

Policy Reference Manual

Update 21

In early January, the Texas Association of Community Colleges published Update 20 to the **TACC Policy Reference Manual** on its Web site. Although we typically send an update only once a year, a recent attorney general opinion prompts this special Update 21 to incorporate important information regarding the nepotism statute, as it relates particularly to community colleges.

Attorney General Opinion No. GA–415, issued March 15, 2006, responds to a request asking whether the nepotism statute, Government Code Chapter 573, prohibited Del Mar College from hiring an adjunct instructor who is related within a prohibited degree to a member of the college board when the board has delegated full hiring authority to the college president. The attorney general concluded that because Education Code 130.082 grants the board final authority to employ faculty members and other employees, the nepotism law prohibits the board from hiring an individual related to a board member, even if the board does not actually vote on the hiring.

This opinion replaces language found in BBFB(LEGAL) from Attorney General Opinion No. GA–123, published November 18, 2003, which states that a trustee of a board of an independent school district that has delegated final authority for personnel selection is not subject to the nepotism provision. While that attorney general opinion addressed the issue in the context of independent school districts, we included the ruling in Update 19 since it may have had broader application affecting college districts.

Attorney General Opinion GA–415 distinguishes community colleges from school districts. This opinion clarifies that a college board’s delegation of employment authority to the college president does not exempt the board from the nepotism statute.

The policies in this Update have already been incorporated into the **TACC Policy Reference Manual**.

Please note:

- This **Update 21** packet contains:

INSTRUCTIONS . . . providing specific directions on which policies have been revised, added, or deleted at this Update;

EXPLANATORY NOTES . . . summarizing and pointing out changes occurring within each policy code; and

UPDATED POLICIES . . . reflecting new or replacement materials included in this Update.

- ***Policy Reference Manual*** Update 21 materials bear an issue date of 3/31/2006. Policy Service will issue localized updates to college districts that have adopted TASB Localized Policy Manuals.
- This Update 21 packet may not be considered as legal advice and is not intended as a substitute for the advice of the board's own legal counsel.
- This Update is the result of collaboration among TASB Legal and Policy Services and the Texas Association of Community Colleges. Questions regarding this Update may be addressed to Dr. Rey Garcia, TACC President, at 512-476-2572, or Rachel Burrow or Darin Hathcock, TASB Policy Consultants/Analysts and Community College Liaisons, at 800-580-7529 or 512-467-0222.

Instruction Sheet

TACC Policy Reference Manual Update 21

District Junior College Policy Reference Manual

Code		Action To Be Taken	Note
BBFB	(LEGAL)	Replace policy	Revised policy
GAA	(LEGAL)	Replace policy	Revised policy

Explanatory Notes

TACC Policy Reference Manual Update 21

District: Junior College Policy Reference Manual

BBFB (LEGAL) ETHICS
PROHIBITED PRACTICES

This policy has been revised in light of a recent attorney general's opinion (GA-415). That opinion, issued on March 15, 2006, concluded that a trustee of a board that has delegated to a college president final authority for personnel selection remains subject to the nepotism provisions, despite that delegation. This opinion replaces two previously cited attorney general opinions found at DEFINITION OF PUBLIC OFFICIAL. The complete attorney general's opinion can be found at <http://www.oag.state.tx.us/opinions/op50abbott/ga-0415.htm>.

GAA (LEGAL) PUBLIC INFORMATION PROGRAM
ACCESS TO INFORMATION

We have deleted the section regarding the confidentiality of teacher and administrator EVALUATIONS, as this text does not apply to college districts.

RESTRICTIONS ON
PUBLIC SERVANTS —
PENAL CODE

“Public servant” shall mean a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if the person has not yet qualified for office or assumed his or her duties:

1. An officer, employee, or agent of government; or
2. A candidate for nomination or election to public office.

Penal Code 1.07(a)(41)(A), (E)

Prohibited activities are covered by, but are not limited to, the following:

BRIBERY

1. A public servant shall not intentionally or knowingly offer, confer, agree to confer on another, solicit, accept, or agree to accept a benefit:
 - a. As consideration for the public servant’s decision, opinion, recommendation, vote, or other exercise of discretion as a public servant.
 - b. As consideration for a violation of a duty imposed on the public servant by law.
 - c. That is a political contribution as defined by Title 15 of the Election Code or an expenditure made and reported as a lobbying expense in accordance with Government Code, Chapter 305, if the benefit was offered, conferred, solicited, accepted, or agreed to pursuant to an express agreement to take or withhold a specific exercise of official discretion, if such exercise of official discretion would not have been taken or withheld but for the benefit.

“Benefit” means anything reasonably regarded as pecuniary gain or pecuniary advantage, including benefit to any other person in whose welfare the beneficiary has a direct and substantial interest.

Penal Code 36.01(3), 36.02

ILLEGAL GIFTS

2. A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions shall not solicit, accept, or agree to accept any benefit from a person the public servant knows is interested in or likely to become interested in any such transactions of a College District, unless a statutory exception applies. *Penal Code 1.07(41)(A), (E), 36.08(d), 36.10*

A public servant who receives an unsolicited benefit that the public servant is prohibited from accepting under this section

may donate the benefit to a governmental entity that has the authority to accept the gift or may donate the benefit to a recognized tax exempt charitable organization formed for educational, religious, or scientific purposes. *Penal Code 36.08(i)*

HONORARIA AND
EXPENSES

3. A public servant commits a class A misdemeanor offense if he or she solicits, accepts, or agrees to accept an honorarium in consideration for services that the public servant would not have been requested to provide but for his or her official position or duties. However, a public servant is not prohibited from accepting transportation and lodging expenses or meals in connection with a conference or similar event in which he or she renders services, such as addressing an audience or engaging in a seminar, to the extent those services are more than merely perfunctory. *Penal Code 36.07*

ABUSE OF OFFICE

4. A public servant shall not, with intent to obtain a benefit or with intent to harm or defraud another, intentionally or knowingly violate a law relating to the office or misuse College District property, services, personnel, or any other thing of value, belonging to a College District, that has come into his or her custody by virtue of his or her office or employment. *Penal Code 39.02(a)*

“Law relating to the office” means a law that specifically applies to a person acting in the capacity of a public servant and that directly or indirectly imposes a duty on the public servant or governs the conduct of the public servant. *Penal Code 39.01(1)*

“Misuse” means to deal with property contrary to:

- a. An agreement under which the public servant holds the property;
- b. A contract of employment or oath of office of a public servant;
- c. A law, including provisions of the General Appropriations Act specifically relating to government property, that prescribes the manner of custody or disposition of the property; or
- d. A limited purpose for which the property is delivered or received.

Penal Code 39.01(2)

NEPOTISM

5. Except as provided by law, 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:

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

Gov't Code 573.002, 573.041; Atty. Gen. Op. JC-184 (2000)

DEFINITION OF
PUBLIC OFFICIAL

“Public official” shall mean:

- c. An officer of this state or of a College District, county, municipality, precinct, College District, or other political subdivision of this state; or
- d. An officer or member of a Board of this state or of a district, county, municipality, College District, or other political subdivision of this state.

Gov't Code 573.001(3)

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

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 individual if the official knows the individual is ineligible. *Gov't Code 573.083*

A Trustee of a Board that has delegated to a college president final authority for personnel selection remains subject to the nepotism provisions. *Atty. Gen. Op. GA-415 (2006)*

FORMER TRUSTEE
EMPLOYMENT

6. A Trustee of a College District may not accept employment with the College District until the first anniversary of the date the Trustee's membership on the Board ends. *Education Code 11.063*

INCOMPATIBILITY OF
OFFICE

7. One person may not occupy two legally incompatible offices. Offices are legally incompatible when the faithful and independent exercise of one would necessarily interfere with the faithful and independent exercise of the other. A person may not serve in one branch of government while exercising any powers properly attached to either of the other branches of government. *Texas Constitution, Art. II, Sec. 1; State v. Martin, 51 S.W.2d 815 (Tex. Civ. App. 1932); Thomas v. Abernathy County Line ISD, 290 S.W. 15 (Tex. Comm. App. 1927);*

Turner v. Trinity ISD, 700 S.W.2d 1 (Tex. Ct. App. 1983); Atty. Gen. Op. JM-634 (1987)

DEPOSITORY
CONFLICT

8. A Trustee who is a stockholder, officer, director, or employee of a bank that has bid to become a depository for a College District shall not vote on the awarding of a depository contract to said bank. *Education Code 45.204*

TEXTBOOK
VIOLATIONS –
COMMISSIONS

9. A Trustee commits a class B misdemeanor offense if the Trustee receives any commission or rebate on any textbooks used in the schools with which the Trustee is associated. *Education Code 31.152(a)*

TEXTBOOK
VIOLATIONS –
CONFLICT

10. A Trustee commits a class B misdemeanor offense if the Trustee accepts a gift, favor, or service that:
- a. Is given to the person or the person's school;
 - b. Might reasonably tend to influence a Trustee in the selection of a textbook; and
 - c. Could not be lawfully purchased with funds from the state textbook fund.

“Gift, favor, or service” does not include staff development, in-service, or teacher training; or instructional materials, such as maps or worksheets, that convey information to the student or otherwise contribute to the learning process.

Education Code 31.152(b)–(d)

PUBLIC
INFORMATION

“Public information” means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by the Board or for the Board and to which the Board has a right of access. *Gov’t Code 552.002(a)*

AVAILABILITY

Public information is available, at a minimum, to the public during the College District’s normal business hours. *Gov’t Code 552.021*

Unless they are expressly confidential under other law, categories of public information that are not excepted from required disclosure under this policy include:

1. A completed report, audit, evaluation, or investigation made of, for, or by the Board, except as provided in Government Code 552.108.
2. The name, sex, ethnicity, salary, title, and dates of employment of each employee and officer of the College District.
3. Information in an account, voucher, or contract relating to the receipt or expenditure of public funds.
4. The name of each official and the final record of voting on all proceedings of the Board.
5. All working papers, research material, and information used to estimate the need or expenditure of public funds or taxes by the Board, on completion of the estimate.
6. A description of the College District’s organization and where, from whom, and how the public may obtain information, submit information or requests, and obtain decisions.
7. A statement of the general course and method by which the College District’s functions are channeled and determined, including the nature and requirements of all formal and informal policies and procedures.
8. A rule of procedure, description of forms available or the places where forms may be obtained, and instructions relating to the scope and content of all papers, reports, or examinations.
9. A substantive rule of general applicability adopted or issued by the Board and a statement of general policy or interpretation of general applicability formulated and adopted by the Board.
10. Any amendment, revision, or repeal of the information described in items 6–9.
11. Final opinions and orders issued in adjudication of cases.

12. A policy statement or interpretation adopted or issued by the Board.
13. Administrative manuals and instructions to staff that affect a member of the public.
14. Information regarded as open to the public under the College District's policies.
15. Information that is in a bill for attorney's fees and that is not privileged under the attorney-client privilege or confidential under other law.
16. Information that is also contained in a public court record.
17. A settlement agreement to which the Board is a party.

A court in this state may not order the Board or the College District's officer for public information to withhold from public inspection any category of public information described above or to not produce the information for inspection or duplication, unless the information is expressly made confidential under other law.

Gov't Code 552.022

INVESTMENT
INFORMATION

Certain College District investment information, as specified by Government Code 552.0225, is public information and not excepted from disclosure. *Gov't Code 552.0225*

PERSONAL
INFORMATION

EMPLOYEE /
BOARD MEMBER

Each College District employee, other than peace officers, and Board member and each former employee and Board member shall choose whether to allow public access to College District-held information relating to the person's home address, telephone number, or social security number, or any other information that reveals whether the person has family members. Employees and Board members shall state their choice to the College District's main personnel officer in a signed writing not later than the 14th day after employment begins, election or appointment to the Board occurs, or service with the College District ends. If an employee or Board member fails to state his or her choice within 14 days, the information is available to the public. However, an employee or Board member may make a written request at any time to the personnel officer to open or close the information relating to the person's home address, telephone number, social security number, or any other information that reveals whether the person has family members. *Gov't Code 552.024*

PEACE OFFICERS /
SECURITY
OFFICERS

College District-held information relating to the home address, home telephone number, or social security number of peace officers or security officers commissioned by the Board of Private

Investigators and Private Security Agencies, or any information that reveals whether the person has family members, is confidential and may not be disclosed if the person chooses to restrict public access to the information and notifies the College District on a form provided by the College District, accompanied by evidence of the individual's status. *Gov't Code 551.1175*

CREDIT CARD, DEBIT
CARD, CHARGE
CARD, AND ACCESS
DEVICE NUMBERS

A credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for the College District is confidential.

"Access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another device may be used to:

1. Obtain money, goods, services, or another thing of value; or
2. Initiate a transfer of funds other than a transfer originated solely by paper instrument.

Gov't Code 552.136

E-MAIL ADDRESSES
CONFIDENTIAL

An e-mail address of a member of the public that is provided for the purpose of communicating electronically with the College District is confidential and not subject to disclosure unless the member of the public affirmatively consents to its release.

EXCEPTIONS

This confidentiality does not apply to an e-mail address:

1. Provided to the College District by a person who has a contractual relationship with the College District or by the contractor's agent;
2. Provided to the College District by a vendor who seeks to contract with the College District or by the vendor's agent;
3. Contained in a response to a request for bids or proposals, contained in a response to similar invitations soliciting offers or information relating to a potential contract, or provided to the College District in the course of negotiating the terms of a contract or potential contract; or
4. Provided to the College District on a letterhead, coversheet, printed document, or other document made available to the public.

The College District may also disclose an e-mail address for any reason to another governmental body or to a federal agency.

Gov't Code 552.137

INFORMATION
EXCEPTED FROM
PUBLIC DISCLOSURE

The Board or the officer for public information voluntarily may make part or all of its records available to the public, unless the disclosure is expressly prohibited by law or the records are confidential by law. *Gov't Code 552.007*

Categories of information that are excepted from disclosure to the public include:

1. Information considered to be confidential by law, either constitutional, statutory, or by judicial decision. *Gov't Code 552.101*
2. Information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, and transcripts from institutions of higher education maintained in files of professional employees; however, the degree obtained and the curriculum on the transcripts shall be subject to disclosure. *Gov't Code 552.102*
3. Information relating to litigation of a civil or criminal nature to which the College District is, or may be, a party or to which an officer or employee of the College District, as a consequence of the office or employment, is or may be a party, but only if the litigation is pending or reasonably anticipated at the time the College District's public information officer receives the request. *Gov't Code 552.103*
4. Information that, if released, would give advantage to competitors or bidders. The requirement of Government Code 552.022 that a category of information listed under 552.022(a) is public information and not excepted from required disclosure unless expressly confidential under law does not apply to information that is excepted from required disclosure under this paragraph. *Gov't Code 552.104*
5. Information pertaining to the location of real or personal property for a public purpose prior to public announcement of the project, or information pertaining to appraisals or purchase price of real or personal property for a public purpose prior to the formal award of contracts for the property. *Gov't Code 552.105*
6. Drafts and working papers involved in the preparation of proposed policies. *Gov't Code 552.106*
7. Information the College District's attorney is prohibited from disclosing because of a duty to the College District under the Texas Rules of Evidence or the Texas Disciplinary Rules of Professional Conduct or information that a court order has prohibited from disclosure. *Gov't Code 552.107*

8. Under certain circumstances, information (except basic information about an arrested person, an arrest, or a crime) held by a law enforcement agency or prosecutor, including:
 - a. Information that deals with detection, investigation, or prosecution of crime; and
 - b. An internal record or notation that is maintained for internal use in matters relating to law enforcement or prosecution.

Gov't Code 552.108

9. Private correspondence and communications of an elected office holder relating to matters the disclosure of which would constitute an invasion of privacy. *Gov't Code 552.109*
10. A trade secret obtained from a person and privileged or confidential by statute or judicial decision. *Gov't Code 552.110(a)*
11. Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained. *Gov't Code 552.110(b)*
12. Interagency or intra-agency memoranda or letters that would not be available by law to a party in litigation with the College District. *Gov't Code 552.111; City of Garland v. Dallas Morning News, 22 S.W.3d 351 (Tex. 2000)*
13. Student records, except to College District personnel, the student, or the student's parents, guardian, or spouse. The College District is not required to release student records, except in conformity with FERPA. *Gov't Code 552.114, 552.026*
[See FL]
14. Information that relates to the home address, home telephone number, or social security number of the following persons, or that reveals whether the person has family members:
 - a. A current or former College District employee or Board member, except as provided by Section 552.024; or
 - b. A peace officer or a security officer commissioned by the Board of Private Investigators and Private Security Agencies, regardless of whether the officer complies with Section 552.1175.

Gov't Code 552.117

15. A photograph that depicts a peace officer, the release of which would endanger the life or physical safety of the officer, unless:
 - a. The officer is under indictment or charged with an offense by information;
 - b. The officer is a party in a fire or police civil service hearing or a case in arbitration; or
 - c. The photograph is introduced as evidence in a judicial proceeding.

If a photograph is exempt from public disclosure as described above, it may be made public only if the officer gives written consent.

Gov't Code 552.119

16. Test items developed by a state-funded educational institution. *Gov't Code 552.122*
17. The certified agenda or tape recording of a closed meeting, unless a court order makes it available for public inspection and copying. *Gov't Code 551.104(c)*
18. Records of a school library or library system that identify or serve to identify a person who requested, obtained, or used a library material or service, unless the records are disclosed:
 - a. Because the library determines that disclosure is reasonably necessary for the operation of the library and the records are not confidential under other state or federal law;
 - b. To a person with a special right of access under Government Code 552.023; or
 - c. To a law enforcement agency or prosecutor under a court order or subpoena.

Gov't Code 552.124

19. The name of an applicant for College President, except the Board must give public notice of the name or names of the finalists being considered for that position at least 21 days before the date of the meeting at which final action or a vote is to be taken on the applicant's employment. *Gov't Code 552.126 [See BJB]*
20. Motor vehicle record information that relates to:
 - a. A motor vehicle operator's or driver's license or permit issued by an agency of this state;

- b. A motor vehicle title or registration issued by an agency of this state; or
- c. A personal identification document issued by an agency of this state or a local agency authorized to issue an identification document.

The motor vehicle record information described above may be released only in accordance with Transportation Code Chapter 730.

Gov't Code 552.130

- 21. An informer's name or information that would substantially reveal the identity of an informer, unless:
 - a. The informer or the informer's spouse consents to disclosure of the informer's name.
 - b. The informer planned, initiated, or participated in the possible violation.

"Informer" means a student or former student or an employee or former employee of the College District who has furnished a report of another person's possible violation of criminal, civil, or regulatory law to the College District or the proper regulatory enforcement authority.

Gov't Code 552.135

- 22. Information in a commercial book or publication purchased or acquired by the College District for research purposes, if the book or publication is commercially available to the public. The College District is not required to make copies of commercially available information, but the College District shall allow the inspection of information in a book or publication that is made part of, incorporated into, or referred to in a rule or policy of the College District. *Gov't Code 552.027*
- 23. Information that relates to economic development negotiations involving the Board and a business prospect that the Board seeks to have locate, stay, or expand in or near the College District, if that information relates to:
 - a. A trade secret of the business prospect; or
 - b. Commercial or financial information for which it is demonstrated based on specific factual evidence that disclosure would cause substantial competitive harm to the person from whom the information was obtained.

24. Unless and until an agreement is made with the business prospect, information about a financial or other incentive being offered to a business prospect by the Board or by another person.

After an agreement is made, information about a financial or other incentive being offered is no longer exempted from public disclosure if the information is about a financial or other incentive being offered to the business prospect:

- a. By the Board; or
- b. By another person, if the financial or other incentive may directly or indirectly result in the expenditure of public funds by the College District or a reduction in revenue received by the College District from any source.

Gov't Code 552.131

25. Information that relates to computer network security or to the design, operation, or defense of a computer network. The following information is confidential:

- a. A computer network vulnerability report; and
- b. Any other assessment of the extent to which data processing operations, a computer, or a computer program, network, system, or software of the College District or of a contractor of the College District is vulnerable to unauthorized access or harm, including an assessment of the extent to which the College District's or contractor's electronically stored information is vulnerable to alteration, damage, or erasure.

Gov't Code 552.136

MILITARY
DISCHARGE
RECORDS

26. A military veteran's Department of Defense Form DD-214 or other military discharge record that first comes into the possession of the College District on or after September 1, 2003. The record is confidential for the 75 years following the date it comes into the possession of the College District in accordance with Government Code Section 552.140. A College District that obtains information from the record shall limit the use and disclosure of the information to the purpose for which the information was obtained. *Gov't Code 552.140*

SOCIAL SECURITY
NUMBERS

27. The Social Security number of a living person. The College District may redact the Social Security number of a living person from any information the College District discloses to the public without the necessity of requesting a decision from the attorney general. *Gov't Code 552.147*

PUBLIC INFORMATION PROGRAM:
ACCESS TO INFORMATION

GAA
(LEGAL)

INVESTMENT
INFORMATION

28. Certain College District investment information, as specified by Government Code 552.143, is not public information and is excepted from disclosure. *Gov't Code 552.143*