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Sec. 1.7.3. NEPOTISM.

Sec. 1.7.3.1. Nepotism Generally Prohibited.

A Director or Officer may not hire, select, appoint, confirm the appointment of, or vote for the hiring, selection, appointment, or confirmation of a person who is to be directly or indirectly compensated from public funds or fees of office, if:

- (1) The person is related to the Director or Officer by consanguinity (blood) within the third degree or by affinity (marriage) within the second degree (as defined below); or
- (2) The Director or Officer 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. Government Code §§ 573.002, 573.041.
- (3) Refer to attached diagram, Exhibit B.

Sec. 1.7.3.2. Independent Contractors.

The nepotism law governs the hiring of an individual, whether the individual is hired as an employee or as an independent contractor.

Sec. 1.7.3.3. Payment to Prohibited Person.

A Director or Officer 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 Director or Officer knows the person is ineligible. Government Code § 573.083; 19 TAC § 100.1116.

Sec. 1.7.3.4. Relation by 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. Government Code § 573.022.

Sec. 1.7.3.5. Third Degree of Consanguinity.

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).
Government Code 573.023.

Note: There is no distinction under the nepotism statute between half-blood and full-blood relations. Thus, half-blood relationships fall within the same degree as those of the full blood. *See* Exhibit B.

Sec. 1.7.3.6. Relation by 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. This provision applies to a Board member or Officer only until the youngest child of the marriage reaches the age of 21 years. Government Code § 573.024.

Sec. 1.7.3.7. First Degree of Affinity.

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.

Sec. 1.7.3.8. Second Degree of Affinity.

If two individuals are related to each other in the second degree by consanguinity, the spouse of one of the individuals is related to the other individual in the second degree by affinity.

Sec. 1.7.3.9. Third Degree of Affinity.

An individual's relatives within the third degree of affinity are:

- (1) Anyone related by consanguinity to the person's spouse within the first or second degree;
and

- (2) The spouse of anyone related to the person by consanguinity within the first or second degree. Government Code § 573.025.

Sec. 1.7.3.10. Existing Employees/Continuous Employment.

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 Director or Officer to whom the person is related in a prohibited degree, and that prior employment is continuous for at least:

- (1) Thirty days, if the Director or Officer is appointed; or
- (2) Six months, if the Director or Officer is elected. Government Code § 573.062(a).
- (3) A person who was not restricted or prohibited under Education Code 12.1055 as it existed before September 1, 2013, from being employed by I.A.E.F. and who was employed by I.A.E.F. before September 1, 2013, is considered to have been in continuous employment as provided by Government Code § 573.062(a), and is not prohibited from continuing employment with I.A.E.F.. Education Code § 12.1055(d).

Sec. 1.7.3.11. Continuous Employment Exception.

For purposes of calculating the appropriate date for the applicability of the continuous-employment exception, a superintendent with final authority to select personnel is an appointed director or officer. *Atty. Gen. Op. GA-177 (2004)*. If an employee continues in a position under this exception, the Director or Officer 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. Government Code § 573.062(b). A “change in status” includes a reassignment within an organization, 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)*. The nepotism prohibitions do not apply to appointment or employment of a substitute teacher. Government Code § 573.061.

Sec. 1.7.3.12. Retired Teachers.

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

Sec. 1.7.3.13. Trading Prohibited.

A Director or Officer may not hire, select, appoint, confirm the appointment of, or vote for the hiring, selection, appointment, or confirmation of an individual to a charter position in which the individual's services are under the Director or Officer's direction or control if:

- (1) The person is related to another Director or Officer within the prohibited degree; and
- (2) The appointment would be carried out, in whole or in partial consideration for the other Director or Officer's hiring, selecting, appointing, confirming, or voting for an individual who is related to the first Director or Officer within a prohibited degree. Government Code § 573.044.

Sec. 1.7.3.14. Source of Funding Irrelevant.

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).*

Sec. 1.7.3.15. Nepotism Exceptions.

The nepotism exceptions described in 19 TAC § 100.1115 also apply. Notwithstanding an exception, a Director or Officer related in a prohibited degree may not participate in any deliberation or voting on the appointment, reappointment, or confirmation of same, employment, reemployment, change in status, compensation, or dismissal of an individual, unless the action is taken regarding a *bona fide* class or category of employees.

Sec. 1.7.3.16. Enforcement of Nepotism Prohibitions.

In accordance with state law, a Director or Officer who violates the nepotism regulations shall be removed from office by the Board of Directors. A failure to thus remove is a material charter violation.

- (1) Removal must be in accordance with the Articles and Bylaws of I.A.E.F. and in accordance with the terms of the charter and other state and federal law.
- (2) A Director or Officer violating the nepotism laws may also be removed by the Attorney General and may be subject to criminal and other penalties.

Sec. 1.7.3.17. Delegation of Hiring Authority.

The Board may delegate final authority to select ILTexas personnel to the Chief Executive Officer/Superintendent, Human Resources Director, or other designated Officer.

If such authority is designated to the Chief Executive Officer/Superintendent, the Chief Executive Officer/Superintendent is a "public official" for purposes of Chapter 573, Government Code, with

respect to a decision made under that delegation of authority. Education Code § 11.1513(f). As such, if the Chief Executive Officer/Superintendent has been delegated final authority to select ILTexas personnel, the Chief Executive Officer/Superintendent may not hire, select, appoint, confirm the appointment of, or vote for the hiring, selection, appointment, or confirmation of an individual who is to be directly or indirectly compensated from public funds or fees of office, if:

- (1) The person is related to the Chief Executive Officer/Superintendent by consanguinity (blood) within the third degree or by affinity (marriage) within the second degree; or
- (2) The person is related to a Board member by blood or marriage within a prohibited degree. Government Code §§ 573.002, 573.041.

An individual who is related to the Chief Executive Officer/Superintendent within the relevant level or consanguinity (blood) or by affinity (marriage) and was employed by ILTexas before September 1, 2013 is considered to have been in continuous employment as provided by Government Code § 573.062(a), and is not prohibited from continuing employment with ILTexas.

Notwithstanding the above, each Director remains subject to Chapter 573, Government Code with respect to all ILTexas employees. Education Code §§ 11.1513(f), 12.1055.

A supervisor shall not have direct professional supervisory responsibility over an ILTexas employee who is related to that supervisor by consanguinity (blood) within the third degree or by affinity (marriage) within the second degree. In addition, all relatives shall be separated by at least two levels of direct reports. In other words, a supervisor-relative may not have an employee-relative be a direct report, and a supervisor-relative must place two non-relative employees, with supervisory roles, between himself/herself and the employee-relative.

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