

**POLICY NUMBER: EM - 28.0****EFFECTIVE DATE: February 1, 2019****SUBJECT: Alternative Dispute Resolution****PREPARED BY: Policy Committee****APPROVED BY COMMISSIONERS: January 16, 2019**

This policy applies to all departments and employees except if superseded by bargaining unit agreement, a term or condition of employment subject to the negotiation process or court-appointed policy.

I. PURPOSE

The County of York has established an Alternative Dispute Resolution (ADR) procedure for employees (excluding Executive Directors and/or Directors) and applicants of the Merit Hire Program, as defined herein. The purpose of this policy is to provide a prompt and efficient procedure for fair and equitable resolutions of conflicts that cannot be mutually resolved, without fear of prejudice or retaliation for initiating a complaint.

II. POLICY

It is the policy of the County of York that, to the extent possible, all complaints should be settled through informal discussions at the lowest administrative level, and disputed matters should be processed in a more formal manner when either party feels that a fair and equitable solution has not been reached. The County of York remains committed to the transparency of the entire appeal process as outlined herein, and has intentionally crafted a series of steps that escalates both in authority and accountability.

This policy applies to employees in Merit Hire Departments as defined herein. It also applies to individuals who apply for employment in these departments and are not selected as a result of what they believe to be arbitrary or discriminatory reasons. The County of York is committed to maintaining the integrity of the application process and ensuring the equal treatment and consideration of all applicants.

It is the County of York's policy to maintain a work environment free from harassment or discrimination because of any status or condition protected by Federal or State civil rights laws.

III. DEFINITIONS

- A. **Complainant** - Person who files a formal accusation or protest over perceived unfair treatment or wrongful doing under the provisions of the County of York's Merit Hire Program.
- B. **Merit Hire Departments** - Area Agency on Aging, Children, Youth & Families, Drug & Alcohol, Emergency Management Agency, Mental Health/Intellectual Disabilities and Development.
- C. **Merit Hire Program** - Regimented guidelines for hiring and promoting employees based on their qualifications and ability to perform a job. The program is designed to be free of subjective factors, ensuring fair and open recruitment, and competition.

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IV. PROCEDURE

A. General

1. Regardless of any informal attempts to resolve areas of conflict, employees and applicants (hereinafter jointly and severally known as “complainant(s)”) have the explicit right to pursue the four-step ADR appeal process which addresses the following employment actions: promotion, involuntary demotion, suspension, reduction in pay, non-selection, adverse performance evaluation reviews, discharge and/or furlough, and unfair treatment as it relates to employment actions which an employee or applicant believes to be arbitrary or discriminatory.
 - a. Arbitrary action is defined as a decision that is not based on reason or judgment but on personal discretion without regard to rules or standards.
 - b. Discriminatory action is defined as any adverse employment action based on sex, race, religion, color, national origin, physical or mental disability, genetic information, marital status, age, sexual orientation, gender identity or any other status protected by Federal, State or local laws. Appeals alleging discrimination which do not include specific facts relating to the alleged discrimination may be dismissed.
2. An election by Complainant to utilize the ADR will preclude said issue from being raised in any other manner or proceeding. Should the complainant elect to engage an alternate manner of resolution or proceeding, the complainant will have waived their right to utilize the ADR.
3. The complainant is responsible for ensuring the Appeal Form is received by the proper person or office within the specified time periods. Failure to do so could render the appeal null and void.
4. The timelines outlined in the following steps should be considered the maximum, as every effort should be made to ensure prompt and efficient consideration at each and every stage.
5. All ADR proceedings are governed by the ADR Hearing Rules as referenced as Appendix G in the County’s Merit Hire Program Manual.
6. The Human Resources Department will be responsible for administering this policy.
7. Complete documentation regarding each appeal will be housed with the Human Resources Department. Department Executive Directors and Directors are responsible for forwarding all of their materials, including the original appeal and responses to the complainant, to the Human Resources Department.
8. At the onset and conclusion of each appeal process, the Human Resources Department will provide to the PA Department of Human Services County Program Section, a copy of the appeal documentation and the final written resolution and/or adjudication.

B. Initiating An Appeal

1. Applicants
 - a. An applicant for a position in a County of York Merit Hire Department who is subject to non-selection, which they believe to be unreasonably arbitrary or discriminatory, may avail themselves of the ADR. Notice of an applicant’s intent to pursue the ADR must be provided, in writing utilizing the Appeal Form, to the Human Resources Department within fourteen (14) calendar days of the date the applicant knows, or should have known, of the issue in dispute or act complained of. The appeal must include how the treatment differs from treatment of others similarly situated, when the acts occurred, when and how the complainant first became aware of the alleged action, and remedy requested. Unless otherwise specified, an applicant’s complaint will begin at the third step as further described in this policy.

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2. Employees

- a. All disputes must begin at the first step within fourteen (14) calendar days of the date that the complainant knows, or should have known, of an action or issue that can be raised through the ADR. A complainant shall utilize the Appeal Form to initiate an appeal at the first step. (The Appeal Form must be utilized for all subsequent steps of the appeal process.) Specific items which should appear on the Appeal Form include: the issue in dispute or act complained of, how the treatment differs from treatment of others similarly situated, when the act occurred, when and how the complainant first became aware of the alleged action, and remedy requested.

C. Steps of the Appeal Process

1. First Step: Immediate Supervisor

- a. Within fourteen (14) calendar days of the date that the complainant knows, or should have known, of an action or issue in dispute, the complainant must notify his/her immediate supervisor, in writing by utilizing the Appeal Form, of the issue in dispute or act complained of, how the treatment differs from treatment of others similarly situated, when the act occurred, when and how the complainant first became aware of the alleged action, and remedy requested. To facilitate required reporting to the PA Department of Human Services, the supervisor is responsible for providing a copy of the complaint to the Human Resources Department within one (1) working day.
- b. The supervisor is responsible for scheduling a meeting with the complainant within seven (7) calendar days of receipt of the complaint to facilitate a discussion of the complainant's appeal.
- c. Within seven (7) calendar days following the first step meeting, the supervisor shall respond to the complainant's appeal using the designated Response Form, which shall include notice to the complainant of his or her right to appeal the dispute at the second step.
- d. The supervisor is responsible for maintaining all notes and documentation, to be made available, as necessary, if the appeal process continues.
- e. The supervisor will forward a copy of the first step response form to the Executive Director of Human Resources or designee within one (1) working day.
- f. Should the issue or dispute involve alleged discriminatory or arbitrary action by the immediate supervisor and/or the agency director, the appeal may be submitted directly at the second or third step, respectively.

2. Second Step: Department Executive Director or Director

- a. If the complainant finds the first step response unsatisfactory, the complainant may appeal the dispute in writing to the Department Executive Director or Director within seven (7) calendar days of receipt of the first step response. The second step appeal must state the issue in dispute or act complained of, how the treatment differs from treatment of others similarly situated, when the act occurred, when and how the complainant first became aware of the alleged action, remedy requested, and the reason the first step response is unsatisfactory. Copies of the first step correspondence must be included. If this step is being utilized as the initial filing, (see Section IV.C.1.e) the Department Executive Director or Director shall provide this information to the Executive Director of Human Resources or designee within one (1) working day.
- b. The Department Executive Director or Director shall, with due consideration of the facts and circumstances of the dispute, meet with the complainant in an effort to resolve the dispute at this level.
- c. Within seven (7) calendar days following the second step meeting, the Department Executive Director or Director shall respond to the complainant's appeal using the

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designated Response Form. This response shall include notice of the complainant's right to appeal the dispute to the third step.

- d. The supervisor is responsible for maintaining all notes and documentation, to be made available, as necessary, if the appeal process continues.
- e. A copy of the second step response form will be provided to the Executive Director of Human Resources or designee within one (1) working day of the Department Executive Director's or Director's response.
- f. Should the issue or dispute involve alleged discrimination or alleged arbitrary action by the Department Executive Director or Director, the appeal may be submitted directly at the third step.

3. Third Step: Human Resources Department Investigation and Review

- a. Employee
 - i. If the employee finds the second step response unsatisfactory, the employee may appeal the dispute in writing to the Executive Director of Human Resources or designee within seven (7) calendar days of receipt of the second step response. The third step appeal must state the specific issue in dispute, facts in support of the employee's position, the reason the second step response is unsatisfactory, and the remedy requested. Copies of the first and second step correspondence must be included.
 - ii. In addition to considering the facts and circumstances of the dispute, the Human Resources Department shall conduct a thorough and complete investigation, including the solicitation of oral and/or written statements from persons of interest in the dispute.
 - iii. Within seven (7) calendar days of the conclusion of the review and investigation, the Human Resources Department shall respond to the complainant's appeal using the designated Response Form. This response shall include notice of the complainant's right to appeal the dispute to the fourth step.
- b. Applicant
 - i. Within seven (7) calendar days of the date that the complainant knows, or should have known, of an action or issue in dispute, the complainant must initiate an appeal. The complainant must notify the Executive Director of Human Resources or designee, in writing, of the specific issue in dispute, the facts in support of the complainant's position, and the remedy being sought.
 - ii. Within seven (7) calendar days of the receipt of the complaint, the Executive Director of Human Resources or designee is responsible for responding to the complainant's appeal, and shall include notice to the complainant of his/her right to appeal the dispute to the fourth step.

4. Fourth Step: Administrative Panel Review

- a. If the complainant finds the third step response unsatisfactory or unresolved, the complainant may request an Administrative Panel Review upon written notification via a letter of intent addressed to the Executive Director of Human Resources within fourteen (14) calendar days after the Human Resources Department's response is due. Copies of correspondence from all steps must accompany the letter of intent.
- b. Upon receiving the letter of intent and determining the appeal was made timely, the review panel (ADR Panel) will be convened within sixty (60) calendar days of receiving the letter of intent.
 - i. The ADR Panel will be comprised of persons who are regarded as being able to listen, remain impartial to the facts surrounding an issue, ask relevant questions of all parties, and arrive at a reasonable, objective decision.

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- ii. The ADR Panel, appointed by the Board of Commissioners, will consist of the following:
 - a. One (1) Human Resources professional from the public sector who is not in any way affiliated with or under the employ of the County,
 - b. One (1) Human Resources professional from an educational institution, and
 - c. One (1) Human Resources professional from the private sector.
- iii. The ADR Panel will consist of a Chairperson and two (2) additional members all of which have no interest in, or privileged knowledge of the appeal. The Chairperson of the ADR Panel will be responsible for conducting the hearing, preparing the final documentation, and assuring that the appeal determination is timely.
- iv. The ADR Panel will be appointed for staggered terms of three (3) years, and will remain in place for any and all appeals that may arise during the term unless there is a case of clear and concise conflict of interest in any given appeal, at which time the ADR Panel member would be substituted with a similarly qualified individual for the purpose and duration of that particular appeal.
- v. The Board of Commissioners can reappoint the same panel members after their initial term, as long as they are rotated and remain in staggered terms.
- vi. Members of the ADR Panel are not compensated and serve in a voluntary capacity by providing their professional expertise to the County of York.
- vii. There may not be any reciprocal agreements between the County of York Merit Hire Program and the programs of any other Pennsylvania Counties regarding ADR Panel members serving multiple counties.
- viii. To ensure the autonomy of the ADR Panel it will also have the authority to hear any case at its sole discretion, whether or not it has gone through steps one (1) through three (3).
- c. The ADR Panel will conduct a hearing on the appeal and provide the opportunity for all parties involved to provide testimony relevant to the matter in dispute.
- d. A complete electronic or other exact record of the proceedings may be made. In the event a party wants a transcript of the record, they must make arrangements with a stenographer and cover the associated costs.
- e. The ADR Panel will render a binding decision in writing to the Human Resources Department within thirty (30) calendar days following the hearing. The written response must contain an explanation for the conclusion.
- f. The ADR Panel has the authority to grant necessary remedy based upon their decision in the context of granting back pay, retroactivity, or reinstatement when applicable.
- g. The Department of Human Resources will advise the Board of Commissioners of the decision.
- h. The decisions of the ADR Panel are final and are not subject to review or modification by the Board of Commissioners or other County staff. The Board of Commissioners will not have influence on the Panel's decision. No ADR Panel member can be removed by an individual or majority of the Board of Commissioners for a decision rendered.
- i. The Department of Human Resources will notify the Department Executive Director or Director and the complainant of the ADR Panel's decision.

D. Withdrawal of Appeal or Negotiated Settlement

- 1. Complainant and County, at their discretion, may enter into an agreement to settle or otherwise terminate a proceeding before convening the ADR Panel or at any point in the process prior to adjudication.
 - a. By written notification to the County and/or the ADR Panel, the complainant may request to vacate and withdraw the appeal.

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- b. If the ADR Panel has been convened and the parties enter into a negotiated settlement, all parties must notify the ADR Panel in writing, in a timely manner. A request may be made of the ADR Panel to review and/or approve a settlement. The Human Resources Department will be responsible for the dispensation of the settlement.

RELATED COUNTY POLICIES:	Employee Discipline Equal Employment Opportunity Recruitment-Hiring
RELATED FORMS:	Alternative Dispute Resolution Appeal Form Alternative Dispute Resolution Response Form
ORIGINAL DATE ESTABLISHED:	January 2019

