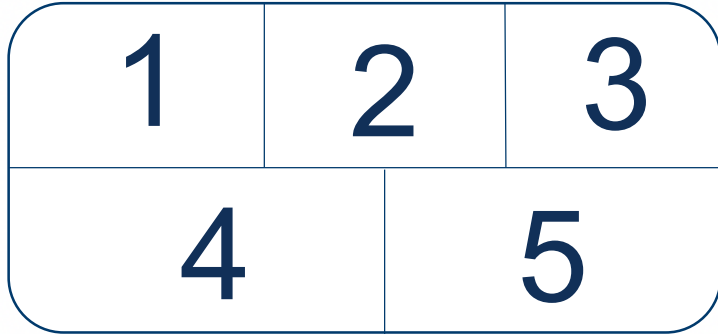


- ONLY voters within the district can vote.

Demo ISD General Election	
Board of Trustees, Place 1	
<input type="radio"/>	Candidate A
<input type="radio"/>	Candidate B
Board of Trustees, Place 3	
<input type="radio"/>	Candidate C
<input type="radio"/>	Candidate D
<input type="radio"/>	Candidate E

Election Results	
Board of Trustees, Place 1	
50	Candidate A
55	Candidate B ←
Board of Trustees, Place 3	
40	Candidate C
48	Candidate D
60	Candidate E ←

SMD AND AT-LARGE



- Vote in races in your SMD and in any at-large race
- In this example, there are 5 SMD seats and 2 at-large seats in the district

Demo ISD General Election	
Board of Trustees, At-Large	
Vote for none or one	
<input type="radio"/>	Candidate A
<input type="radio"/>	Candidate B
<input type="radio"/>	Candidate C
Board of Trustees, Place 1	
<input type="radio"/>	Candidate D
<input type="radio"/>	Candidate E
Board of Trustees, Place 2	
<input type="radio"/>	Candidate F
<input type="radio"/>	Candidate G
<input type="radio"/>	Candidate H

Election Results	
Board of Trustees, At-Large	
150	Candidate A
155	Candidate B ←
100	Candidate C
Board of Trustees, Place 1	
40	Candidate D
48	Candidate E ←
Board of Trustees, Place 2	
35	Candidate F ←
30	Candidate G
33	Candidate H

JOINT ELECTIONS

- Required for trustee elections
- Permissible partners
 - City in the district
 - County
 - Community college district
 - Hospital district (certain school districts)
- Joint election agreement and at least one shared polling place

CHANGING ELECTION DATE

- Under current law, there is no broad authority to change election date
- SB 1131 – school districts in El Paso County
- SB 2620 – school districts in Montague County

3

COMMON QUESTIONS

WHO CAN RUN?

US citizen

At least 18 years old

Not mentally incapacitated without the right to vote

Resident of state and district for required time

Registered voter in the territory from which the office is elected

No felony conviction without pardon or release from resulting disabilities

RESIDENCY

What is it?

- One's home and fixed place of habitation to which one **intends to return** after any temporary absence
- Not lost by temporary absence
- Not gained without intention to make the place one's home

Who decides?

- **A court**
 - No public record conclusively establishes residency
 - 2019 legislation (Tex. Elec. Code § 141.001(a-1)) guides a court

How long?

- 12 months in the state and 6 months in the district before the applicable date
 - Filing deadline for a candidate on the ballot
 - Election day for a write-in candidate
 - Date of appointment for an appointee

FELONY CONVICTIONS

2-26
 Prescribed by Secretary of State
 Section 141.031, Chapters 143 and 144, Texas Election Code
 09/2021

**APPLICATION FOR A PLACE ON THE BALLOT FOR A GENERAL ELECTION
 FOR A CITY, SCHOOL DISTRICT OR OTHER POLITICAL SUBDIVISION**

ALL INFORMATION IS REQUIRED TO BE PROVIDED UNLESS INDICATED AS OPTIONAL! Failure to provide required information may result in rejection of application.

APPLICATION FOR A PLACE ON THE _____ GENERAL ELECTION BALLOT					
TO: City Secretary/Secretary of Board _____ (name of election)					
I request that my name be placed on the above-named official ballot as a candidate for the office indicated below.					
OFFICE SOUGHT (Include any place number or other distinguishing number, if any.)			INDICATE TERM <input type="checkbox"/> FULL <input type="checkbox"/> UNEXPIRED		
FULL NAME (First, Middle, Last)			PRINT NAME AS YOU WANT IT TO APPEAR ON THE BALLOT*		
PERMANENT RESIDENCE ADDRESS (Do not include a P.O. Box or Rural Route. If you do not have a residence address, describe location of residence.)			PUBLIC MAILING ADDRESS (Optional) (Address for which you receive campaign related correspondence, if available.)		
CITY	STATE	ZIP	CITY	STATE	ZIP
PUBLIC EMAIL ADDRESS (Optional) (Address for which you receive campaign related emails, if available.)	OCCUPATION (Do not leave blank)	DATE OF BIRTH	VOTER REGISTRATION VOID NUMBER ² (Optional)		
TELEPHONE CONTACT INFORMATION (Optional) Home: _____ Office: _____ Cell: _____					
FELONY CONVICTION STATUS (You MUST check one)		LENGTH OF CONTINUOUS RESIDENCE AS OF DATE THIS APPLICATION WAS SWORN			
<input type="checkbox"/> I have not been finally convicted of a felony. <input type="checkbox"/> I have been finally convicted of a felony, but I have been pardoned or otherwise released from the resulting disabilities of that felony conviction and I have provided proof of this fact with the submission of this application. ³		IN THE STATE OF TEXAS _____ year(s) _____ month(s)		IN TERRITORY/DISTRICT/PRECINCT FROM WHICH THE OFFICE SOUGHT IS ELECTED _____ year(s) _____ month(s)	
*If using a nickname as part of your name to appear on the ballot, you are also signing and swearing to the following statements: I further swear that my nickname does not constitute a slogan or contain a title, nor does it indicate a political, economic, social, or religious view or affiliation. I have been commonly known by this nickname for at least three years prior to this election. Please review sections 52.031, 52.032 and 52.033 of the Texas Election Code regarding the rules for how names may be listed on the official ballot.					
Before me, the undersigned authority, on this day personally appeared (name of candidate) _____, who being by me here and now duly sworn, upon oath says: "I, (name of candidate) _____, of _____ County, Texas, being a candidate for the office of _____, swear that I will support and defend the Constitution and laws of the United States and of the State of Texas. I am a citizen of the United States eligible to hold such office under the constitution and laws of this state. I have 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. I am aware of the nepotism law, Chapter 573, Government Code. I am aware that I must disclose any prior felony conviction, and if so convicted, must provide proof that I have been pardoned or otherwise released from the resulting disabilities of any such final felony conviction. I am aware that knowingly providing false information on the application regarding my possible felony conviction status constitutes a Class B misdemeanor. I further swear that the foregoing statements included in my application are in all things true and correct."					
X _____ SIGNATURE OF CANDIDATE					



INSTRUCTIONS

An application for a place on the general election for a city, school district or other political subdivision, may not be filed earlier than 30 days before the deadline prescribed by this code for filing the application. An application filed before that day is void. All fields of the application must be completed unless specifically marked optional.

For an election to be held on a uniform election date, the day of the filing deadline is the 78th day before Election Day.

If you have questions about the application, please contact the Secretary of State's Elections Division at 800-252-8683.

NEPOTISM LAW

The candidate must sign this statement indicating his awareness of the nepotism law. When a candidate signs the application, it is an acknowledgment that the candidate is aware of the nepotism law. The nepotism prohibitions of chapter 573, Government Code, are summarized below:

No officer may appoint, or vote for or confirm the appointment or employment of any person related within the second degree by affinity (marriage) or the third degree by consanguinity (blood) to the officer, or to any other member of the governing body or court on which the officer serves when the compensation of that person is to be paid out of public funds or fees of office. However, nothing in the law prevents the appointment, voting for, or confirmation of anyone who has been continuously employed in the office or employment for the following period prior to the election or appointment of the officer or member related to the employee in the prohibited degree: six months, if the officer or member is elected at an election other than the general election for state and county officers.

No candidate may take action to influence an employee of the office to which the candidate is seeking election or an employee or officer of the governmental body to which the candidate is seeking election regarding the appointment or employment of a person related to the candidate in a prohibited degree as noted above. This prohibition does not apply to a candidate's actions with respect to a bona fide class or category of employees or prospective employees.

FOOTNOTES

³Proof of release from the resulting disabilities of a felony conviction would include proof of judicial clemency under Texas Code of Criminal Procedure 42A.701, proof of executive pardon under Texas Code of Criminal Procedure 48.01, or proof of a restoration of rights under Texas Code of Criminal Procedure 48.05. (Texas Attorney General Opinion KP-0251)

One of the following documents must be submitted with this application.

Judicial Clemency under Texas Code of Criminal Procedure 42A.701

Executive Pardon under Texas Code of Criminal Procedure 48.01

Restoration of Rights under Texas Code of Criminal Procedure 48.05

Executive Pardon under Texas Code of Criminal Procedure 48.01
Restoration of Rights under Texas Code of Criminal Procedure 48.05

⁴All oaths, affidavits, or affirmations made within this State may be administered and a certificate of the fact given by a judge, clerk, or commissioner of any court of record, a notary public, a justice of the peace, city secretary (for a city office), and the Secretary of State of Texas. See Chapter 602 of the Texas Government Code for the complete list of persons authorized to administer oaths.

FELONY CONVICTIONS

Tex. Elec. Code § 141.001(a)(4) (RUN AND SERVE)

To be eligible to be a candidate for, or elected or appointed to, a public elective office in Texas, a person must not have been finally convicted of a felony from which the person has not been pardoned or otherwise released from the resulting disabilities.

Tex. Educ. Code § 11.066 (SERVE)

A person is ineligible to serve as a member of the board of trustees of a school district if the person has been convicted of a felony or an offense under Texas Penal Code section 43.021.





CFR FORMS

- Must make Campaign Finance Reports available on website no later than **10 business days** after the report is received
- May remove each contributor's street address, but not the city, state, or zip code
- Reports must remain on website for **5 years**



E L E M E N T A R Y S C H O O L

SCHOOLS AS POLLING PLACES

- Cannot prohibit use of district buildings as polling places
- May **strategically locate** polling place in building
- Large, open, accessible place
- EOP **must include a policy** for district property used as a polling place

CAMPAIGN SPEECH

Tex. Elec. Code §§ 255.003-.0031	Tex. Educ. Code § 11.169	Tex. Penal Code § 39.02(a)(2)	Tex. Const. art. 3, § 52(a)	Local policies
Political advertising	Electioneering	Abuse of official capacity	Prohibits use of public funds for private purpose	GKD – nonschool use of facilities GKDA – distribution of nonschool literature
Texas Ethics Commission enforces	Texas Ethics Commission enforces	Local county or district attorney enforces	Court determines	Local school board enforces

CAMPAIGN SPEECH

- School district **may not take a position** in an election.
- Prohibited from using **district resources**, including equipment, supplies, employee time, or students to create or distribute political advertising.
- Public funds may be used to disseminate information that is **purely factual**.
 - Explanatory materials about what is at stake in bond or tax election.
 - Information about election, such as polling locations, candidate names, and election dates.

CAMPAIGN SPEECH

- The question often arises whether board members may use their own time and money to campaign for candidates and causes.
- A public official **acting independently** has a free speech right to engage in political advocacy, including advocacy for the official's own re-election.
 - A school board member may attend a community meeting and advocate for passage of a bond or write a letter to the newspaper editor in support of a VATRE
 - When engaging in advocacy using personal time and resources, a trustee need not conceal the trustee's position or claim to be acting as a private citizen.



Campaign Speech During Elections

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

This article answers frequently asked questions about campaign speech rights of school districts, board members, candidates, community members, employees, and students.

- [Applicable Laws](#)
- [School District](#)
- [Board Members](#)
- [Candidates \(Including Incumbents\) and Other Citizens](#)
- [Employees](#)
- [Students](#)

Applicable Laws

1. **What laws apply to campaigning, electioneering, and political advertising?**

Several statutes apply to campaigning, electioneering, and political advertising. Each statute specifies the persons or entities to which it applies. The statutes do not apply equally to everyone. It is important to read the statute to understand its application to particular circumstances.

- **Texas Election Code**

Political Advertising: Texas Election Code section 255.003(a) prohibits an **officer or employee** of a political subdivision, including a school district, from knowingly spending or authorizing the spending of public funds for **political advertising**.

Political advertising is a communication that supports or opposes a candidate or a measure that:

1. is published in a newspaper or other periodical in return for consideration;
2. is broadcast by radio or television in return for consideration;
3. appears in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or
4. appears on a website.

1 Tex. Admin. Code § 20.1(11)(A); Tex. Elec. Code § 251.001(16).

Political advertising does not include an individual communication made by email or text message but does include mass emails and text messages involving an expenditure of funds beyond the basic cost of hardware, messaging software, and bandwidth. 1 Tex. Admin. Code § 20.1(11)(B).

The prohibition in Section 255.003(a) does not apply to a communication that factually describes the purposes of a measure if the communication does not advocate passage or defeat of the measure. Tex. Elec. Code § 255.003(b). *Measure* means a question or proposal submitted in an election for an expression of the voters' will, such as a bond or tax rate proposition. Tex. Elec. Code § 251.001(19).

Section 255.003(b-1) also prohibits an **officer or employee** from spending or using the spending of public funds for a communication describing a measure that contains information that the officer or employee knows is sufficiently substantial and important as to be reasonably likely to affect the vote for or against the measure.

Section 255.003 is a Class A misdemeanor. It is an affirmative defense to the imposition of a civil penalty that a person reasonably relied on a judicial interpretation of the statute in a written opinion of a court, the Texas Ethics Commission. Tex. Elec. Code § 255.003(c), (d).

Section 255.0031 prohibits an **officer or employee** of a political subdivision, from knowingly using or authorizing the use of a **political mail system** for the distribution of political advertising. A violation is a misdemeanor. Section 255.0031 defines a **political mail system** as a system operated by a political subdivision to distribute political advertising through the U.S. Postal Service.

Section 255.0031 also prohibits a **school board** from using state or local funds to **electioneer** for or against any candidate, unless the electioneering does not define electioneer.

Section 255.0031 also prohibits a **public servant** from using or misusing his or her official capacity. A **public servant** is a person who uses government authority for the benefit or to harm or defraud the public servant's employer or the public servant's employment. The term does not include a person whose official capacity is being misused.



VACANCIES

- Created by
 - Resignation
 - Death
 - Declination of office
 - Acceptance of incompatible office
 - Declaration of ineligibility
 - No one runs for office
 - Removal from office by a court
 - Automatic removal for qualifying offense

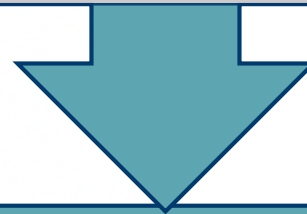
VACANCIES

To fill a vacancy, the board may:

Appoint until the next regular trustee election

Order a special election to fill the unexpired term

Leave vacant if there is less than a year remaining on the term



Resigned board member holds over until successor qualifies for office

AFTER THE ELECTION

Post results

As soon as practicable after election

Canvass the election

Deadlines vary by election date
Quorum is 2 board members

Qualify for office

Certificate of Election
Statement of Officer
Oath of Office

Reorganize board

At meeting immediately following canvass/swearing in

4

YOUR QUESTIONS

**THANK
YOU!**



800-580-5345

legal@tasb.org

