

Bargaining Unit employees should review their appropriate Collective Bargaining Agreement (CBA) to determine if this procedure applies to them. In case of a conflict between the applicable CBA and these procedures, the provision in the CBA controls.

Procedure No.: EP 9-4
Revision No.: 3

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Appeals

OVERVIEW: This procedure provides employees a process to appeal formal corrective action. The process is designed to meet all constitutional and legal requirements while encouraging resolution at the lowest possible level.

SCOPE: This procedure applies to all classified employees of the Board, excluding Executive Service.

PROVISIONS:

1. Right of Appeal.

- a. Only permanent employees may file an appeal under this procedure.
- b. Employees in bargaining unit positions may file an appeal under the Board's Employee Procedures or a grievance under the Collective Bargaining Agreement as defined in the CBA. However, once such an employee initiates one process, the employee waives the right to file under the other process.

2. Performance Evaluations

- a. Bargaining unit employees who receive either a "SOMETIMES does NOT MEET" performance objectives and expectations, or "FAILS" to meet performance objectives may file an appeal concerning that performance review.
- b. Non-bargaining employees who receive either a "SOMETIMES does NOT MEET" performance objectives and expectations, or "FAILS" to meet performance objectives may request departmental oversight of an annual performance review as outlined in the procedure on Performance Evaluations EP 4-5.

3. Appeal Process.

- a. The time limits at any step may be extended by mutual agreement of the appealing employee and the County representative.
- b. The Human Resources Director shall serve as the County representative for such requests at Step 2 (listed below).

- c. If an appeal is not pursued to the next step in a timely fashion, it shall be considered settled with the last answer of the County representative.
- d. In the absence of a timely answer by the County, an appeal will be considered denied and the appealing employee may move to the next step of the process.
- e. The employee and the County representative may mutually agree to waive any step in the appeal process.
- f. A supervisor authorized by these regulations to act on an appeal of a major disciplinary action may designate or request another official to act in their place. This designee may not be an official who has already acted in the matter, or a supervisor who has acted in the matter at any point.

4. Appeal Process Steps

- a. Step 1.
 - i. An employee shall first present any appeal in writing to the employee's Department Director within seven calendar days following the event giving rise to the appeal or the date the event became known, or should have become known, to the employee. If the Department Director or Administrating Official made the disciplinary decision being appealed, the Step 1 appeal will be directed to either an Assistant or Deputy County Manager who does not supervise that department.
 - ii. The Department Director or Assistant or Deputy County Manager shall meet with the employee within seven calendar days or as soon as practicable following receipt of the appeal to discuss the matter.
 - iii. Within seven calendar days following the meeting, the Department Director or Assistant or Deputy County Manager shall provide a written response to the employee. Non-Executive Service employees who are disciplined by an Administrating Official may present a Step 1 appeal to that official as a request for reconsideration of the disciplinary action.
- b. Step 2a Corrective Action- Written Warning
 - i. If an employee who is appealing a written warning is not satisfied with the response at Step 1, or if the employee fails to receive a timely response, the employee may file a written request for review.
 - ii. The request must be filed through the Human Resources Department within seven calendar days following receipt of the Step 1 response or within seven calendar days following a failure to receive a timely response.

iii. The Assistant County Manager over the employee's department or Deputy County Manager will conduct a meeting on the matter with the employee and the County representative(s). The Assistant County Manager or Deputy County Manager will provide a written response to the employee within seven calendar days following the meeting. The written response is final without further opportunity to appeal, under this procedure.

c. Step 2b Corrective Action greater than Written Warning

- i. Upon a timely request of an employee who is appealing Step 1 corrective action greater than a written warning, the Administrating Official or designee will arrange a full due process hearing on the appeal, held before an impartial hearing officer selected by the employee from a current list of hearing officers under contract with the County.
- ii. A request for hearing is timely if it is made in writing within seven calendar days following the employee's receipt of the Step 1 response or the County's failure to make a timely response. This seven day limit may be extended if both the appealing employee and the County agree to an extension in writing.
- iii. A Step 2b hearing will be conducted generally in accordance with federal and state constitutional law pertaining to administrative hearings. No action taken inconsistent with this process shall be invalid solely because it was taken inconsistent with this process.
 1. The employee has the right to written notice of the time and place of the hearing, the name of the hearing officer, and a copy of the evidence relied on by the County to support the disciplinary action.
 2. The employee has the right to adequate time to prepare for the hearing. Normally fourteen calendar days following the date of the notice and receipt of the County's evidence is adequate. The hearing officer may grant additional time for good cause shown.
 3. The employee has the right to require the County to prove the basis for the disciplinary action taken by a preponderance of the evidence.
 4. The employee has the right to be represented by counsel or other representative at the employee's own expense.
 5. The employee and the County have the right to present witnesses, documentary and tangible evidence. Witnesses will be sworn. The employee must make their own arrangements for witnesses' appearance, except that current employees of the Board may be

required to attend by the hearing officer, acting through the Administrating Official if requested.

6. The employee has the right to cross-examine witnesses for the County, to object to evidence offered by the County, and to present rebuttal evidence.
7. The employee has no right to extensive discovery beyond that described in this Procedure or granted by the hearing officer for good cause shown.
8. The hearing officer will make a tape or digital recording of the hearing, or prepare an accurate summary of the hearing for both sides to review. The employee has the right to a copy of the recording, and to make a full or partial transcript of the recording at the employee's own expense.
9. The County and the employee have the right to object to the hearing officer's summary of the hearing. The hearing officer's determination of the content of the summary is final, but will note any unresolved objection.

iv. The hearing officer:

1. May continue the hearing for good cause shown or without objection.
 2. May control discovery.
 3. May direct actions to maintain an orderly process and hearing and compliance with rules and time limits established by this procedure.
 4. May issue sanctions within the hearing process, such as to strike or limit testimony.
 5. Will make findings of fact and conclusions of law, and will promptly report the results of the hearing to the Administrating Official.
 6. There will be no ex parte contact excluding scheduling and logistical conversations with any contracted hearing officer about the subject of the hearing after the employee requests a hearing.
- v. The order of the hearing will generally follow the order of an administrative hearing. The County representative, bearing the burden of proof, will present the County's case first. The hearing officer may announce modified procedures upon good cause or without objection.

- d. Step 3 Corrective Action greater than a Written Warning.
- i. The Administrating Official will make the final decision on the resolution of the employee's appeal.
 - ii. The hearing officer's findings of fact that are supported by substantial, competent evidence are binding on the Administrating Official. The Administrating Official will explain in writing any deviations from the hearing officer's conclusions of law or ultimate conclusions of fact in the record of the appeal.
 - iii. The Administrating Official will forward a written decision to the employee within seven calendar days following receipt of the hearing officer's report on findings of fact and conclusions of law. The original copy of the Administrating Official's written decision will be included in the employee's personnel record by Human Resources.



County Manager

County Attorney