

November 10, 2023

To: info.ethics@hawaii.gov

re: **Testimony re: Nov. 15, 2023 Ethics Commission Meeting Agenda IV.
Discussion of Media Reports Concerning Ethics or the Ethics Commission
Since the Last Meeting**

Aloha Hawai'i State Ethics Commission,

The November 3, 2023 Honolulu Civil Beat editorial, "[Hawaii's New Nepotism Law Is Kicking In](#)," briefed the public about the Ethics Commission rulings to date concerning our new nepotism prohibition law. The majority of the five rulings give me hope that, "the Ethics Commission believes the threshold standard of 'good cause' is a high bar," and, "that exceptions should rarely be granted."

However, the rulings concerning public school principals are cause for concern. There are three fatal flaws in the Commission's logic in these rulings that are applicable to all government employees in managerial roles.

1. **JOB DUTIES**: A manager given complete authority to make all decisions for the manager's department cannot separate him/herself from daily recommendations and decisions concerning allocation of resources. It's part and parcel of the job.
2. **SURROGATE SUPERVISORS**: Passing off supervisory duties and evaluations of a manager's relative to a "direct report" (one who reports directly to the manager and is evaluated by the manager) creates conditions whereby the surrogate supervisor cannot objectively perform these duties in the best interests of the public. Ensuring survival, pleasing one's boss will always be one's first priority.
3. **HRS §84-NEW(e) EXCEPTIONS**: Exceptions based on HRS §84-NEW(e) ("a demonstrated lack of qualified personnel or applicants") should not be granted without sufficient demonstration of rigorous recruitment efforts, nor should they be granted in perpetuity. Every new day offers an opportunity to do better.

I know how the Department of Education is operates because I used to be a DOE teacher, and I have many associates who still are. So, I will use examples from that perspective, though these concepts apply to any department manager.

1. JOB DUTIES

The Commission's August 14, 2023 ruling evinces a firm grasp of the broad scope of authority and power a manager possesses.

“...While you are not responsible for hiring candidates for the...Position, you assign daily activities, take corrective action, and oversee the work performed. You do not make personnel decisions (such as promotion or termination), but act in a managerial role and provide recommendations... The Ethics Commission may grant an exception to this law upon good cause shown. And yet, 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.”

A DOE principal has the authority to make final decisions about facilities, training opportunities, student assignments, allocation of resources, employee evaluations, resolving conflicts, etc. Principals have ultimate responsibility and power. They cannot, in all practicality, separate themselves from supervising *any* employees at a school. They make decisions that benefit one employee or group of employees at the expense of another all the time. The potential for nepotistic decisions is omnipresent.

Allowing a principal's relative to work at the school negatively affects how unions are supposed to function. The Hawai'i State Teachers Association has elected school level leaders who are supposed to represent the interests of teachers at the school. A principal's relative could be elected as a SLL, and most likely will choose to keep the family relationship intact by acquiescing to the principal's wishes instead of supporting teachers' interests should these objectives be at odds.

2. SURROGATE SUPERVISORS

It's not possible for a vice principal to evaluate his or her boss's relative without bias. To survive employment at a DOE school, one learns to never question much less disagree with a principal or the principal's family members. The notion that a vice principal can do truly objective evaluations of his or her boss's family members is contrary to human nature. Third-party favoritism, done consciously or not, is inevitable.

Here are other examples of third-party nepotism that can occur. None of the most challenging students are assigned to the relative's class, but the choice is made by a grade level committee. A curriculum coach selects the relative to go to a desirable training opportunity. A custodian prioritizes the relative's work requests over others' requests. The vice principal assigns the relative to the best and biggest classroom.

All school employees report to the principal, and are beholden to the principal for their livelihoods, and by default, the principal's family members. The direct-report, surrogate supervisor arrangement is a dysfunctional folly fraught with favoritism and fear.

3. HRS §84-NEW(e) EXCEPTIONS

Sometimes the only person to apply is a principal's relative. However, exceptions based on lack of qualified applicants should NEVER be in perpetuity. There's always tomorrow, and another opportunity to fix a problem instead of letting it fester or become so embedded it mutates into a dangerous precedent that kills the intent of HRS §84-NEW. The DOE must be expected to try harder to comply with the law. Simply posting an available position on an internal search engine and waiting for high qualified candidates to show up is lazy, and has proven to be ineffective.

Be aware that one nepotism technique DOE principals have used for *decades* is to delay posting of a position until the last minute so that only those who know the position is available have time to apply. Another is to not try trying hard enough to find qualified candidates both within the DOE and outside the state. More diversity in education would be helpful. In reality, the Department's recruitment efforts are paltry, and its retention efforts are abysmal. I assert that nepotism is a significant factor.

The DOE claims high teacher turnover is simply because of low pay, but these stats are skewed. The exit survey allows the respondent *only one* choice from a short list of reasons for leaving. "Low pay" will always be number one because a common departure sentiment is, "I'm not getting paid enough to put up with this nonsense."

What nonsense? Corruption due to: nepotism; bias against outsiders; lack of accountability for following the law; retaliation at the hands of the principals and their relatives against advocates for improvement; the list goes on. The DOE can do better. Strict enforcement of HRS §84-NEW would compel the Department to work harder to solve retention problems, e.g., much better advocacy to raise teachers' salaries, which requires greater transparency of current expenditures. Strict adherence to our new nepotism prohibition has the potential for significant reforms in many different ways.

HRS §84-NEW(e) exceptions shouldn't last longer than one school year. During that time, the Department must be held accountable for finding qualified personnel unrelated to the principal. If that means offering a bonus and covering the moving costs for DOE employees reassigned from other schools, and hiring professional recruiters, then that's the expense of following the law. If evidence of an exhaustive recruitment effort honestly proves that nobody else in Hawai'i or the U.S. can fill the position, then the Commission should give the agency a new deadline and be required to produce new evidence of new recruitment efforts.

CONCLUSION

I wholeheartedly support the analysis in the Commission's August 14, 2023 ruling that the legislature intended a firm prohibition of nepotism, and that public policy further supports drawing a narrow line around possible good cause exceptions. As stated in that ruling, the nepotism prohibition should:


- *Eliminate favoritism, and establish an equal playing field for other qualified individuals seeking an employment opportunity;*
- *Avoid conflicts of interest by ensuring state employees can make unbiased decisions in the best interest of the public;*
- *Help maintain public confidence in the public integrity and impartiality of government as a whole; and*
- *Prevent abuses of power, that is, government managers misusing their authority to benefit family members and expend public resources improperly.*

I would feel more confident that the nepotism prohibition law will be effective in eradicating nepotism in Hawai'i's government agencies if the Ethics Commission takes a firm stand in enforcing the intent and letter of the law.

I hope the Commission will reconsider its recent rulings regarding school principals, and set a better precedent based on these realities: (1) Managers cannot help but favor family members, and may even be unaware of it. To *prevent* this, managers should never have any direct reports (defined by a standard, hierarchical org chart) who are relatives or household members except in the most extreme cases. Surrogate supervision disrupts the functionality of the entire department when managers are absolved (on paper) of their job responsibilities. (2) It's contrary to human nature, and thus illogical, to think any employee who reports directly to a manager can be unbiased in any decisions where the manager's family members are concerned. Nepotistic favoritism has many tentacles. (3) Granting HRS §84-NEW(e) exceptions in perpetuity in the absence of proof that the agency conducted exhaustive recruitment efforts, and is continuing those efforts until a replacement unrelated to the manager can be found, does not instill confidence that the nepotism prohibition will be enforced.

It will take time for the new law to ferret nepotism out of our government. The culture will not change overnight. Adjustments will require *effort*. Unless the Commission draws a very narrow line around good cause exceptions, and sets higher expectations for compliance, nepotism will remain firmly entrenched in Hawai'i.

Mahalo for your consideration,


Vanessa Ott