

## SUMMARY OF PUBLIC COMMENTS AND THE BOARD'S RESPONSES

### I.

#### Introduction

The State Personnel Board (Board) proposes to amend sections 83.5, 83.6, and 87 of Title 2, Chapter 1, of the Code of Regulations (CCR). A 15-day public comment period on this rulemaking action was held from March 19, 2021, through April 5, 2021. The comments received by the Board were taken under submission and considered. A summary of those comments and the Board's responses are below.

### II.

#### Summary of Written Comments from Cadence Wong, representing herself.

##### Comment I:

##### **Proposed § 83.5**

Ms. Wong believes that the current definition of nepotism fails to prohibit instances wherein higher level managers otherwise not involved in the hiring process pressure hiring managers to hire applicants based on a personal relationship. Ms. Wong recommends that the Board qualify the definition of nepotism by adding the phrase "assist and facilitate" before the word "hire."

##### **Response I:**

The Board's proposed definition of nepotism provides for a broad interpretation of nepotistic behavior. As currently written, the definition applies to any employee who uses their influence or power to directly, or indirectly, bias the selection process in order to hire, transfer, or promote an applicant based on a personal relationship rather than merit. As such, the definition includes any manager or supervisor who uses their influence or power to hire, transfer, or promote, regardless of whether or not they were directly or indirectly involved in the selection and hiring process.

Moreover, the addition of "assist and facilitate" into the proposed text may potentially narrow rather than broaden the interpretation of nepotistic behavior to exclude those instances wherein a higher-level manager indirectly pressures a hiring manager to hire

an applicant based on a personal relationship because it would not be clear if the higher-level manager actually “assisted” with, or “facilitated,” the hire in question. For example, does a phone call or indirect hallway conversation between a higher-level manager and a hiring manager constitute “assisting” or “facilitating” a hire, transfer, or promotion or would that require the higher-level manager to be more directly involved in the hiring and selection process; such as serving on an interview panel or doctoring a hiring document? It is not clear. As such, adding “assist and facilitate” to the definition of nepotism may in fact undermine the express purpose of Ms. Wong’s comment which is to include nepotistic behavior that is indirect and/or removed from the formal hiring and selection process.

As currently proposed, the Board believes the text plainly prohibits the nepotistic behavior described by Ms. Wong and requires no further clarification.

Comment II:

**Proposed § 83.5**

Ms. Wong believes that the word “influence” is not clear and therefore should be defined in the proposed text.

**Response II:**

The Board believes that the term “influence” requires no further clarification. Merriam Webster defines influence as “the power or capacity of causing an effect in indirect or intangible ways.” This term coupled with “power” makes plain that the intent of the proposed definition of nepotism is to include any employee who possesses the authority, control, or influence to unfairly sway, directly or indirectly, a hire, transfer or promotion within the state civil service system because of a personal relationship.

Comment III:

**Proposed § 87**

Ms. Wong believes that “bargaining unit memoranda of understanding” (MOU)’s should be added to the end of the first sentence of the proposed text because MOU’s also provide rules that apply to the merit civil service system of which appointing powers must comply.

**Response III:**

Proposed section 87 mandates that appointing powers shall hire, transfer, and promote all employees on the basis of merit and fitness in accordance with civil service statutes, rules and regulations. The Board declines to make the suggested change. The merit system is governed by the state constitution, statutes and Board rules.

Comment IV:

**Proposed § 87**

In subdivision (3), regarding the wording “current or former marriage,” Ms. Wong asks if marriage only includes the individual’s current or former marriage? Can it also include marriages of family members, like daughter-in-law, etc.?

**Response IV:**

This comment does not contain a suggested change to the proposed regulations. The Board feels that the term “current or former marriage” clearly applies to relationships created by the institution of marriage such as daughter-in-law, current or former stepson or stepdaughter, former/ex son-in-law, etc. No further clarification is necessary.

Comment V:

**Proposed § 87**

Ms. Wong feels that the word “selection” in subdivision (4) is too vague. She asks if the term means the final hiring decision or if it also includes the screening of applicants?

**Response V:**

The Board disagrees that the word “selection” is vague. Anti-nepotism policies apply to the selection process as defined by section 78: “the procedures, practices, and activities used by the appointing power to appoint and promote employees in the state civil service and includes the phases of recruitment, examination, establishment of eligible lists, screening and rating of a candidate’s qualifications, the hiring process, and any required probationary period.”

Comment VI:

**Proposed § 87**

In subdivision (5), Ms. Wong feels that the restriction of “direct or first-line” supervisors does not go far enough. She feels that supervisors within any level of the chain of command should be restricted from overseeing any employee of which they have a personal relationship in order to prevent upper managers from engaging in nepotistic behavior.

### **Response VI:**

The design of the regulation and policy already prohibits managers and/or supervisors within any level of the chain of command from using their influence or power to favor family members during the selection process. The Board believes that it would be unnecessary to broaden this restriction. Additionally, in a larger chain of command, there are more factors and/or checks and balances which should prevent nepotistic behavior. The intent of this regulation is not to overly restrict departmental hiring operations that may have locations in smaller cities with smaller applicant pools, such as correctional facilities, where the hiring of an otherwise competent and competitive employee complies with the merit civil service system despite having a personal relationship with a higher level manager who does not directly supervise the employee or directly influence the day-to-day operations.

### **III.**

### **Summary of Written Comments from Melinda Williams, Attorney III, Office of the Chief Counsel, Department of Water Resources (DWR).**

#### Comment:

#### **Proposed § 87**

DWR proposes further revision in the regulations to correct what appears to be an error. In section 87, subdivision (2), nepotism is defined “as an employee’s use of influence or power to hire, transfer, or assign promote an applicant or employee because of a personal relationship.” In response to a previous comment, the SPB had amended section 83.5 to delete the word “assign” and instead insert the word “promote.” DWR believes the word “assign” in section 87, subdivision (2) has been erroneously left in the current revision and should also be deleted from the definition to be consistent with the phrasing now used in section 87.

#### **Response:**

The Board thanks the DWR for pointing out this error and it has been corrected.

#### IV.

### **Summary of Written Comments from Allen Chancey and Darci Haesche, Department of Health Care Services (DHCS).**

#### Comment I:

#### **Proposed § 83.6**

DHCS recommends striking “in a romantic relationship” from the definition of cohabitation and instead consider any form of cohabitation. The DHCS believes that the term “romantic relationship” is too vague and that it could lead hiring authorities to invade a person’s privacy in order to determine if the cohabitation is something that could be considered “romantic”.

#### **Response I:**

The Board declines the DHCS’s recommendation.

Section 83.6 narrowly defines a personal relationship to those individuals related by blood, marriage, domestic partnership, and/or cohabitation. The narrowed definition’s purpose along with these proposed regulations is to specifically and substantially address nepotistic behavior within the state civil service system; not cronyism. To expand the definition of personal relationship to “any form of cohabitation” conflates nepotism with cronyism and thereby includes other types of personal relationships from friendships to casual acquaintances that reside at the same residence. These other types of relationships fall outside of the scope of nepotism and as such their inclusion in these proposed regulations would be inappropriate.

To be clear, cronyism, or the act of favoring a close friend of long standing during the selection process regardless of merit, violates current civil service statutes, rules and regulations requiring that all appointments be based on merit.

Moreover, the Board believes that broadening the definition of personal relationship to those individuals who reside at the same residence may unfairly impact potential applicants and existing state employees who are not related by blood, marriage, and/or domestic partnership.

In order to dispel any confusion regarding the term “cohabitation”, the Board made specific that cohabitation means living with another person in a romantic relationship without being married or in a domestic partnership. The Board believes that “romantic relationship” appropriately characterizes this form of non-legally binding cohabitation wherein two people live together as if a married couple.

Most departments inquire prior to making a hiring offer, as to the candidate’s personal relationship with other departmental employees. Cohabitation with a romantic partner could simply be included as an additional category of personal relationships. In other words, candidates will self-report which would not require the department to be intrusive into the candidate or employee’s private life.

Comment II:

**Proposed § 87**

DWR points out that the words “transfer” along with “promote” in place of “assign” should be in the first sentence of this proposed subdivision. Additionally, they point out the error already mentioned in which SPB failed to strike “assign” in subdivision (2).

**Response II:**

The Board thanks the DWR for the recommendation and will incorporate this into the regulation for consistency. In regards to striking the word “assign” from the definition of nepotism in subdivision (2), please see the response to comment III from DWR above.

**V.**

**Conclusion**

The Board appreciates the comments and feedback it received regarding this proposed regulation. The modified text with the changes clearly indicated are available to the public as stated in the Notice of Modification to Text of Proposed Regulation.