

Family Ties and Your Policy Manual

Has your board adopted its new nepotism policy yet?

By GIANFRANCO A. PIETRAFESA, ESQ.

The New Jersey Department of Education has adopted new financial accountability regulations. Among other things, the new regulations require public school districts to adopt a nepotism policy to eliminate conflicts of interest in employment. However, not just any nepotism policy will do. Instead, N.J.A.C. 6A:23A-6.2(a) states that a school district must adopt the policy specified in the accountability regulations. The regulations also state that a board must adopt the required nepotism policy "as a condition of receiving State aid." Therefore, a board risks the loss of state aid if it does not adopt the required policy.

In February, the New Jersey School Boards Association revised sample nepotism policies 4112.8 and 4212.8 in the *Critical Policy Reference Manual* to comply with the regulations. A district's nepotism policy must include the following provisions.

A board cannot employ a "relative" of a board member or of the superintendent in any position in the district. The term "relative" is broadly defined to include an individual's spouse, civil union partner, domestic partner, or the parent, child, sibling, aunt, uncle, niece, nephew, grandparent, grandchild, son-in-law, daughter-in-law, stepparent, stepchild, stepbrother, stepsister, half-brother or half-sister, of the individual or of the individual's spouse, civil union partner or domestic partner by blood, marriage or adoption. However, there is an exception. A person who is already employed in the school district on the effective date of the policy, or on the date that a relative becomes a board member or the superintendent, can continue being employed by the district.

An "administrator" cannot exercise authority, supervision or control over

a relative. The term "administrator" includes the superintendent, principals and the school business administrator, among others. Again, there is an exception: Where it is not feasible to eliminate a direct or indirect supervisory relationship between an administrator and a relative, then the board and/or the superintendent must establish appropriate screens and/or alternative supervision and reporting mechanisms. (For a related article, see "Who Can Evaluate the CSA," on page 38.)

If a board member or an administrator has a relative who is a member of a collective bargaining unit in the district, the board member or administrator cannot (a) be a member of the board's negotiating team; (b) participate in any way in negotiations; (c) discuss the proposed collective bargaining agreement; (d) be present when the board discusses negotiation strategies in closed session; or (e) vote on the proposed collective bargaining agreement. However, there is a limited exception: the board can allow an administrator to provide technical information necessary to the collective bargaining process when no one else can provide the information.

What if a board member or an administrator has an "immediate family member" who is a member of the same statewide union in another school district? In that case, the board member or administrator cannot (a) be a member of the board's negotiating team; (b) participate in any way in negotiations; or (c) be present when the board discusses negotiation strategies in closed session. An "immediate family member" is defined as an individual's spouse, civil union partner, domestic partner or dependent child of the individual residing in the same household, whether related by blood, marriage or adoption.

However, once the board has

reached a tentative memorandum of agreement with the collective bargaining unit, including a salary guide and a total compensation package (including benefits), such a board member or administrator may fully participate in the process, including voting on the proposed agreement.

When making recommendations of employment to the board, the superintendent cannot recommend a relative of a board member or of the superintendent.

If a school district does not adopt such a nepotism policy or if it fails to follow such a policy, it can not only lose its state aid, it can also lose points on its New Jersey Quality Single Accountability Continuum (NJQSAC) monitoring. Board members can also receive personal sanctions from the School Ethics Commission, including reprimand, censure, suspension or removal of the board member from the board. These are the same sanctions that can be imposed when a board member violates the conflict of interest laws.

Finally, it is conceivable that a taxpayer can file a lawsuit seeking to invalidate a collective bargaining agreement or the employment of an individual on the basis that it was the result of undue influence by a board member or administrator having a conflict of interest.

In light of the potential consequences, boards should move quickly to adopt and follow the nepotism policy specified in the new regulations. **sl**

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Editors' Notes: For links to the specific legal citations relevant to the article, please see the online version at www.njsba.org/school-leader.