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October 21, 2023

Hawai'i State Ethics Commission
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COMPLAINT: Objection to Hawai'i State Ethics Commission Grant of Exception to Nepotism Prohibition in Perpetuity for Principal of Kaunakakai Elementary School

Aloha State of Hawai'i Ethics Commission,

I object to the Commission's August 2, 2023 granting of an exception *in perpetuity* of Hawai'i's new nepotism law to Daniel Espaniola, Principal of Kaunakakai Elementary School (ATTACHMENT).

This is the second exception the Commission has granted since the law went into effect this past July that sets an alarming precedent which undermines the purposes of our new and long-awaited nepotism law. The exception also establishes conditions that absolve school principals of performing their job duties which is recipe for rampant nepotism and incompetence to continue in our public schools.

In Principal Espaniola's case, I am completely sympathetic to his situation. Molokai schools are difficult to staff. Special Education teachers are hard to find statewide. However, many of Hawai'i's "high needs" schools have staffing problems *because* of nepotism, lack of diversity, lack of accountability, and fair opportunities for outsiders. Eradicate nepotism in our public schools and they will improve!

I think the legislature erred when it did not allow for a one-year blanket exemption for full implementation of the nepotism law, especially where public schools are concerned. The law went into effect in July 2023, and schools already had positions for the impending school year assigned. The Commission can mitigate this omission by granting temporary exemptions with deadlines for compliance. In Principal Espaniola's case, I think it's reasonable to grant an exemption for School Year 2023-2024, but certainly not forever. Granting this exception in perpetuity simply perpetuates the nepotism the new law is intended to eradicate.

It's a Principal's job to supervise the employees at a school as well as seek *and* retain qualified candidates. Many teachers have come to Hawai'i and many have been driven away by DOE corruption that is in part due to nepotism. It is imperative that Mr. Espaniola AND the Department of Education do a better job seeking out and being equitable and friendly to non-relatives in order to comply with the law.

One special nepotism technique that DOE Principals have been using for decades to favor hiring of relatives is to delay posting of a position, and not try hard enough to find qualified candidates who could compete for a position the Principal wants to fill with a relative. That is the situation in this case, correct? I ascribe no such deliberate conspiracy to Mr. Espaniola, but we can never know for certain what someone's motivations or deficiencies are. The nepotism law is supposed to make such questions moot.

The Commission's reason for granting the exception is:

"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."

It's unreasonable for the Commission to grant an exception to the nepotism law in perpetuity unless there is *extremely* good cause. Unless the Department and the Principal make a *truly* exhaustive effort to seek qualified staff who are not relatives, and evidence of such efforts accompanies a request for exception, the exception should *not* be granted. Exceptions based on claims that another qualified applicant could not be found anywhere in the U.S., should never be in perpetuity, and should not last any longer than one school year.

In my October 20, 2023 complaint to the commission regarding the exception granted to Principal David Dinkle, I explain several reasons for why it is unreasonable to think that a Principal is not directly supervising all the staff at the school on a day-to-day basis. The Commission must recognize that supervisory acts subject to the evils of nepotistic favoritism go far beyond an employee's annual evaluation and permeate even the simplest decisions related to daily school operations. The Commission's form of accountability, that a Principal promise to not favor a relative is contrary to human nature. So, the Commission's follow statement is like asking a fox to guard a henhouse:

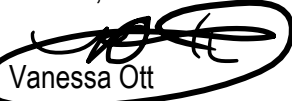
"Finally, you should be aware of an additional section of the Ethics Code. Haw. Rev. Stat. §84-13(a) prohibits state employees from using their state positions to grant themselves or anyone else any unwarranted benefit or advantage. State employees who work alongside relatives must be extremely careful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

The point is, state employees should not be working under a supervisor who is a relative – PERIOD. **When following the law**, no supervisor has to be careful about giving special treatment to relatives because **they just don't supervise their relatives!**

Therefore, I request that the Hawai'i State Ethics Commission fulfill the intent of our new nepotism law by doing the following:

1. Revise the exception granted to Daniel Espaniola, Principal of Principal of Kaunakakai Elementary School, so that it expires at the end of School Year 2023-2024
2. Disallow any and all exceptions based on claims that no other qualified candidate could be found unless ample evidence is provided with an exception request that proves beyond a shadow of a doubt that the DOE and the Principal engaged in exhaustive effort to find a suitable, non-related candidate.
3. If the Commission is unwilling to not grant my requests 1 and 2 above, a thorough explanation for its reasons is requested.

Mahalo,


Vanessa Ott

ATTACHMENT

<https://ethics.hawaii.gov/wp-content/uploads/2023-08-02Nepotism-EspaniolaD.pdf>



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-E-mail: 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

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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.

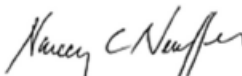
That said, this approval is conditioned upon your recusal from any supervision or evaluation of your daughter. You stated you would not be involved in the day-to-day supervision of your daughter and that, in the past, your direct supervision of this position has amounted to an annual evaluation. You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