

**Comments on Proposed Revisions to Board Policy 5.30
Community Unit School District 200**

Submitted by:

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A ban on nepotism in hiring is needed

A ban on nepotism in District 200 is long overdue. Numerous recent scandals have arisen at all levels of Illinois government, including major educational institutions. Citizens – including myself – are partially to blame; we have a right to demand that this practice be abolished but have been silent too long on the abuses taking place. Unfortunately, the proposed policy, as drafted, is inadequate and is specifically written to exempt certain egregious examples of nepotism and conflicts of interest currently existing in the District. Attached to these comments are proposed revisions.

District 200 should establish fiduciary standards to avoid any appearance of impropriety

“As elected public officials, board members hold a fiduciary position and owe duties of loyalty and good faith to the entities that they are elected to serve. The fiduciary duty requires the board member to put the best interests of the district ahead of his or her other personal or financial interests. As the Illinois Supreme Court has noted, ‘The faithful performance of official duties is best secured if a governmental officer, like any other person holding a fiduciary position, is not called upon to make decisions that may advance or injure his individual interest.’”¹ Fiduciary duties are the highest standard of duty implied by law².

If District 200 intends to be an exemplary school district in accordance with its mission statement, it must set an example of best practices, not merely accept the bare minimum level of compliance needed to avoid direct violation of Illinois law. The Illinois Association of School Boards (IASB), of which District 200 is a member, urges board members to avoid even the appearance of impropriety. It states, “*Appearance of impropriety* is not a legal standard; it refers to conduct that appears questionable although it may be legal.”³

Furthermore, if the public interest requires that nepotism be banned under this policy, it should make no difference whether the nepotism exists now or hereafter. As far as I can determine, the District does not permit ongoing violation of any of its other personnel policies. If the policy is worthy of being adopted, it is worthy of being enforced.

¹ Illinois Association of School Boards, *Answers to FAQs Conflict of Interest and Incompatible Offices* (April 2009), p. 5, available at <http://www.iasb.com/law/FAQsConflictofInterestIncompatibleOffices.pdf>.

² *Black's Law Dictionary*, Sixth Edition (West Publishing Company, St. Paul, Minnesota, 1990).

³ Illinois Association of School Boards, *Answers to FAQs Conflict of Interest and Incompatible Offices*, p. 8.

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Banning nepotism benefits everyone

Bans on nepotism benefit everyone involved.

- Citizens benefit from having governmental decisions made in the best interest of the community, free from improper influence. This ensures that the best qualified individuals are hired, free of bias.
- The prospective employee benefits, because he or she can be confident that employment decisions are made solely based on merit and free of personal considerations – positive or negative.
- Co-workers benefit because they can be confident that they will be treated fairly in comparison with others.
- The individual making the hiring decision benefits; he or she need not feel pressured with respect to hiring relatives, or have his or her decisions questioned. The University of Illinois recognizes this in its policy 313; one purpose of the policy is “to protect individual members of a family from having or being perceived to have a conflict of interest with respect to one of their relatives.”⁴

Avoiding conflicts in the first place eliminates the need for recusal later

It is not always possible to avoid conflicts of interest. However, if they exist, extreme care must be taken to avoid acting improperly. In the business world, for example, some major corporations prohibit even taking part in decisions that affect relatives. 3M Corporation’s Conflict of Interest policy indicates that employees are to avoid taking part in: “Taking part in any 3M business decision involving a company that employs your spouse or family member.”⁵

If a relative is hired in a position over which one has supervisory authority, the superior must avoid taking any action involving the relative, to avoid the appearance of impropriety. This can result in the need for frequent recusal, preventing the superior from doing his or her job properly. It is better to avoid the situation in the first place.

The Board should also consider whether it is advisable to employ family members in the same building, even on a peer level, as this could create difficulties in relation to discipline and/or interaction with other staff, particularly if the relationship were to terminate (e.g., divorce).

The Board should also take steps to ensure that its summer hiring programs are well publicized and open to all, without preference to relatives of current staff.

⁴ See http://www.uic.edu/depts/hr/uic/hr/relations/PolicyDocs/HRPP%200300/313_092508.pdf.

⁵ See http://solutions.3m.com/wps/portal/3M/en_US/businessconduct/bcmain/policy/policies/protect3m/conflictinterest/.

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Specific concerns

I am not aware of any Board member or district personnel having taken any unlawful actions. However, the purpose of this policy, as noted above, is to set high standards to avoid the appearance of impropriety, even if the conduct prohibited by the policy is legal. In that regard, there is plenty of appearance of impropriety in District 200 today, and all involved would benefit from removing it. I therefore call for the immediate resignation of the Board member in question, so that his spouse can perform her job free of appearance of impropriety, and so the community can have a Board member who can fully participate in key decisions.

Bluntly stated, it is unacceptable for a Board member to be married to a senior member of the administration and to have had multiple children employed by the District, even if he recuses himself from certain votes. No one is well served by this arrangement.

- How can he impartially consider budget cuts among District programs, when he has a family relationship with the supervisor of a particular department?
- How can the administrator interact on an equal basis with others over whom her spouse has ultimate authority?
- How can he participate in discussions whether to disclose employment contracts of a class of administrators including his relative?
- How can he participate in closed meetings involving teacher contracts, even if he recuses himself from the final vote?
- If he cannot participate in teacher contract votes – representing the vast majority of the District expenditures – how can he serve effectively as a Board member?
- If his children are hired out of thousands of applicants, how can there be impartial consideration when he sits in judgment on the hiring administrators?
- Why does he not make specific disclosure of conflicts before abstaining, rather than do so silently?
- What benefits does he receive from the District by virtue of his spouse's employment, and what role has he had in shaping and approving those benefits?

Personnel

General Personnel -- Hiring Process and Criteria

The Superintendent or his/her designee is responsible for recruiting personnel, in compliance with Board of Education policy, and making hiring recommendations to the Board of Education. The Superintendent shall develop procedures for the screening of applicants. The District shall hire the best qualified personnel consistent with budget and staffing requirements, and shall comply with Board of Education policy on equal employment opportunities and minority recruitment. Compliance with Board policy on equal employment opportunities and minority recruitment precludes a hiring preference for spouses and relatives of current employees.

The Superintendent may select personnel on a short-term basis for a specific project or emergency condition before the Board of Education's approval.

All applicants must complete a District application form in order to be considered for employment. In addition, applicants must complete the Previous Employment Waiver form, the Mandatory Child Abuse Reporting form, and the Authorization for Technology Access. The applicant must also provide two forms of identification, one of which includes a photo, and a social security card.

Nepotism

The District's standards for employment decisions such as hiring, promoting, reappointing, evaluating, awarding salary, disciplining, and terminating employees are based on qualifications for the position, ability, and performance. The District strives to avoid favoritism, the appearance of favoritism and conflicts of interest in employment decisions. **The Board shall ensure that all hiring opportunities, specifically including summer hires, are fully publicized and open to all without favoritism to relatives of current staff, even if not supervisors.**

Employees and applicants for employment shall not be denied employment or advancement opportunities because of their status as a family or household member of another employee. However, no person shall be employed, promoted, or transferred to a position in the District which would create a ~~direct~~ supervisor-subordinate relationship with a relative. District Administrators, supervisors and managers are expected to avoid hiring or transferring individuals to a position which would create a ~~direct~~ supervisor-subordinate relationship with a relative.

Applicants for any position as a new hire, any position as a transfer and/or promotion are expected to notify, in writing, the Board and the District Administration of any relatives employed by the District. Employees that become related to each other during the course of employment must notify, in writing, the Board, the Superintendent, and District Administration within ten days of the commencement of the relationship.

Failure to disclose relative status may be cause for disciplinary action up to and including

termination.

However, the Board shall take action to eliminate the supervisory relationship through transfer or job reassignment as required.

Persons who are employees of the Board on the date that this policy becomes effective shall not be discharged because of this policy. Nor shall they be denied reemployment in succeeding years because of this policy. However, if any person who is a member of the immediate family of a board member or an administrator resigns or is not re-employed for other reasons (~~except reduction in force~~), this policy would apply for such period as the individual has such a family relationship under the "relative" definition herein. **Relatives of Board members or District Administrators shall not be eligible for employment while their relative serves.**

~~In cases where a Board member or District Administrator has a relative being considered for employment or a relative already employed by the District, the Board member or District Administrator shall publicly and in writing disclose the nature and extent of the relationship prior to any deliberations regarding the relative. Such deliberations may include but not be limited to recommendations and/or voting on any matter related to the relative's hiring, promotion, reappointment, evaluation, transfer, discipline, termination, wages, benefits, hours, and terms or conditions of employment, including a collective bargaining agreement which applies to the relative. or budgeting matters.~~

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participate in

Such deliberations may include but not be limited to recommendations and/or voting on any matter related to the relative's hiring, promotion, reappointment, evaluation, transfer, discipline, termination, wages, benefits, hours, and terms or conditions of employment, including a collective bargaining agreement which applies to the relative. **or budgeting matters.**

A "supervisor" directly or indirectly assigns, directs or oversees the work product, or recommends or has the authority to discipline, promote, assign salary or review the performance of a "subordinate." **Board members shall be deemed supervisors of all District employees.**

For the purpose of this policy, the definition of the term "relative" apply both to the applicant for employment in the District and, if legally married at the time of prospective employment, the spouse of such applicant. A "relative" includes the following individuals:

- Spouse
- Mother; step or foster mother
- Father; step or foster father
- Sister; step or half-sister
- Brother; step or half-brother
- Child; step or foster child
- Guardian or Ward
- Grandmother; step or foster grandmother
- Grandfather; step or foster grandfather
- Grandchild; step or foster grandchild
- Aunt or Uncle
- Niece or nephew
- Member of the same household