



United States Department of the Interior
BUREAU OF INDIAN EDUCATION
Washington, D.C. 20240

BIE BULLETIN NO:	HR-001
POLICY TITLE:	Guidance on Nepotism
EFFECTIVE DATE:	August 9, 2016
TERMINATION DATE:	(Review every two years)

I. POLICY: This bulletin announces the interim policy that provides guidance on Nepotism for the Bureau of Indian Education (BIE).

II. SCOPE: This policy bulletin applies to all BIE managers/supervisors and employees involved in the recruitment and selection process of applicants.

III. REFERENCES:

- A. 5 United States Code (USC) 2302(b)(7)
- B. 5 USC 3110
- C. 5 USC 3110(a)(3) and (b)
- D. 5 Code of Federal Regulations (CFR) 310
- E. Federal Personnel Manual, MP-5 Part I, Chapter 300, Paragraph 10

IV. CANCELLATIONS: None

V. ADDITIONAL GUIDANCE: The following procedures are effective immediately:

A. It is the goal of the BIE to avoid creating or maintaining circumstances in which the appearance or the possibility of favoritism, conflict of interest, or management disruptions exist. This bulletin must be considered when hiring, promoting, or transferring any employee or applicant for a vacant position. Should any of the relationships addressed within this bulletin be identified with either candidates for employment or current employees, the matter should be immediately reported to the Human Resources Officer (HRO) and the following procedures will be followed:

1. A determination will be made whether the relationship is subject to the BIE's Nepotism policy based on the conditions described in this bulletin.
2. If the relationship is determined to fall within one or more of the conditions described in this bulletin the HRO in consultation with the Office of the Solicitor shall determine the necessary action in order to resolve the situation.

B. Nepotism is the term used to describe the granting of improper preference, assistance, or advancement to an individual related by blood or marriage. It is prohibited under both 5 USC 2302(b)(7) and 5 USC 3110(b). The purpose of this bulletin is to provide guidance to employees and managers regarding nepotism, the appearance of nepotism, and the hiring or assignment of relatives within a supervisory chain.

C. "Relative" means, with respect to a public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, or half-sister as outlined in 5 USC 3110(a)(3).

D. Anti-Nepotism statutes and regulations have long been established in the Federal Government that prohibit a public official from appointing, employing, promoting, or advancing a relative or advocating such an action in favor of the relative. Although the anti-nepotism statutes and regulations do not prohibit the assignment of relatives within the same chain of supervision, prior to being abolished, the Federal Personnel Manual (FPM), MP-5 Part I, Chapter 300, Paragraph 10, specified requirements for management to take extreme caution to avoid "any possibility or likelihood that the nepotism law may be violated in an employment action." It also stipulated that management should take appropriate action to avoid situations "which have the potential for, or appearance of, being in violation of nepotism requirements." Neither inclusion of relatives within a chain of supervision, nor mere suspicion or concern based on that relationship, constitutes an "appearance" of nepotism or of partiality. Appearance could be established when there is sufficient evidence to substantiate that an employee influenced or attempted to influence action in favor of his/her relative. While the FPM was abolished on Dec. 31, 1993, it may be relied upon for guidance in appropriate circumstances. See: *Drury v. Office of Personnel Management*, 79 M.S.P.R. 493, ¶ 8 (1998) or *Slater v. Department of Homeland Security*, 108 M.S.P.R. 419, n.1 (Merit System Protection Board 2008).

E. 5 USC 3110 outlines the following restrictions.

1. A public official shall not advocate one of his/her relatives for appointment, employment, promotion, or advancement to a position in his/her agency or in an agency over which he/she exercises jurisdiction or control.
2. A public official shall not appoint, employ, promote, or advance to a position in his/her agency or in an agency over which he/she exercises jurisdiction or control of:
 - (a) One of his/her relatives; or
 - (b) The relative of a public official of his/her agency, or of a public official who exercises jurisdiction or control over his/her agency, if the public official has advocated the appointment, employment, promotion, or advancement of that relative.
3. For the purpose of this section, a public official who recommends a relative, or refers a relative for consideration by a public official standing lower in the chain of command, for appointment, employment, promotion, or advancement is deemed to have advocated the appointment, employment, promotion, or advancement of the relative.

F. It is preferred that relatives will not work in the same chain of supervision or program area or school when one of them is a supervisor or manager. In those instances where there are no other options, it is a requirement of the BIE to align a subordinate relative to have a minimum of two intervening levels of supervision within the chain of command to show clear separation. In addition, it is expected that managers will recuse themselves in regards to any issue or matter that involves the employment or financial interest of a relative.

G. Violations of these requirements constitute prohibited personnel practices, which are subject to investigation and disciplinary action.

H. It is the responsibility of every employee to identify to the BIE's HRO any potential or existing personal relationship which falls under the definitions provided in this policy. Employees who fail to disclose personal relationships covered by this policy will be subject to disciplinary action up to and including the termination of employment.

I. When an applicant who meets the term "Relative" as specified in section C above, applies to a position in a program area or school of a supervisor/manager that they are related to, where the position applied to does not afford the required separation, they will not be referred on the certificate of qualified applicants, because it would be in violation of this policy letter.

J. If it is determined that a selectee for a position is found to meet the definition of a "Relative" as described in section C above, and the position they were selected for would create a violation of the requirements of this policy, the job offer will be rescinded. The selecting official will be notified that they will be required to make a new selection. This procedure will provide consistency of our hiring process and will provide oversight of a sensitive issue.

K. No personal employee relationship covered by this policy will be allowed to be maintained, regardless of the positions involved, if it creates a disruption or potential disruption in the work environment, creates an actual or perceived conflict of interest, or is prohibited by any legal or regulatory mandate.

L. All federal employees have a responsibility to prevent Prohibited Personnel Practices. Section 2302(c) of title 5 requires federal agency heads, and officials with delegated authority for any aspect of personnel management, to:

1. Prevent prohibited personnel practices, including reprisal for whistleblowing;
2. Comply with and enforce civil service laws, rules and regulations; and
3. Ensure (in consultation with the Office of Special Counsel) that federal employees are informed of their rights and remedies.

M. The BIE reserves the right to exercise appropriate managerial judgment to take such actions as may be necessary to achieve the intent of this policy. The BIE reserves the right to vary from the guidelines outlined in this policy to address unusual circumstances on a case-by-case basis.

N. Exceptions:

1. When necessary to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or a national emergency as defined in 5 CFR 230.402 (a)(1), a public official may employ relatives to meet those needs without regard to the restrictions on the employment of relatives in 5 USC 3110. Such appointments are temporary and may not exceed 30 days, but the agency may extend such an appointment for one additional 30-day period if the emergency need still exists at the time of the extension. 5 CFR 310.102.

2. 5 CFR 310 does not prohibit the appointment in the competitive service of a preference eligible if (1) his/her name is within reach for selection from an appropriate certificate of eligible applicants and (2) an alternative selection cannot be made from the certificate without passing over the preference eligible and selecting an individual who is not a preference eligible.

O. For additional information, you may contact the Human Resources Officer at (505) 563-5300.

VI. **OFFICE OF PRIMARY INTEREST:** Human Resources Office, Bureau of Indian Education.

VII. **ATTACHMENTS:** None



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