

# Nepotism: Contracts, Hiring, Public Perception and the Law

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# Overview

- Nepotism Standard in NM Schools for Hiring
- Initial Hiring, Supervision, and Evaluation
- Promotion
- Contracting
- Policy proposals
- Consequences for board member interference



# Initial Hiring

How do nepotism rules impact the hiring of relatives?





A local superintendent shall not **initially employ or approve the initial employment in any capacity** of a person who is the [relative] of a member of the local school board or the local superintendent. The local school board may waive the nepotism rule for family members of a local superintendent.

NMSA 1978, §22-5-6  
Nepotism prohibited  
Effective 6/19/2009

No agency shall permit the **hiring, promotion, or direct supervision** of an employee by a person who is related by blood or marriage within the third degree to the employee.

NMAC 1.7.6.8 Nepotism  
State Personnel Administration  
Effective 11/30/2000

# How far do they reach?

## §22-5-6 Nepotism prohibited

- Spouse
- Father, Father-In-Law, Mother, Mother-In-Law,
- Son, Son-In-Law, Daughter, Daughter-In-Law,
- Brother, Brother-In-Law, Sister, Sister-In-Law



## NMAC 1.7.6.8

- “third degree” relation
  - Great-grandparents
  - Great grandchildren
  - Great Uncles/Aunts
  - First Cousins



# What is the reason for this ban?

- Concern about the Superintendent/Board dynamic
  - Superintendent alone has the authority to hire/fire.
  - However, boards evaluate and hire/fire superintendents.
- The concerns:
  - Superintendent will hire board member family to curry favor with board members (his/her evaluator)
  - Board members will pressure superintendents to hire family members, as a way for the Superintendent to ensure job security



# What Does “Initially Employ” Mean?

- Is there an impact on being hired for those already employed at the time of board member election?
  - No impact on continuing employment
- What if the family member leaves the District and then tries to then be rehired?
- What are the board member’s options if a family member is banned from hire?
- Can you ask a superintendent to let the family member apply and if they get the job, the board member can resign?



# Practice Problem:

- The former superintendent ignored the law and hired a board member's family in a teaching position. When a new superintendent is hired, she receives a report about the alleged illegal hire.
  - What should the Superintendent do?
  - If the board member who is related to the teacher is still a sitting board member, what are his/her options?
  - What options does the employee have?
  - What are the implications for the board member, teacher and former superintendent?





# What positions are excluded?

- Statute says cannot be employed “in any capacity”.
  - That includes substitutes, part time, hourly, and certainly, licensed.
- Disagreement: volunteers
  - Form of employment
  - Statute bars employment “in any capacity”
  - What are the possible complications with volunteers related to the Board?
    - Supervision and direction of that family
    - Temptation for board members to try to influence
  - Best practice: Just say no.



# Is Promotion Also Barred for School Employees?

## Legal Authority

- Public School Code does not explicitly include “promotion” in the nepotism statute.
- “Initially employ”  
“Approve initial employment”

## Best Practices

- Promotion can be considered a form of initial hiring for a new position.
- New status; increased pay; competitive?



# Practice Problem: Promotion

- Assistant principal is spouse of sitting board member. She wants to apply for open principalships.
  - Concerns for the superintendent, board member, applicant?
  - What is the public perception issue? Possible investigation?
  - Implications for licensure? Under the Governmental Conduct Act? Recall?



# Supervision & Evaluation

How do nepotism standards apply to supervision and evaluation of school employees?





### Supervision of Board Member Family (where already employed):

- Consider no direct supervision from the superintendent
- If problems, consider third party investigation of issues
- Superintendent still has to make the ultimate decisions on rehire, assignment, discipline.
- **Board member stays away!**

### Evaluation of Board Member Family (where already employed):

- Consider structures that are independent of the Superintendent
- Consider third party evaluators if the family member is a poor performer
- Superintendent still makes the ultimate determination on rehire, assignment, PGP.
- **Board member stays away!**

# Should there be nepotism concerns regarding employees, unrelated to board members?

- Remember that nepotism with employees is to be handled by the Superintendent, not the Board.
- That being said, if one family member supervises/evaluates another:
  - Danger of misconduct and poor performance being overlooked and never documented



# What about contractors who may be related to board members? Are they barred too?

- The nepotism statute refers to “employment” -- employees. **Contractors do not fall under the nepotism statute.**
- Boards choose and hire contractors (as an expense):
  - However, that does not mean that you can run wild!
  - The Procurement Code, the Governmental Conduct Act, and Board ethical requirements bar conflicts of interest and self dealing. So there is a process by which a board member’s relative can bid on projects.
    - Public assertion of conflict; completely opting out of consideration and vote; objective measures for selection
    - So why can’t we just do the same for employees?



# The Argument for Waivers and Allowing Family to Be Hired





# Policy Issues

- A waiver should be instituted:
  - New Mexico is made up of small towns that need all the staff they can find.
  - We should not be creating disincentives for our kids to return to their hometowns.
  - The nepotism rules discourage good people from running for the Board.
  - We allow waivers for contractors. Why not employees?
- However:
  - NM has a problem with conflicts of interest and nepotism.
  - A waiver could encourage board member interference.
  - The nepotism bar should be strengthened, not weakened, to ensure public confidence and protection of public ethics and money.



# What are other states doing?

## *New Jersey*

- *N.J.A.C. 6A:23A-6.2 (a)(2)(ii)*. A school district may employ a relative of a district board of education member or chief school administrator provided the school district has obtained approval from the executive county superintendent. Such approval shall be granted only upon demonstration by the school district that it conducted a thorough search for candidates and the proposed candidate is the only qualified and available person for the position.
- *N.J.A.C. 6A:23A-6.2 (b)* Additionally, a board of education may exclude per diem substitutes and student employees from its nepotism policy. This provision may be implemented at the district's discretion and should be clearly set out in its local nepotism policy.



Source: [New Jersey School Boards Association](#)



# Legislative Fights Over a New Waiver

- Proposals:
  - Allow a superintendent to ask the board for a waiver where there is demonstrable need, as determined by the superintendent
  - Give notice to NMPED that a waiver has been obtained
  - Allow the family member to apply and to go through any committee hiring process
  - Allow the superintendent to have the final word.
  - Impose criminal penalties and make it easier to remove board members who interfere or who exercise improper influence at any stage.

What are the possible reasons people might attack this proposal?



# Possible Repercussions for Board Members for Engaging in Nepotism

- Embarrassment, Cost, Investigation.
- Public Censure by Your Board
- Allegations of impropriety by your superintendent and possible contract violations
- Ethics complaints to the NMSBA
- Governmental Conduct Act violations (4<sup>th</sup> degree felony)
- Recall for misfeasance/malfeasance in office



# What's the Takeaway?

- As of now, your family members cannot be hired if you are on the Board.
- They probably should not be promoted since that is a hire in the first instance to a new position.
- They should not be allowed to participate in hiring processes, with a promise that you will step down if they are chosen.
- As a board member, you should NEVER suggest or encourage in any fashion to the Superintendent that a family member be considered for a position.
- The consequences for interference can be severe.
- If you do not like the law, your board can advocate for its change.



Questions?

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