



HAWAI‘I STATE ETHICS COMMISSION

State of Hawai‘i · Bishop Square, 1001 Bishop Street, ASB Tower 970 · Honolulu, Hawai‘i 96813

August 2, 2023

Via-Email: Daniel.Espaniola@k12.hi.us

Daniel Espaniola
Principal
Kaunakakai Elementary School

Re: *Request for a Good Cause Exception to Nepotism Prohibition*

Dear Mr. Espaniola:

Thank you for contacting our office to request a good cause exception to the Nepotism Law. You are the principal of Kaunakakai Elementary School. You requested a good cause exception so that your daughter may continue as the school’s preschool special education teacher. Based on the information provided, it is our opinion that, given your unique circumstances and needs, good cause exists for an exemption to the Nepotism Law, provided that you do not take part in the direct supervision of your daughter.

The Nepotism Law prohibits state employees from taking employment action affecting relatives or household members. Employment action includes such things as hiring, evaluating, demoting, or supervising a relative or household member. The law further provides that the Ethics Commission may grant an exception to this law upon good cause shown. Good cause may include a demonstrated lack of qualified employees or candidates.¹

Based on the information provided by you, the Complex Area Superintendent, and the Assistant Superintendent of the Office of Talent Management of the Department of Education (“DOE”), I understand that Kaunakakai Elementary School is the only public school on Molokai serving preschool special education students. In June of this year, the incumbent preschool special education teacher resigned, which necessitated the hiring of a new teacher. The position was posted in July on the DOE’s NEOED hiring platform, which recruits worldwide. Your daughter applied through NEOED and was the only applicant who applied before the start of the new school year. She is a licensed and certified special education teacher. You recused yourself from the interview process but, based on the recommendation of the hiring panel, you granted final approval to hire your daughter. You, the Complex Area Superintendent, and the Assistant Superintendent of the Office of Talent Management all stressed that it is extremely difficult to fill these positions on Molokai given its geographical remoteness. All of you indicated qualified applicants are few and far between. You asked for an exception to the Nepotism Law so that your daughter may continue in the position in order to meet Federal requirements for serving the needs of preschool special education students.

¹ The Nepotism Law is available at:

https://www.capitol.hawaii.gov/session/measure_indiv.aspx?billtype=HB&billnumber=717&year=2023

The purpose of the Nepotism Law is to eliminate favoritism in hiring and employment decisions, promote public confidence in state employees and state government, and prevent abuses of power by prohibiting state officials and employees from using their positions to benefit family members. Given the strong public policy supporting the law, the Ethics Commission believes that exceptions should rarely be granted. In this case, however, given the unique circumstances, and provided you recuse yourself from the direct supervision of your daughter, we believe an exception to the law is warranted.

The DOE is required to provide special education services to students and, thus, this is a critical position to fill. The position was widely advertised through the NEOED platform. Only one candidate applied. As noted earlier, Molokai presents unique staffing challenges given its remoteness. All of these factors indicate that an exception is appropriate. Balanced against this, however, is the fact that, given the short time frame available for the hiring process, this position was posted only for a short time on a single platform. Generally, hiring efforts should be significantly more robust before an exception to the law is granted. Nonetheless, taking all the circumstances into consideration, we believe the exception is appropriate.

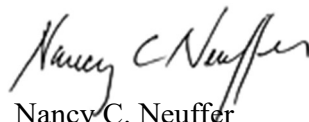
That said, this approval is conditioned upon your recusal from any supervision or evaluation of your daughter. You stated you would not be involved in the day-to-day supervision of your daughter and that, in the past, your direct supervision of this position has amounted to an annual evaluation. You are able to recuse yourself from this evaluation and have another education official perform the evaluation.

Finally, you should be aware of an additional section of the Ethics Code. Haw. Rev. Stat. §84-13(a) prohibits state employees from using their state positions to grant themselves or anyone else any unwarranted benefit or advantage. State employees who work alongside relatives must be extremely careful not to accord their relatives any special treatment.

Thank you for your request for an exemption. This letter is based on the information provided by you and other employees of the DOE. If any of this information is inaccurate, please inform us as soon as possible as this may affect our decision.

If you have questions or would like to discuss this matter further, please contact me at (808) 587-0460.

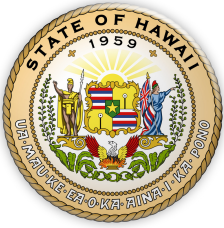
Sincerely,



Nancy C. Neuffer
Staff Attorney

Attachment: Nepotism Quick Guide

NCN/ls



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THE STATE ETHICS CODE - A QUICK GUIDE ON THE NEPOTISM LAW

DOES THE NEPOTISM LAW APPLY TO ME?

The nepotism law applies to almost all state employees (including board members). Exceptions include employees in the legislative or judicial branches.

The Commission encourages all state employees to comply with this law.

What does the nepotism law prohibit?

If the nepotism law applies to you, there are two restrictions:

1. You cannot take employment action affecting relatives or household members.

- This means you cannot appoint, hire, promote, retain, demote, discharge, terminate, or supervise a relative or household member from a paid position in your agency.
- This also means you cannot participate in an interview or discussion regarding a relative or household member’s potential hiring, promotion, or retention to a paid position in your agency.
- There is an exception for supervising a relative where you have a physical impairment requiring the hiring of a particular relative or household member and the employment is disclosed to the Commission before the hire is made.

2. You cannot be involved in contracts awarded to businesses owned by relatives or household members.

- You may not award or be involved in administering/supervising a contract to a business where a relative or household member:
 - is an executive officer of that business or
 - owns a substantial interest in the business.
- For example, an employee could not sit on the selection panel of a request for proposals if one of the applicants was owned by a relative.
- **Narrow exception:** if you are legally required to take action affecting a relative or family member’s business, you may do so when you file a notice with the Commission at least five days in advance.

What is a Relative?

A “Relative” includes parents, grandparents, children, grandchildren, siblings, uncles/aunts, cousins, in-laws, and step-relationships.

A “household member” is anyone who resides in the same dwelling.

THE STATE ETHICS CODE - A QUICK GUIDE ON THE NEPOTISM LAW

What should I do if I supervise a relative at work?

Employees generally cannot supervise their relatives, and agencies and employees should work together to comply with the nepotism law. For instance, a supervisor could delegate all employment decisions affecting a relative to another person in the agency. To avoid the appearance of impropriety, it will be important to document that employment decisions are being made by someone else and be public about that delegation.

If that is not possible, you may apply to the Commission for an exception to the nepotism law where there is good cause. You must prove good cause, which might include a lack of qualified applicants, in a public and transparent manner. An exception form can be found at ethics.hawaii.gov.

How do I establish good cause?

When applying for a good cause exception, it is important that the employee or agency produce evidence that they are unable to comply with the nepotism law. For hiring decisions, this could include ensuring that the job description was reviewed for general applicability; meaningfully advertising in relevant locations; advertising for a reasonable period; acting quickly to review and consider potential candidates; and generally going above and beyond to recruit applicants into the state system.

For existing state employees taking action affecting relatives, a good cause exception application should include proof of why the agency and employee are unable to delegate those duties to another employee and the efforts that were made to comply with the nepotism law absent an exception.

What should I do if I am asked to interview a relative for a job opportunity?

Employees may not interview or promote their relatives. An employee that is asked to do so should disclose their relationship to their agency and refrain from participating in the hiring process.

What are the penalties for a violation?

Employees violating the nepotism law face fines of up to \$1,000 per violation, any favorable treatment received by a relative or household member is potentially voidable.

Contact Us:

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