

MEMORANDUM

October 1, 2009

TO: Management and Fiscal Policy Committee

FROM: Leslie Rubin, Legislative Analyst 
Office of Legislative Oversight

SUBJECT: Follow-up Worksession on the County Government's Hiring of Persons with Disabilities

On October 5th, the Committee will hold its third follow-up worksession on Office of Legislative Oversight (OLO) Report 2008-9, *Hiring Persons with Disabilities: A Review of County Government Practices*. The worksession agenda includes discussion of issues previously identified by the Committee, including whether the County Government should establish a special hiring authority to hire persons with disabilities in the County Government's merit system. Staff notes that the Committee's scheduling of this worksession is timely, given that October is National Disability Employment Awareness Month.

This memorandum is organized as follows:

- **Part A** describes the issues and options surrounding the creation of a special hiring authority in the County Government's merit system for persons with disabilities.
- **Part B** summarizes recent information about the County Government's Customized Employment Public Intern Project.
- **Part C** describes other Executive Branch steps taken to address the recommendations in OLO's report that were endorsed by the Council last fall.
- **Part D** describes two reports on individuals with developmental disabilities.

The following Executive branch representatives are scheduled to attend today's worksession:

Office of the County Attorney	Ed Lattner, Division Chief, Division of Human Resources and Appeals Ann Windle, Associate County Attorney
Office of Human Resources	Joe Adler, Director
Department of Health and Human Services	Jay Kenney, Chief, Aging and Disability Services Lauren Newman, Program Administrator, Developmental Disability Services
Department of Technology Services	Steven Emanuel, Chief Information Officer

Michael Faden, Senior Legislative Attorney, is also expected to attend the worksession.

A. SPECIAL HIRING AUTHORITY

At the Committee's worksession in February 2009, Committee members discussed the logistics of establishing a special hiring authority in the County Government for persons with disabilities. In this context, a "special hiring authority" refers to amending the County law (and regulations) to permit an alternative approach for the recruitment, selection, and hiring of persons with disabilities into County Government merit system positions.

1. Opinion of the Office of the County Attorney

At the Committee's worksession in February, staff from the Office of the County Attorney (OCA) summarized the OCA's opinion that establishing a special hiring authority by law would require an amendment to the County Charter. On July 29, 2009, the Deputy County Attorney sent a memorandum to the Council's Senior Legislative Attorney further explaining the OCA's conclusion. In sum, the OCA's memo concludes that:

- Establishing a special hiring authority for persons with disabilities would require an amendment to the County Charter because Section 401 of the Charter "forbids the use of a noncompetitive hiring process based on an immutable, non-merit factor such as disability."¹
- The Council could establish by law and regulation a preference for persons with disabilities in the hiring process, similar to the veteran's credit, without amending the County Charter.²

Special Hiring Authority. If the Committee favors creating a special hiring authority for persons with disabilities, the current language in the Charter governing the merit system would need to be amended. To accomplish a Charter change, the Committee can either:

- Refer the issue to the Charter Review Commission, which could choose to study the issue (or not) and make a recommendation to the Council;³ or
- Recommend directly to the Council that it adopt a resolution proposing an amendment to the Charter.⁴

If the Council adopts a resolution proposing an amendment to the Charter in the next election cycle, the Board of Elections would submit recommended Charter language to County voters for approval or rejection in the November 2010 election.

In July 1994, an Assistant County Attorney drafted Charter language that would allow the Council to establish a special hiring authority. For the Committee's reference and only as an example, this language stated:

The Council may establish by legislation a special hiring authority to permit the recruitment, selection, and hiring of persons with disabilities in the County work force, with personnel actions based on factors other than merit system principles.⁵

¹ 7-29-09 Memorandum from Marc Hansen, Deputy County Attorney, to Michael Faden, Council Senior Legislative Attorney, at p. 1 [hereinafter "7-29-09 OCA Memo"], attached at ©1-13.

² 7-29-09 OCA Memo at p. 7.

³ The Charter Review Commission has the authority to study the issues it chooses and *is not required* to study or make recommendations on all issues referred to it.

⁴ See Montgomery County Code § 16-14. Typically, the Council adopts a resolution with proposed amendments to the County Charter the July before an election.

⁵ See OLO Report 2008-9, *Hiring Persons with Disabilities: A Review of County Government Practices*, at Appendix O-4 (July 21, 1994 Memo from Steven Gilbert, OCA, to Jane Lawton, Special Assistant to the County Executive, at p. 4.

Hiring Preference. As an alternative to (or in addition to) amending the Charter to establish a special hiring authority, the Office of the County Attorney advised that the Council could amend County law to establish a “hiring preference” for persons with disabilities.⁶ A hiring preference, as described in the OCA memo, would allow the County Government to place a person with a disability on a “priority eligible list” for job applicants, if during a competitive rating process for an open position, the person was put into the highest rating category. In other words, if such a hiring preference was legislated in County law, a candidate with a disability who was put into the highest rating category after a competitive rating process would receive a hiring preference over candidates without disabilities.

In September, the Transition Work Group, a group that focuses on the transition of students with disabilities from school to work, sent comments to the Council President about the County Government’s hiring process as it relates to persons with disabilities. These comments are attached at ©14-15.

The table below summarizes the options for the MFP Committee to consider, with a brief description of the potential result of each option.

Options for Changing the Merit System Hiring Process for Persons with Disabilities

	Option	Requires Amendment to...	Potential Result*
1	Refer Charter amendment issue to the Charter Review Commission	n/a	The Charter Review Commission could choose to review the issue and make a recommendation to the Council about whether to amend the Charter, or it could choose not to review the question.
2	Special Hiring Authority	County Charter	Hiring of persons with disabilities directly into merit system positions. A hiring manager could directly hire a person with a disability into a merit system position and bypass the typical merit system hiring process. Candidates would need to possess the knowledge, skills, and abilities required for the position.
3	Hiring Preference	County Law	Hiring of persons with disabilities into merit system positions if they are among the highest rated candidates in a normal competitive hiring process. A candidate with a disability would receive a hiring preference over candidates without disabilities if the candidate with a disability was put into the highest rating category after a competitive rating process.
4	Special Hiring Authority <i>and</i> Hiring Preference	County Charter <i>and</i> County Law	Hiring of persons with disabilities directly into merit system positions <i>and</i> hiring of persons with disabilities into merit system positions if they are among the highest rated candidates in a normal competitive hiring process.
5	Neither	n/a	Status quo.

* Final results of any changes would be based on the details of any system or change ultimately made by the Council.

⁶ 7-29-09 OCA Memo at p. 7.

2. Collecting Data on the Disability Status of Job Applicants

Currently, the County Government does not collect any data about a job applicant's disability status before making a job offer. In February 2009, Councilmember Andrews asked what disability data the County Government is permitted to collect from job applicants.

Except in the limited circumstances below, the ADA prohibits employers from asking job applicants questions about disabilities *before* making offers of employment. However, employers *can* ask job applicants to voluntarily self-identify as persons with disabilities *before* making job offers if:

- An employer has an affirmative action program based on federal, state, or local law that requires affirmative action for persons with disabilities; or
- An employer is *voluntarily* using the information to benefit individuals with disabilities.⁷

Currently, the County Government's practices do not meet either one of these criteria. Therefore, federal law prohibits the County Government from asking disability-related questions as part of the applicant screening process.

There are examples of other jurisdictions that do ask job applicants about their disability status when an applicant is applying for a job. Specifically, in King County, Washington, the County asks about a job applicant's disability status on the same form where it collects data on sex, race, ethnicity, and veteran's status. See ©16 for a copy of this form.

King County can legally collect these data because it has an Equal Employment Opportunity/Affirmative Action Plan that it developed "to ensure equal employment opportunity and affirmative action in the workplace."⁸ A copy of King County's 2008-2012 Plan is available online at <http://www.kingcounty.gov/jobs/benefits.aspx>.

B. CUSTOMIZED EMPLOYMENT PUBLIC INTERN PROJECT

In FY08, the County Government established an intern program to hire persons with disabilities into non-merit County Government jobs. The County Government's Customized Employment Public Intern Project provides persons with disabilities part-time, non-merit County Government jobs for a maximum time period of two years.

In both FY09 and FY10, the County Government's approved budget included \$100,000 for intern salaries and \$50,000 for a contractor (TransCen, Inc.) to administer the program. The table below summarizes these budgets and the program's actual expenditures.

Summary of FY09 and FY10 Funding for Customized Employment Public Intern Project

	FY09		FY10	
	Intern Salaries	Contract for Program Administration	Intern Salaries	Contract for Program Administration
Approved Budget	\$100,000	\$50,000	\$100,000	\$50,000
Actual Expenditures	\$119,220*	\$45,721	\$5,958**	\$7,475**

Source: 9-21-09 Memo from Joseph Adler, Director, OHR, at p. 1 (see ©18) [hereinafter "9-21-09 Adler Memo"]

*Reflects additional FICA expenses due to base salary increase from \$7.20 to \$7.65/hour based on General Wage Increase allowance.

**As of August 31, 2009.

⁷ See OLO Report 2008-9, *Hiring Persons with Disabilities: A Review of County Government Practices*, at p. 45.

⁸ See *Equal Employment Opportunity/Affirmative Action Plan, 2008-2012*, King County, Washington, at p. 1.

The table below summarizes the number of intern positions created in the Executive Branch during FY08, FY09, and FY10.

**Number of Intern Positions Listed by
Department or Agency, FY08-FY10**

Department	FY08	FY09	FY10
DPWT	5	4	
OHR	3	1	
DHHS	11	3	
DOCR			12 (pending)
DLC	6		
DTS	1		
MCPS		1	
Total	26	9	12

Source: 9-21-09 Adler Memo at p. 3-5 (see ©20-22)

See ©17 for the copy of a letter from a Laura Dawson, a disabled small business owner, to County Executive Leggett and to the Council about the Project.

C. UPDATE ON EXECUTIVE BRANCH EFFORTS

In preparation for this worksession, OLO asked Executive Branch staff for updates on their implementation of specific recommendations that had been endorsed by the Council last fall. The written response from OHR Director Joe Adler is attached in its entirety at ©18-41. This section summarizes several of the issues and the Executive Branch’s responses.

1. Splitting Merit System Positions

Last February, OHR Director Joe Adler reported that the County Government had increased its contract with TransCen., Inc. for the purpose of identifying County merit system positions to split in half and fill with persons with disabilities. Executive Branch staff report that TransCen staff reviewed five departments (MCPD, DHHS, DOT, DGS, and MCFRS) to identify suitable positions.

For a variety of reasons, including the Office of the County Attorney’s July 2009 opinion on hiring persons with disabilities and the recent Reduction in Force, the County Government has not split any jobs for this purpose. See 9-21-09 Adler Memo at p. 12-13 (©29-30). The County Government allocated \$10,000 for this project in FY09, but none in FY10. See *ibid.* at p. 13 (©30).

2. Interdepartmental Work Group on Hiring of Disabled Persons

In October 2008, Executive Branch staff reported the establishment of a work group on the hiring of persons with disabilities – the Interdepartmental Work Group on Hiring of Disabled Persons. According to the September 2009 update, this work group has met twice – on June 17, 2009 and on September 22, 2009. Executive Branch staff report that work group activities have included:

- Formally establishing the work group;
- Reviewing OLO’s report on the County Government’s hiring of persons with disabilities; and
- Working with TransCen staff to identify positions appropriate for inclusion in the Customized Employment Public Intern Project.

The table below lists the work group's participants.

Department	Meeting Participants
Office of the County Executive	Time Firestine, CAO and Chair of the Work Group
Department of General Services	David Dise, Director
Department of Correction and Rehabilitation	Arthur Wallenstein, Director
Department of Transportation	Arthur Holmes, Director
Montgomery County Police Department	Tom Manger, Chief, represented by Capt. James Fenner
Department of Health and Human Services	Uma Ahluwalia, Director Jay Kenney, Chief, Aging and Disability Services
Department of Recreation	Gabriel Albornoz, Director
Montgomery County Fire and Rescue Services	Richard Bowers, Chief
Staff Participants	
Office of Human Resources	Melissa Davis, Team Manager, Recruitment and Selection Joe Heiney-Gonzalez, Special Assistant to the Director
Department of Correction and Rehabilitation	Ivonne Guitierrez-Anglin

Source: 9-21-09 Adler Memo at p. 6 (see ©23)

See ©22-24 for the Executive Branch's description of the work group and its activities.

3. Mandatory Training on the Americans with Disabilities Act (ADA)

OLO recommended in Report 2008-9 that the County Government develop a mandatory training course for County Government managers that specifically focuses on hiring persons with disabilities. Executive Branch staff report that, beginning in FY10, managers and supervisors are required to take the County Government's *Americans with Disabilities Act: Employment Law* training course. OHR is offering this three-hour course nine times during the coming year. See 9-21-09 Adler Memo at p. 11 (©28). See ©42 for a list of OHR's mandatory training courses.

4. ADA Procedure Manual

In October 2008, Executive Branch staff indicated that the Office of Human Resources was nearing completion of an *Americans with Disabilities Act Procedure Manual* that would describe the process for applying for and implementing reasonable accommodations under the ADA. Executive Branch staff report that the manual was completed in June 2009, that a hard copy is currently available from OHR (upon request), and that it will soon be available online from OHR's website. Executive Branch staff note that the Manual includes guidelines for the County Government's Worker's Assistance Program. See 9-21-09 Adler Memo at p. 11 (©28). See also 9-21-09 Adler Memo at p. 17-22 (©34-39) for a copy of the Manual.

5. Web Accessibility

The Executive Branch's responses to OLO's questions include information on the accessibility of the County Government's website for persons with disabilities. Issues addressed in the Executive Branch's response include:

- Providing user-controlled adjustable font sizes on the County Government's website;
- Seeking input about the County Government's website from persons with disabilities; and
- Reviewing and providing education about the County Government's web accessibility policy.

See 9-21-09 Adler Memo at p. 7-10 (©24-27) for OLO's questions and the Executive Branch's complete responses.

D. Workgroup Reports on Persons with Severe Developmental Disabilities

In May 2009, a workgroup consisting of County Government staff, advocates, service providers, and families released two reports addressing the needs of people with severe developmental disabilities, including autism. The workgroup was co-chaired by Jay Kenney, Chief, DHHS' Aging and Disability Services, and Lyda Astrove, a community member. See ©43 for a letter from Jay Kenney and Lyda Astrove to the Council President about the reports.

The workgroup discussed approaches “to address the unmet needs of increasing numbers of people with severe developmental disabilities” and was charged with “determine[ing] the extent of the need, defin[ing] the people most in need of intensive support, and decide[ing] which needs should have highest priority.”⁹

Their findings and recommendations are set out in two reports:

- *Partnerships for a Positive Future, 2009 Study Results from the Workgroup on the Future for People with Severe Developmental Disabilities, including Autism*; and
- *Call to Action: Strategic Steps for Real Change*.

Both reports are available on the County Government's website at <http://www.montgomerycountymd.gov/content/hhs/ads/PDFs/mcdhhspartnerships.pdf> and <http://www.montgomerycountymd.gov/content/hhs/ads/PDFs/mcdhhscalltoaction.pdf>.

ATTACHMENT	BEGINS AT:
7-29-09 Office of the County Attorney Memorandum on Noncompetitive Hiring of Persons with Disabilities	©1
9-16-09 Letter from Karen Leggett of the Transition Work Group to the Council President	©14
King County, Washington Applicant Data Sheet	©16
7-16-09 Letter from Laura Dawson to the Council	©17
9-21-09 Memorandum from Joseph Adler, Responses for Council 10/5/09 MFP Hearing/OLO Disability Report	©18
List of OHR's Mandatory Training Courses	©42
5-29-09 Letter from Jay Kenney and Lyda Astrove to the Council President re: workgroup reports on the needs of people with severe developmental disabilities, including autism	©43

⁹ *Partnerships for a Positive Future, 2009 Study Results from the Workgroup on the Future for People with Severe Developmental Disabilities, including Autism*, at p. 5.



OFFICE OF THE COUNTY ATTORNEY

Isiah Leggett
County Executive

Leon Rodriguez
County Attorney

MEMORANDUM

TO: Michael Faden, Senior Legislative Attorney
County Council

FROM: Marc P. Hansen *Marc Hansen*
Deputy County Attorney

Edward B. Lattner, Chief *EBL*
Division of Human Resources and Appeals

Anne T. Windle *Anne T. Windle*
Associate County Attorney

DATE: July 29, 2009

RE: **Noncompetitive Hiring of Persons with Disabilities**

The County is considering a recommendation to establish a program to hire persons with disabilities on a noncompetitive basis. The County Charter requires that all personnel actions taken under the merit system be “based on demonstrated merit and fitness.” Based on the history of this Charter provision, we have concluded that the Charter forbids the use of a noncompetitive hiring process based on an immutable, non-merit factor such as a disability. Although the Charter, forbids the use of a noncompetitive rating process based solely upon an immutable, non-merit factor such as disability, the County Council could amend the County Code to place a person with a disability on a priority eligible list for job applicants, if that person is first placed in the highest rating category through a competitive process.

BACKGROUND

In June of 2008, the Office of Legislative Oversight issued Report Number 2008-9, Hiring Persons with Disabilities: A Review of County Government Practices (OLO Report). The OLO Report notes that “a recurring question during the course of conducting the study was, ‘Why doesn’t the County Government develop a special hiring authority to hire persons with disabilities into merit system jobs?’” OLO Report at 93. The OLO Report continues, “The model most often suggested for the County Government to follow is the Federal Government’s

Schedule A hiring program, which allows federal agencies to directly hire a person with a disability into a vacant position on a noncompetitive basis. The County Attorney advises that creating this sort of program requires an amendment to the County's Charter." *Id.*¹

ANALYSIS

I. The Charter requires that the County determine an individual's merit and fitness through a competitive rating process.

The Charter requires that all personnel actions under the merit system be based upon demonstrated merit and fitness. Specifically, Charter § 401 calls upon the County Council to establish by law a merit system for all County employees,² which "shall provide the means to recruit, select, develop, and maintain an effective, non-partisan, and responsive work force **with personnel actions based on demonstrated merit and fitness**" (emphasis added).³ Provisions like Charter § 401 are intended to increase the efficiency of the public service by abolishing the spoils system, providing for appointments on the basis of merit and fitness rather than on political or personal considerations, assuring tenure, and providing opportunity for advancement.⁴

Code § 33-9(a) implements Charter § 401 by providing that "[t]he county's policy shall be to take all personnel actions on the basis of merit and fitness without regard to political affiliation or non-merit factors . . . such as sex, marital status, race, religion, national origin, age or handicap."

What did the Charter intend to achieve by employing the phrase "demonstrated merit and fitness"?⁵ To be sure, the language of Charter § 401 is silent with respect to whether competition

¹ Schedule A permits, but does not require, a hiring manager to select a Schedule A applicant without considering other applicants. "To be hired 'under Schedule A' an applicant must meet the minimum job qualifications, demonstrate job readiness, and provide documentation of 'mental retardation, severe physical disabilities, or psychiatric disabilities.'" OLO Report at 26. Individuals hired pursuant to Schedule A are not initially merit system employees, but may noncompetitively become merit system employees after two years of satisfactory service.

² The charter provides that certain high level employees are outside the merit system.

³ The Charter provides that even probationary, temporary, and term employees, all of whom may be exempted from the merit system, must still be recruited, selected, and promoted by the County on the basis of demonstrated merit and fitness.

⁴ *Secretary, Maryland Department of Personnel v. Bender*, 44 Md. App. 714, 411 A.2d 107 (1980), *aff'd*, 290 Md. 345, 430 A.2d 66 (1981).

⁵ The cardinal rule of statutory construction is to ascertain and effectuate the intent of the law. *Johnson v.*

must be employed as part of the process of determining an individual's "merit and fitness". Nevertheless, after reviewing the history of Charter § 401 and how the County has implemented the merit system, we have concluded that the phrase "demonstrated merit and fitness" was intended to require open competition as a key component in reaching a determination concerning an individual's fitness for a County position. The history of the merit system created by the Charter, however, also reveals an intent to permit certain narrow exceptions to the competition requirement. But these exceptions were not so broad as to encompass an exemption from competition for a class of individuals defined by an immutable characteristic shared by members of the class, such as the presence of a disability.

A. The County has historically used a competitive rating process to demonstrate merit and fitness in all personnel actions.

In 1945 the General Assembly established a "civil service" system for the County.⁶ Prior to 1945 the County operated under a "spoils system".⁷ In 1948 the County adopted a Charter Home Rule form of government under Article XI-A of the Maryland Constitution. The 1948 Charter reflected the "informed consensus" to end the "spoils system" by adopting "strict personnel practices."⁸

The 1948 Charter used general, non-specific language to implement this policy goal of creating a civil service system. Article V, Sec. 1, b., merely required the Personnel Board to adopt personnel regulations that addressed "minimum qualifications for any such positions, methods of determining such qualifications, and methods of selection for any such positions."

The County's personnel law gave definition to the principles of a civil service system that was intended to be created by the 1948 Charter and it did so by requiring the use of a competitive rating process to determine merit and fitness. The personnel law generally required, subject to certain narrow exceptions, an open competitive examination process to determine job qualifications of an individual. The 1950 County Code required the Personnel Board to prepare examinations to establish lists of individuals eligible to hold a County position. The examination was required to be "competitive, free, and open to **all** persons" subject to the authority of the Personnel Board to place limitation as to "age, sex, health, physical condition, moral character and **performance** of the duties" of the position to be filled.⁹ (Emphasis added) The implication

Mayor and City Council of Baltimore City, 387 Md. 1 (2005).

⁶ 1980 Report of the Charter Review Commission, p. 10.

⁷ *Id.*

⁸ *Id.* at 11.

⁹ 1950 County Code, § 150-12 a.

of this provision is clear: consideration of an individual's immutable characteristics that were unrelated to the ability of the applicant to perform the job was not permitted.¹⁰

The current Charter was approved by the voters in 1968, and created an Executive Branch of government headed by an elected County Executive. The 1948 Charter provisions regarding the personnel system were transplanted "virtually intact" into the 1968 Charter.¹¹ The County personnel law implementing the 1968 Charter remained largely unchanged from the 1950 personnel law regarding the requirement to use competitive examinations, except that the Code provided, pursuant to the new Charter, that the Chief Administrative Officer would implement the merit system in place of the Personnel Board. The implication regarding the prohibition against considering characteristics of an individual unrelated to the potential to perform job duties found in the 1950 Code was made, at least in part, explicit in the 1972 Code which explicitly prohibited discrimination on the basis of "race, creed, color, or national origin."¹²

The 1972 Code made the County's use of a competitive rating process even more apparent. Section 33-5(l) of the 1972 Code provided "for the appointment, advancement and retention of employees on the basis of merit and fitness to be ascertained in most cases by competitive examination without regard to race, religion or political affiliation." Section 33-10(d) of the 1972 Code provides: "As a general policy, entrance and promotional examinations to establish or re-establish a list of eligible applicants or promotional candidates shall be administered on a competitive basis."

In 1980 the Charter was amended placing more explicit language in the Charter regarding the nature of the merit system. This language, which remains in the current Charter, states,

The merit system shall provide the means to recruit, select, develop, and maintain an effective, non-partisan, and responsive work force with personnel actions based on demonstrated merit and fitness.

The current Code and personnel practice implements this Charter language through the use of open competition. For example, § 33-5(b)(2) states that "the recruitment, selection and advancement of merit system employees shall be on the basis of their relative abilities, knowledge and skills, including the full and open consideration of qualified applicants for initial appointments."

¹⁰ That which necessarily is implied in a law is as much a part of the law as that which is expressed. *Stanford v. Maryland Police Training and Correctional Commission*, 346 Md. 374 (1997).

¹¹ 1980 Report of the Charter Review Commission, p. 11.

¹² 1972 County Code § 33-9 (i).

Reliance upon a competitive rating process to demonstrate merit and fitness is reflected in current personnel practice. The OHR Director first reviews and evaluates all applications to ensure that each applicant is eligible for the announced vacancy; the OHR Director may disqualify, at any point in the hiring process, an applicant who lacks the required minimum qualifications for the position. Montgomery County Personnel Regulations § 6-4(b) (eff. Oct. 21, 2008) (“MCPR”). Then, “[t]he OHR Director must establish a competitive rating process to create an eligible list for employment or promotion . . .” MCPR § 6-5(a)¹³ The focus of this competitive rating process is to determine the relative merit and fitness of the candidates. MCPR § 6-5(b)(2) states that the competitive rating process must result from a job analysis that documents the knowledges, skills, and abilities required to perform essential functions of the job” and must “assess the employee’s ability to perform important aspects of the job.”

At the conclusion of the rating process, whether making an initial appointment or a promotion, the OHR director must create an eligible list of qualified applicants “grouped in appropriate rating categories.” MCPR § 6-9. The appointing department director must fill a vacant position from an eligible list and, “consistent with equal employment opportunity policies, the department director may choose any individual from the highest rating category.” MCPR § 7-1(a).

Where a priority eligible list exists, the appointing authority must comply with the priority consideration provisions. MCPR § 7-1(b). A priority eligible list is a list of applicants who have priority consideration. MCPR § 1-55. Priority consideration means consideration of an applicant to a vacant position before others are considered. It does not guarantee that the candidate will be selected. MCPR § 1-54.

Given the long and consistent history of the County merit system’s use of competition, we conclude that the Charter intended to establish a personnel system that measures “merit and fitness” though the crucible of competition open to all applicants without regard to personal characteristics unrelated to the performance of the position’s duties. There are, however, a few, narrow exceptions to this general rule.

B. The County has permitted the use of a noncompetitive rating process only in narrow circumstances.

The County has historically permitted the use of a noncompetitive rating process only in

¹³ The need for a competitive rating process is also reflected in the County’s equal employment opportunity and affirmative action program. Code § 33-9(a) states that the County’s equal employment opportunity and affirmative action program must “ensure all persons an equal opportunity to enter and progress in the county’s service **on the basis of open competition and demonstrated ability.** (Emphasis added.)

narrow circumstances. Section 150-12(b) of the 1950 Code authorized the Personnel Board¹⁴ to “give noncompetitive examinations to test fitness for reinstatement, transfer, or promotion when in the Board’s opinion competitive examinations are impractical or undesirable.” And while the 1972 Code explicitly favored a competitive rating process, it did allow for noncompetitive examinations where a competitive rating process “would not be practical or in the best interest of the county government and its merit system, (for example only one applicant has applied, unskilled laborer positions, development and maintenance of a career service, etc.)” 1972 Code § 33-10(e).

Current personnel practice restricts the use of a noncompetitive rating process to three situations: (A) creation of an eligible list for appointment or promotion to positions involving unskilled manual labor and for other classes of work if a competitive process is impractical (MCPR § 6-7), (B) promotion of an employee who was demoted as a result of a disability or a reduction-in-force (MCPR § 27-2(b)),¹⁵ and (C) certain priority eligible lists that allow an employee to receive priority consideration for another position at or below the grade level of an employee’s prior position where an employee has lost his or her job due to circumstances beyond the employee’s control (MCPR § 6-10(a)(1) - (3)). In all cases the employee or applicant must be fit for the position sought.

C. Use of a noncompetitive rating process for individuals based upon a non-merit factor such as disability would violate Charter § 401.

As seen the Personnel Regulations permit the use of a noncompetitive rating process in a limited number of circumstances—specific hard-to-fill job classes or current employees (who already obtained their jobs through a competitive rating process) demoted through no fault of their own. The extension of a noncompetitive rating process to persons based solely upon an immutable non-merit factor such as disability is dissimilar from the existing uses of the noncompetitive process permitted under Charter § 401. The use of a noncompetitive rating process in that manner would require an amendment of Charter § 401.

The noncompetitive rating process permitted under MCPR § 6-7 is limited to certain job classes, it does not extend to persons based solely upon an immutable non-merit factor such as disability. MCPR § 6-7 allows the OHR Director to establish an eligible list for employment or promotion on a noncompetitive basis “for positions involving unskilled manual labor and for other classes of work if a competitive process is impractical.” In these cases, all applicants who

¹⁴ The Personnel Board was the forerunner of the Merit Board.

¹⁵ These first two situations are addressed in MCPR 6-5(a): “The OHR Director must establish a competitive rating process to create an eligible list for employment or promotion, unless the OHR Director determines that a noncompetitive process is appropriate under Section 6-[7] or 27-2(b) of these Regulations.” The regulation incorrectly refers to § 6-6. MCPR § 6-7 deals with noncompetitive promotion.

met the minimum qualifications are certified to the eligible list. This noncompetitive rating process is used only where a competitive process is impractical or (e.g., difficult-to-fill or difficult-to-retain job classes), where further screening or competition among applicants is felt unnecessary. For example, this practice has been applied to jobs that require difficult to obtain degrees or licenses, that have a high turnover rate, or for jobs that have salary requirements that are difficult to meet because of market demand and have very few applicants. The noncompetitive rating list contemplated under this section does not benefit a discrete class of individuals but is intended to facilitate and promote the efficient filling of positions to carry out the mission of the County. And selection from a noncompetitively rated eligible list is still based on demonstrated merit and fitness.

Noncompetitive promotion under MCPR § 27-2(b)(2) is limited to current employees, individuals who already obtained their jobs through a competitive rating process. This provision allows a department director to noncompetitively promote a current employee who was demoted as the result of disability or reduction in force, or who was reclassified or reallocated downward, if the employee is promoted to a position at the same or a lower grade that the employee previously held, meets the job requirements for the position, passes any required physical examination, and applies for the promotion within five years of demotion, reclassification or reallocation. Further, the employee's noncompetitive promotion must be approved by the department director, is the prerogative of management, and denial of a noncompetitive promotion may not be appealed or grieved. In other words, an employee can only be noncompetitively promoted to a position for which the employee is qualified and which is comparable in grade to the position the employee originally achieved through competition and demonstrating merit and fitness.

Lastly, priority consideration through a priority eligible list under MCPR §§ 6-10(a)(1)-(3) is limited to current employees who already obtained their jobs through a competitive rating process but, through no fault of their own, are facing loss of their position. These employees receive priority consideration for positions at or below the grade level of their previous positions. This group is limited to employees who are unable to perform job functions because of disability, employees affected by reduction in force, and former employees no longer eligible for temporary disability retirement.

II. Alternatively, giving disabled individuals in the highest rating category a preference, similar to the veteran's credit, would require amendment of the Code and Personnel Regulations, but not the Charter.

Although the County cannot extend the noncompetitive rating process to persons based solely upon an immutable non-merit factor such as disability, it can place a person with a disability on a priority eligible list for job applicants, if that person is in the highest rating category after a competitive rating process. This approach is akin to the veteran's credit provided

by MCPR §§ 6-10(a)(4) & 6-12. However, the veteran's preference is mandated by state law. To provide for giving a disabled preference, this office believes that the Council would have to amend Code § 33-9, in addition to the personnel regulations.

The current Code prohibits the placement of a job applicant on a priority eligibility list based solely on the applicant's membership in a group with an immutable characteristic, e.g., race, sex, or disability.¹⁶ Code § 33-9(a) provides in pertinent part:

The county's policy shall be to take all personnel actions on the basis of merit and fitness without regard to political affiliation or non-merit factors, and without regard to other factors as may be provided for in chapter 27, "Human Relations and Civil Liberties," such as sex, marital status, race, religion, national origin, age or handicap.¹⁷

Thus, placement of a job applicant on a priority eligibility list solely on the basis of disability would violate the County's own equal employment opportunity statute. This section of the law must be amended to allow the personnel regulations to provide for priority based upon disability.¹⁸

No charter amendment is required to place persons with a disability on a priority eligible list because the personnel regulations would still require those persons with a disability to compete and demonstrate merit and fitness. Preference statutes such as veteran's acts usually contemplate a competitive process and do not deprive the appointing authority of the ability to judge the relative qualifications of the applicants.¹⁹ As noted earlier, a department director is

¹⁶ The availability of priority consideration through a priority eligible list for current employees who are disabled satisfies the County's duty of reasonable accommodation under the ADA and therefore does not violate § 33-9(a). See *Scott v. Montgomery County*, 164 F. Supp. 2d 502, 508 (D. Md. 2001) (provision in collective bargaining agreement policy restricting priority consideration to positions at or below employee's current grade meets ADA requirement of reasonable accommodation).

¹⁷ Code § 33-5(b)(6) similarly provides: "All applicants to and employees of the county merit system shall be assured fair treatment without regard to political affiliation or other non-merit factors in all aspects of personnel administration." See also MCPR § 5-2(b)(2), which provides that the County must "conduct all employment activities in a manner that ensures equal employment opportunity for all persons without regard to race, color, religion, national origin, ancestry, sex, marital status, age, disability, sexual orientation, or genetic status . . ."

¹⁸ There is no need to amend the County's anti-discrimination law. Recent amendments to the ADA's rules of construction clarify that a non-disabled person may not make a claim of "reverse disability discrimination." "Nothing in this chapter shall provide the basis for a claim by an individual without a disability that the individual was subject to discrimination because of the individual's lack of disability." Pub. Law 110-325, to be codified at 42 U.S.C. § 12201(g) (eff. Jan 1, 2009).

¹⁹ McQuillin, *Mun. Corp.* § 12.82 (3rd Ed.) (citations omitted); *Cassidy v. Municipal Civil Service Commission of the City of New Rochelle*, 37 N.Y.2d 526 (1975). Laws providing preference to veterans have been

allowed to select anyone in the highest rating category, pursuant to MCPR § 7-1(a). Where a priority eligibility list exists, the appointing authority must comply with the priority consideration provisions. MCPR § 7-1(b).

As previously discussed, the County has permitted the use of a noncompetitive rating process where a competitive process would not be practical so long as the applicant meets the minimum qualifications for the job.²⁰ For example, an eligible list may be created to fill a position that requires unskilled manual labor without using the competitive rating process; or a noncompetitive eligible list may be created for employees who have lost a County job due to circumstances beyond the employee's control—*e.g.* a reduction-in-force. In those situations where a noncompetitive process would otherwise be permitted, an individual with a disability could be accorded a priority placement preference without having undergone a competitive rating process.

A disability preference similar to the veteran's preference triggers an Equal Protection analysis because people with disabilities would be treated differently than other persons.

III. Since no suspect class is involved, the County need only have a rationale basis for a law which treats individuals with a disability differently.

If the Council chooses to pursue a priority eligible list based upon disability preference, the resulting legislation would create statutory classifications as to County job applicants and employees seeking promotion: those who have a disability and those who do not. The question, then, is whether such a statutory distinction violates the right to equal protection, as guaranteed by the federal and state constitutions.²¹

In reviewing classifications challenged under equal protection guarantees, the court considers the three standards: (1) strict scrutiny, (2) intermediate scrutiny (also been referred to as "heightened scrutiny"), and (3) rational basis. *Jackson v. Dackman*, 181 Md. App. 546, 569, 956 A.2d 861, 874-75 (2008).

First, equal protection analysis requires strict scrutiny of a legislative

sustained as constitutional. *See Personnel Adm'r of Massachusetts v. Feeney*, 442 U.S. 256 (1979), *Keim v. United States*, 177 U.S. 290 (1900).

²⁰ *See* Subsection I. B., above.

²¹ Although the Maryland Constitution lacks an express Equal Protection Clause, Maryland courts have long held that the state's Due Process Clause embodies the concept of equal protection to the same extent as the federal Equal Protection Clause. Because of this, Maryland courts regard federal court equal protection decisions as "practically direct authorities" with regard to the state. *Jackson v. Dackman*, 181 Md. App. 546, 569, 956 A.2d 861, 874-75 (2008).

classification when the classification impermissibly interferes with the exercise of a fundamental right or operates to the peculiar disadvantage of a suspect class. Laws which are subject to this demanding review violate the *equal protection clause* unless the State can demonstrate that such laws are necessary to promote a compelling governmental interest.

Second, classifications which have been subjected to a higher degree of scrutiny than the traditional and deferential rational basis test, but which have not been deemed to involve suspect classes or fundamental rights and thus have not been subjected to the strict scrutiny test, are reviewed under intermediate scrutiny. In order to be sustained, this type of classification must serve important governmental objectives and must be substantially related to achievement of those objectives. There is no brightline diagnostic, enunciated by either the Court of Appeals or the U.S. Supreme Court, by which a suspect or quasi-suspect class may be recognized readily. The Court of Appeals, however, has adopted criteria used by the Supreme Court in assessing claims of a new suspect or quasi-suspect classification. They are as follows:

(1) whether the group of people disadvantaged by a statute display a readily-recognizable, obvious, immutable, or distinguishing characteristics that define the group as a discrete and insular minority;

(2) whether the impacted group is saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection from the majoritarian political process; and

(3) whether the class of people singled out is subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities to contribute meaningfully to society.

Third, in most instances when a governmental classification is attacked on equal protection grounds, the classification is reviewed under the rational basis test. Generally under that test, a court will not overturn the classification unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that the court can only conclude that the governmental actions were irrational. The Supreme Court, in applying this test, has been willing to uphold the constitutionality of an enactment

when ‘any state of facts reasonably maybe conceived to justify it.

Jackson v. Dackman, 181 Md. App. at 570-71, 956 A.2d at 875-76 (internal citations and quotations omitted; emphasis in original).

In this case, the two classifications are individuals with a disability seeking appointment or promotion with the County and individuals without a disability seeking appointment or promotion. The Supreme Court has held that the disabled are not a suspect or quasi-suspect class entitled to special protection under the Equal Protection Clause. See *City of Cleburne v. Cleburne Living Ctr. Inc.*, 473 U.S. 432, 442-47, 105 S. Ct. 3249, 87 L. Ed. 2d 313 (1985) (concluding that mentally disabled individuals are not a suspect or quasi-suspect class); *Brown v. N.C. Div. of Motor Vehicles*, 166 F. 3d 698, 706 (4th Cir. 1999) (extending *Cleburne* to all disabled individuals). In any event, the legislation to either provide a special hiring authority or a disabled preference benefits rather than burdens people with disabilities.

Looking to the other classification, non-disabled individuals, strict scrutiny would not be proper because legislation providing either a special hiring authority or a disabled preference would neither interfere with a fundamental right nor does it operate to the peculiar disadvantage of a suspect class. First, the Supreme Court’s decisions give no support to the proposition that governmental employment is per se a fundamental right. *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 313, 96 S. Ct. 2562, 2566-67, 49 L. Ed. 2d 520 (1976). Further, suspect classifications are those based on race or national origin. *United States v. Virginia*, 518 U.S. 515, 532-35, 116 S. Ct. 2264, 135 L. Ed. 2d 735 (1996). Such is not the case here.

Intermediate or heightened scrutiny would also not be appropriate because non-disabled individuals seeking appointment or promotion in the County are also not a quasi-suspect class. The class of non-disabled individuals seeking appointment or promotion using the criteria used by the Supreme Court and adopted by the Maryland Court of Appeals in assessing claims of a new suspect or quasi-suspect classification, described *supra*, fails to show that this classification is quasi-suspect. First, this class does not display “readily-recognizable, obvious, immutable, or distinguishing characteristics that define the group as a discrete and insular minority. In fact, this class is very diverse as to age, sex, race, national origin and other characteristics. Second, this class has been saddled with such disabilities, or subjected to such a history of purposeful unequal treatment, or relegated to such a position of political powerlessness as to command extraordinary protection. Finally, this class is not subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their abilities to contribute meaningfully to society. Non-disabled individuals seeking appointment or promotion in the County are neither a suspect class, warranting strict scrutiny, nor a quasi-suspect class, warranting intermediate or heightened scrutiny.

Because strict and intermediate scrutiny are not appropriate in this case, we apply the

rational basis standard of review.

Several Supreme Court cases make clear that the Equal Protection Clause is implicated when the government makes class-based decisions in the employment context, treating distinct groups of individuals categorically differently, and have applied the rational basis test in each case. *See, e.g., New York City Transit Authority v. Beazer*, 440 U.S. 568, 593, 99 S. Ct. 1355, 59 L. Ed. 2d 587 (1979) (upholding city's exclusion of methadone users from employment under rational-basis review); *Harrah Independent School District v. Martin*, 440 U.S. 194, 199-201, 99 S. Ct. 1062, 59 L. Ed. 2d 248 (1979) (classification between teachers who had complied with a continuing-education requirement and those who had not is rational and does not violate the Equal Protection Clause); *Massachusetts Board of Retirement v. Murgia*, 427 U.S. 307, 314-317, 96 S. Ct. 2562, 49 L. Ed. 2d 520 (1976) (upholding a mandatory retirement age--a classification based on age--under rational-basis review).

"Legislative classifications are valid unless they bear no rational relationship to the State's objectives." *Murgia*, 427 U.S. 307, 314, 96 S. Ct. 2562, 49 L. Ed. 2d 520. "[W]here rationality is the test, a State "does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect." *Id.* (citation omitted). "The School Board's rule is endowed with a presumption of legislative validity, and the burden is on respondent to show that there is no rational connection between the Board's action and its conceded interest in providing its students with competent, well-trained teachers." *Martin*, 440 U.S. at 198, 99 S. Ct. 1062, 59 L. Ed. 2d 248.

Under the rational basis standard, legislation either creating a special hiring authority for the disabled or providing for a disabled preference would not be overturned unless the varying treatment of the two groups, disabled and non-disabled, is so unrelated to legitimate governmental purposes as to be irrational. In this case, the rational basis for a statute permitting different treatment of the two groups is Montgomery County's interest in fostering a more diverse work force by encouraging employment of people with disabilities. Therefore, it is this office's opinion that such legislation would not violate equal protection.

CONCLUSION

The Charter, Code, and personnel regulations require that the County engage in a competitive rating process to determine an individual's merit and fitness for a merit system position. Although these laws countenance a noncompetitive rating process in certain limited circumstances—specific hard-to-fill job classes or current employees (who already obtained their jobs through a competitive rating process) demoted through no fault of their own—those circumstances are dissimilar from the program proposed presented here—noncompetitive hiring of an applicant based solely upon the applicant's disability status. But the County could amend the Code and personnel regulations to provide for placement on a priority eligible list for a

Mike Faden
July 29, 2009
Page 13

person with a disability, if that person is in the highest rating category after a competitive rating process (or meets minimum job qualifications if a noncompetitive process is otherwise authorized).

Cc: Karen Orlansky, Director, Officer of Legislative Oversight
✓ Leslie Rubin, Office of Legislative Oversight
Fariba Kassiri, Assistant Chief Administrative Officer
Kathleen Boucher, Assistant Chief Administrative Officer
Merit System Protection Board
Leon Rodriguez, County Attorney

noncompetitive hiring of disabled person (MPH, EBL2)
A09-00035
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Brogden, Karen

From: Andrews' Office, Councilmember
Sent: Thursday, September 17, 2009 9:14 AM
To: Montgomery County Council
Subject: FW: Employment public intern program

051283

2009 SEP 17 PM 3:27

RECEIVED
MONTGOMERY COUNTY
COUNCIL

-----Original Message-----

From: Karen Leggett [mailto:leggett@comcast.net]
Sent: Wednesday, September 16, 2009 9:34 PM
To: Andrews' Office, Councilmember
Subject: Re: Employment public intern program



Dear Phil,

I'm glad we had a chance to chat briefly at the All Kids Count picnic last weekend and of course, I appreciate your continuing interest in County employment of people with disabilities.

Here are three actions the Transition Work Group believes the Council could take to expand employment opportunities for this population, particularly for individuals with significant disabilities who are indeed capable of making a meaningful contribution to society:

- 1) When individuals with a disability apply for a position in County Government and are deemed "qualified," allow them to remain in the pool for further consideration. This would apply to individuals willing to disclose their disability. Currently, only candidates in the highest rated category ("Well Qualified") are forwarded to the hiring department. This change would require that a preference be granted to individuals with disabilities but only *after* they have reached the "qualified" category in the competitive rating process.
- 2) Permit educational requirements for entry level positions to include a High School Certificate of Completion recognized in the State of Maryland instead of a high school diploma or G.E.D. Many young people with disabilities earned a certificate rather than a diploma simply because they were unable to pass certain state assessments or advanced math courses; they often have skills that would otherwise qualify them for entry level work.
- 3) Create a new entry level position that could be posted by any hiring department and would require primarily the skills or tasks typically included in Public Intern positions (filing, data entry, shredding, copying, collating, answering phones, etc.). Interns applying for these positions would have experience in the specific tasks required and could therefore compete more effectively.

I am not entirely sure whether these are actions that would require legislation or simply action by the Department of Human Resources, but we believe they are worthy of discussion at the October 5 worksession. Should a charter amendment be required, we urge the County Council to proceed as expeditiously as possible.

We look forward to continuing our work with you on this and related issues. Thank you!

Karen

Karen Leggett
Chair, Transition Work Group
301-438-7601

From: Montgomery County Council
Sent: Monday, August 10, 2009 10:37 AM
To: leggett@comcast.net
Subject: Employment public-intern program

Dear Karen,

Thank you for your e-mail to the County Council about the customized employment public intern program and for taking the time to share with us the recent experience your daughter had in trying to apply for a job with Montgomery County. I certainly understand why the Transition Work Group is interested in seeing if there is a way for the county to be more flexible in giving consideration to hiring a person with cognitive disabilities, and I am sorry for your daughter's disappointment.

The Management and Fiscal Policy Committee is tentatively scheduled to hold its next worksession on September 21st at 2:00 p.m. I believe that Leslie Rubin of the Office of Legislative Oversight may have already sent you a notice about this session. At that session, the Committee will have additional information from the County Attorney on what might or might not be allowed in terms of special consideration for disabled job applicants under the county's merit system. If you have questions, Ms. Rubin may be reached at 240-777-7998 and a read-ahead memorandum should be available on the Council's website on September 17th.

Sincerely,



Phil Andrews
Council President

050202

9/17/2009

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APPLICANT DATA SHEET

Job applying for:		Job announcement #:
Name (Last, First, Middle):		
Mailing address:		
City:	State:	Zip code:
E-mail address:		
Home phone:	Are you currently a King County career service employee? <input type="checkbox"/> Yes <input type="checkbox"/> No	
How did you hear about this job? List specific website, newspaper, etc.		
If you need a disability accommodation in the application or testing process, please call the contact number listed on the job announcement.		

AFFIRMATIVE ACTION INFORMATION – CONFIDENTIAL AND VOLUNTARY

King County is committed to non-discrimination in employment. To assist in this effort, we ask your voluntary cooperation in responding to the questions below. The data collected will be used for statistical and affirmative action purposes only. Responses will not be used in evaluating your application. Definitions of the categories on this page are available at <http://metrokc.gov/jobs/aadefs.htm>.

1. **Are you** Male Female

2. **Ethnicity:** Are you Hispanic or Latino (A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin unique to the Americas, regardless of race)? Yes No

3. **Race:** (not Hispanic or Latino)
 - African American/Black:* A person having origins in any of the black racial groups of Africa.
 - American Indian/Alaska Native:* A person having origins in the original peoples of North America who maintain cultural identification through tribal affiliation or community recognition.
 - Asian:* A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian Subcontinent, including, for example, Cambodia, China, India, the Philippine Islands, and Vietnam.
 - Native Hawaiian or Other Pacific Islander:* A person having origins in any of the peoples of Hawaii, Guam, Samoa, or other Pacific Islands
 - White/Caucasian:* A person having origins in any of the original peoples of Europe, North Africa, the Middle East, or Southwest Asia.
 - Two or more races:* A person who identifies with more than one of the five races listed above.

4. **Do you have a disability as defined by the Americans with Disabilities Act (ADA)?** Yes No
 All disability status information will be treated as confidential.

5. **Have you ever been on active duty in the U.S. Armed Forces?** No Yes Dates: _____

6. **If you have been on active duty in the U.S. Armed Forces, which, if any, apply?**
 - Vietnam Era veteran
 - Special disabled veteran
 - Recently separated veteran
 - Other protected veteran

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Brogden, Karen

From: Laura Dawson [nutridoc@foodphysicsandbodydynamics.com]
Sent: Thursday, July 16, 2009 9:58 AM
To: Ike Leggett
Cc: Montgomery County Council
Subject: Congratulations on Customized Employment Program Award!
Importance: High

050275



Thursday, July 16, 2009

As a disabled small business owner, providing health care services to fellow disabled populations, it is good news to hear of your progress in implementing Customized Employment.

One patient who suffered from Chronic Fatigue Syndrome and other associated maladies, had a first clean blood serum report, however here in North Carolina, we were not able to bridge the gap into a specific Customized Employment with her existing employer. Your progress in this area may need to be shared with surrounding state's Department of Rehabilitation providers, Ticket to Work program managers (i.e. Cessi).

Well Done.

Be In Good Health.

Laura L Dawson, Dipl.Ac., L.Ac.

Food Physics and Body Dynamics LLC
The Spirit of Food



"Remembering...we are each second to none." Dawson

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OFFICE OF HUMAN RESOURCES

Isiah Leggett
County Executive

Joseph Adler
Director

MEMORANDUM

September 21, 2009

TO: Leslie Rubin, Legislative Analyst

FROM: Joseph Adler, Director
Office of Human Resources

SUBJECT: Responses for Council 10/5/09 MFP Hearing/OLO Disability Report

In response to your inquiries, this MEMORANDUM presents responses to the questions submitted to assist with the preparation of briefing documents for the October County Council MFP work session.

- **Section A** presents responses to questions submitted to the Executive Branch on August 25, 2009.
- **Section B** presents responses to questions submitted to the Executive Branch on September 3, 2009.
- **Attached Appendix** presents the documents referenced in this MEMORANDUM.

Please contact me if you have any questions regarding the information presented.

SECTION A -- August 25, 2009 Questions & Responses

I. Customized Employment Public Intern Project

What is the FY10 budget for the Customized Employment Public Intern Project broken down by (1) funds for intern salaries and (2) funds for paying the contractor. What are the actual FY09 expenditures, broken down in the same way?

RESPONSE: Chart A

FISCAL YEAR	FY2009		FY2010	
	INTERN SALARIES	FUNDS FOR CONTRACTOR	INTERN SALARIES	FUNDS FOR CONTRACTOR
Approved Budget	\$ 100,000	\$ 50,000	\$ 100,000	\$ 50,000
Actual Expenditures	\$ 119,220 *	\$ 45,721	\$5,958 [pending intern placements]	\$7,475 [as of August 31, 2009]

** Base salary in FY2009 was increased from \$7.20/hr to \$7.65/hr based on General Wage Increase allowance. The Intern Salaries expense reflects payment of FICA expenses for Intern Salaries not originally budgeted in the approved FY2009.*

A. The number of individuals hired to date under the Customized Employment Public Intern Project?

RESPONSE:

- *Forty-four (44) individuals have been hired to date under the Customized Employment Public Intern Project.*
- *See Chart A, B, and C below [pages 3, 4, 5] for listing of Intern Positions by Fiscal Year.*

B. Their individual beginning and ending dates of service.

RESPONSE:

- *See Chart A, B, and C below [pages 3, 4, 5] for listing of Intern Positions by Fiscal Year.*

C. The departments in which they work.

RESPONSE:

- *See Chart A, B, and C below [pages 3, 4, 5] for listing of Intern Positions by Departments by Fiscal Year.*

D. How many open but unfilled internships have been created?

RESPONSE:

- *12 Internship positions have been created in FY2010 but are pending to be filled contingent on department security check processing requirements*
- *See Chart C below [page 5] for pending FY 2010 internship placements in County Departments.*

CHART A: FISCAL YEAR 2008

FISCAL YEAR 2008				
	POSITION	DEPARTMENT	START DATE	END DATE
1.	Customer service assistant <i>Intern reassigned to:</i> Office Assistant	DPWT DED	10/1/07 4/30/08	4/25/08
2.	Data entry assistant	OHR	11/20/07	4/24/08
3.	Data entry assistant	DPWT	10/29/07	6/2/08
4.	Office assistant	OHR	1/08/08	4/24/08
5.	Data entry clerk <i>Intern reassigned to:</i> Data entry clerk	DHHS DOCR	2/5/08 7/06/09	5/28/09
6.	Accounting Assistant <i>Intern reassigned to:</i> Data Entry Assistant	DLC	3/03/08 6/16/08	6/13/08
7.	Warehouse Assistant	DPWT	6/26/08	9/25/08
8.	Data Entry	DHHS	10/22/07	
9.	Office assistant	DHHS	10/23/07	
10.	Office assistant	DHHS	10/23/07	
11.	Office assistant	DHHS	10/24/07	
12.	Office assistant	DHHS	10/24/07	
13.	Office assistant	DHHS	11/14/07	
14.	Data entry assistant	OHR	11/19/07	
15.	File Clerk	DHHS	1/9/08	
16.	Materials clerk	DHHS	1/30/08	
17.	File clerk	DHHS	2/04/08	
18.	Data entry assistant	DHHS	2/5/08	
19.	IT assistant	DTS	2/11/08	
20.	Office Assistant	DPWT	2/19/08	
21.	Office Assistant	DPWT	2/25/08	
22.	Data entry assistant	DLC	3/10/08	
23.	Office Assistant	DLC	3/10/08	
24.	Warehouse Assistant	DLC	3/25/08	
25.	Data entry assistant	DLC	4/07/08	
26.	Data Entry Assistant	DLC	5/20/08	

Summary of FY2008 Intern Placements:

- 26 Interns placed in County Departments
- 6 Interns ended job placements in FY08; 1 ended placement in FY09. 3 were reassigned.

Location of Intern Placements

Health and Human Services (11)	Liquor Control (6)
Public Works & Transportation (5)	Office of Human Resources (2)
Economic Development (1)	Technology Services (1)

CHART B. FISCAL YEAR 2009

FISCAL YEAR 2009				
	POSITION	DEPARTMENT	START DATE	END DATE
1.	Warehouse Assistant <i>Intern reassigned to:</i> Cafeteria Assistant	DPWT MCPS	7/15/08 10/6/08	8/17/08
2.	Warehouse Assistant	DPWT	10/28/08	12/30/08
3.	Front Desk Assistant	MCPD	12/8/08	12/19/08
4.	File Clerk	OHR	7/1/08	
5.	Data Entry Assistant	DHHS	10/13/08	
6.	Front Desk Assistant	DHHS	10/27/08	
7.	Data Entry Assistant	DHHS	11/3/08	
8.	Warehouse Assistant	DPWT	3/31/09	
9.	Office Assistant	DPWT	4/10/09	

Summary of FY2009 Intern Placements:

- 9 Interns placed in County Departments
- 4 Interns ended job placements in FY09. 1 was reassigned.
- Location of Intern Placements

Health and Human Services (3)	Police Department (1)
Public Works & Transportation (4)	Office of Human Resources (1)
Montgomery Public Schools (1 – Intern reassignment)	

CHART C. FISCAL YEAR 2010

FISCAL YEAR 2010				
<i>NOTE: Positions below are identified as Intern placements for individuals who require completion of their security check processing approvals</i>				
	POSITION	DEPARTMENT	START DATE *	END DATE
1.	Mail Clerk	DOCR / MCCF		
2.	Front Desk Asst.	DOCR		
3.	Materials Clerk	DOCR		
4.	Materials Clerk	DOCR		
5.	File Clerk	DOCR		
6.	File Clerk	DOCR		
7.	File Clerk	DOCR		
8.	Medical File Clerk	DOCR		
9.	Monitoring Assistant	DOCR		
10,11,12	Three (3) Positions for <u>Facilities Assistant</u> Position > Intern workers identified for placement pending completion of security check processing.	DOCR		

Summary of FY2010 Intern Placements:

- * 12 Interns pending placements; job placement processing and security clearances pending
- Location for pending Intern Placements
Corrections and Rehabilitation (12 pending Intern placements)

II. Inter-Departmental Work Group on Hiring Persons with Disabilities

5. Before the October 27, 2008 MFP work session on this report, the Executive Branch reported to OLO that the Office of Human Resources organized an inter-departmental work group of the County's six largest departments in response to OLO's recommendations to convene a group to recommend new strategies related to hiring persons with disabilities.

A. Which six departments are members of this work group? Who represents each department?

RESPONSE:

- Chief Administrative Officer serves as Chair of the Interdepartmental Work Group on Hiring of Disabled Persons
- The first meeting of the Interdepartmental Work Group was conducted on June 17, 2009. The second meeting was held on September 22, 2009.
- Interdepartmental Work Group participants include the following departments.

Department	Meeting Participant
	Tim Firestine, Chair Chief Administrative Officer - Offices of the County Executive
Office of Human Resources	Joe Adler, Director
Department of General Services	David Dise, Director
Department of Correction and Rehabilitation	Arthur Wallenstein, Director
Department of Transportation	Arthur Holmes, Director
Department of Police	Tom Manger, Chief, represented by Capt. James Fenner
Department of Health and Human Services	Uma Ahluwalia, Director John Kenney, Aging & Disability Services
Department of Recreation	Gabriel Albornoz, Director
Fire and Rescue Services	Richard Bowers, Chief
	Staff Participants
Office of Human Resources	Melissa Davis, Team Manager, Recruitment and Selection Joe Heiney-Gonzalez, Special Assistant to the Director
Department of Correction and Rehabilitation	Ivonne Gutierrez-Anglin

B. How many meetings has the work group had? Dates?

RESPONSE:

- *The Interdepartmental Work Group on Hiring Persons with Disabilities convened on:*
 - *June 17, 2009*
 - *September 22, 2009*

C. What work has the group undertaken to date?

RESPONSE:

- *Formal establishment of the Offices of the County Executive Interdepartmental Work Group on Hiring of Persons with Disabilities [referenced as Interdepartmental Work Group].*

- *Review of the Office of Legislative Oversight [OLO] report by members of the Interdepartmental Work Group. [OLO report titled Hiring Persons with Disabilities: A Review of County Government Practices]*
- *Agreement by members of the Interdepartmental Work Group Department Director members to partner with TRANSCEN to review county department operations to identify positions appropriate for inclusion in the Customized Employment Public Internship Program.*
 - *TRANSCEN staff member, in consultation with Department personnel, conducted preliminary review of staff operations in County Departments to identify potential staff positions that might qualify as opportunities for persons with disabilities.*

D. When is the workgroup expected to complete their assignment?

RESPONSE:

- *In light of ongoing fiscal constraints, the Interdepartmental Work Group will review options for supporting and implementing internship placements, job skill training and support options available for persons with disabilities.*
- *Improvements in county departments will be explored, such as the State of Maryland QUEST program to determine feasibility of implementing the QUEST model in Montgomery County Government.*

A. Web Accessibility Issues

6. Before the October 27, 2008 MFP work session on this report, the Executive Branch reported to OLO that DTS and the PIO planned several steps to address accessibility of the County government's web site. Please provide the status of the following plans:

A. Explore the use of "user-controlled adjustable size fonts" for possible implementation on the current version of the County Website. This practice will enable users to adjust the default size on any County website page for easier viewing.

RESPONSE:

- *While adjustable size fonts are not part of the Section 508 standard, DTS and PIO have explored the use of these fonts. Based upon the research, DTS and PIO have found that this capability is built into web browser software. By simply clicking the "zoom" button at the bottom right of the browser, users may adjust the font size. The default setting is "100%" but this may be increased or decreased as needed. In summary, DTS and PIO plan to leverage no-cost, built-in browser functionality rather than invest development effort in a customized adjustable size font feature.*
- B. Work with the County's Department of HHS to periodically meet with people with disabilities to learn of issues they experience when using the county website.

RESPONSE:

- *Schedules permitting, staff from DTS and PIO plan to attend the October meeting of the Commission on People with Disabilities (CPWD) to initiate the outreach effort and to begin a dialogue on web accessibility issues*

C. Review and revise, if necessary, the Accessibility policy on the County home page.

- *DTS and PIO are currently re-writing the County's web accessibility policy and expect to have it complete by the end of 2009. Once a draft is ready, it will be sent to HHS, the County Attorney's Office, and other Departments (as needed) for review*

D. Increase efforts to educate County web content contributors to the County Accessibility policy and methods relative to the Americans with Disabilities Act – section 508 guidelines.

RESPONSE:

- *DTS plans to develop a computer-based training (CBT) module on the use of the County's web accessibility software, Compliance Sheriff. DTS expects to have a prototype of the CBT available by the end of 2009.*

E. Explore the feasibility of securing funding to develop a Section 508 application development guide.

RESPONSE:

- *DTS has requested funding for fiscal year 2011 (FY11) via the future fiscal impact (FFI) process to enhance its abilities relative to web accessibility. Absent this funding, DTS will be unable to make substantive progress on the development of the guide during FY11.*

7. On December 12, 2008, the Directors of DTS and PIO sent a memo to all County government department directors, the Technical Operational Management Group, and the Web content managers Group. The memo advised all web content contributors to review websites “to bring them inline with Section 508 standards” of the Federal Rehabilitation Act (which address website accessibility for persons with disabilities).

A. Have staff in DTS or PIO followed up with other County Government staff to monitor County Government web pages' compliance with federal law regarding accessibility of websites for persons with disabilities?

RESPONSE:

- *Departments develop, maintain and enhance their web pages and are therefore responsible for their web content and applications. From a governance perspective, DTS and PIO set general web accessibility policies and guidelines but it is up to the Departments to implement the policies. DTS intends to provide Compliance Sheriff*

software training and will leverage the software to run scans and develop compliance reports for the Departments, but the Departments are accountable for remediating any issues. Both DTS and PIO have limited bandwidth to assist Departments with remediation efforts.

- *DTS and PIO intend to issue a follow-up memo on web accessibility to Departments by the end of September. This memo will serve as a reminder to web content contributors that the County has voluntarily chosen to use the standards in Section 508 of the Vocational Rehabilitation Act of 1973 and that responsibility lies with each Department for ensuring that their web pages are accessible. Lastly, there is a reminder that accessibility testing software and training will be available by the end of 2009 and that in the interim, online accessibility training is available through the Section 508 website. DTS intends to make completion of the Compliance Sheriff CBT mandatory for all authorized users of the County's web content management system (WebEditPro), and intends to revoke access for users that fail to complete the CBT by the requisite date.*
8. Most County Government web pages have a "Text Version" link at the top of the page that will allow users to convert the page to text for use with screen readers (typically used by people with limited or no sight). See page 69 and appendix L of OLO's report for the report's discussion of the "Text Version" link:
<http://www.montgomerycountymd.gov/content/council/olo/reports/pdf/2008-9.pdf>

A recent scan (August 25, 2009) of several County Government web pages revealed that the "Text Version" link did not work. Several of these links have not worked since the report was released in June 2008.

Web pages with "Text Version" links that did not work included: OHR's Careers web pages (where people get info to apply for all County Government jobs), OHR's Resource Library, MCPL's website, the Office of Procurement's web page, the County Government home page "Services & Info" link, and the County government home page "I want to..." link. Most of these web pages provide a link to County Government services or resources, including applying for County government jobs, use of library resources, and the ability to get information about County Government contracts and other issues.

- A. Are County Government staff taking any steps to ensure that the "Text Version" link works on these specific web sites and pages?

RESPONSE:

- *DTS and PIO are aware of the limitations of the text version link. To conclude that it does not work is misleading. The text-only link provides County website users the ability to convert static text to a text-only version of the webpage, which may then be read by screen reader technology. This innovative, no-cost technology was developed in-house by DTS in 2002 without any external support or funding. The text conversion is not able to convert applications or on-line forms. This is a known deficiency of the tool. DTS has not had the resources to develop an*

enhanced solution but has acquired other tools, such as Browsealoud, to supplement the text-only version. The accessibility policy link on the County's website (footer area) provides contact information for users who need additional assistance.

- B. If these pages have features that cannot be converted to a "Text Version", what steps are County Government staff taking to make these features accessible?

RESPONSE:

- *It is important to note that there are several third party commercial off the shelf (COTS) software applications utilized on the County's website. These software applications are not developed by DTS or by the Departments. Once such example is the software that the County uses on its Careers page.*
- *Departments that enter into contracts with third party software providers should assure that the software is accessible prior to its deployment on the website. The County's IT architecture document, which can be viewed on-line on the County Intranet at [http://portal.mcgov.org/content/departments_intranet/dts/stratplan/IT Arch requirements.pdf](http://portal.mcgov.org/content/departments_intranet/dts/stratplan/IT_Arch_requirements.pdf), includes ADA requirements for COTS applications.*

9. The 12-12-08 DTS/PIO Memo also noted that DTS will begin conducting web accessibility training in 2009 for County Government web content providers.
- A. How many classes have been conducted? Dates of classes? How many County Government employees have taken the class?

RESPONSE:

- *DTS is still in the process of conducting training internally for technical staff. Rather than conduct classroom training for Departmental users, DTS plans to develop a Computer-Based Training (CBT) module to train departmental users on the use of the accessibility software. Conducting classroom-based training is not feasible due to the large number of web content contributors across County government. There are over 450 authorized users of the County's web content management system as well as several dozen Departmental application developers across County government.*

Other Issues

10. Before the October 27, 2008 MFP work session on this report, the Executive Branch reported to OLO that OHR was "near completion of an Americans with Disabilities Act Procedure Manual which addresses all aspects of the reasonable accommodation process from application to implementation or appeal." See page 5 of the packet (link to the packet above.)
- A. What is the status of this manual? If it is complete, where can it be found?

RESPONSE:

- *The manual titled **The Americans with Disabilities Amendment Act, 2008 Reasonable Accommodations and Worker's Assistance Countywide Procedures Manual** was completed in June 2009.*
- *The Manual is available at the Office of Human Resources and will be posted on the department website for wider accessibility to county residents.*
- *See Appendix 2 for the copy of the Office of Human Resources **Americans with Disabilities Amendment Act, 2008 Reasonable Accommodations and Worker's Assistance Countywide Procedures Manual**.*

11. What is the status of developing and publicizing guidelines for the Worker Assistance Program? If they are complete, where can they be found?

RESPONSE:

- *The manual noted in item "A" above includes guidelines for the Worker's Assistance Program, on page 8 of the manual.*
- *The Manual is available at the Office of Human Resources and will be posted on the department website for wider accessibility to county residents.*
- *See Appendix 2 for the copy of the Office of Human Resources **Americans with Disabilities Amendment Act, 2008 Reasonable Accommodations and Worker's Assistance Countywide Procedures Manual**.*

12. In October 2008, the Executive Branch reported to OLO that a mandatory training program for County Government managers focused on hiring persons with disabilities "is expected to be in place by early 2009." What is the status of developing this training?

RESPONSE:

- *Mandatory training for County Government managers and supervisors includes a course on **Americans with Disability Act: Employment Law**.*
- *This mandatory training focuses on the "Title I portion of **The Americans with Disabilities Act 2008 as Amended (ADAA)**. The Title I "employment portion" of the ADAA concentrates on specific provisions regarding **Reasonable Accommodations, Medical Examinations, Interview Techniques** and overall approaches to diminishing attitudinal and institutional barriers associated with myths regarding individuals with disabilities."*
- *The mandatory course schedule is published in the county online Office of Human Resources as a **NEW REQUIREMENT of Mandatory Courses** at website <http://www.montgomerycountymd.gov/content/ohr/ResourceLibrary/files/MANDATORY%20COURSES.pdf>*
- *The mandatory course schedule is published in the county online Office of Human Resources **Planning for the Future: FY 10 Training Catalog** on page 56.*
- *See Attachment 3 of the Appendix for copy of the **FY 2010 Americans With Disabilities Act – Employment Law**.*

SECTION B – September 3, 2009 Questions & Responses

At the last MFP work session in February 2009, Joe Adler stated that the County Government was working to identify merit system positions in the top five County Government departments to split in half and fill with persons with disabilities. He indicated that OHR and DHHS had added some funding to an existing County Government contract with TRANSCEN so TRANSCEN staff could work on this.

1. What is the status of this endeavor?

RESPONSE:

- *In FY2009 TRANSCEN conducted a review of the five largest departments (Police, Health and Human Services, Transportation, General Services and fire and Rescue) to identify department positions suitable for purposes of global job carving and sharing potential to increase job opportunities for persons with disabilities.*
 - *Seventeen (17) positions were identified as “entry level” positions which crossed county departments and divisions that might be suitable positions for individuals with disabilities. The positions are in various job title classifications however, the individual job duties vary depending upon the department specific job requirements.*
 - *Based on the July 29, 2009 County Attorney opinion, the County Charter requires that all personnel actions under the merit system be “based on demonstrated merit and fitness. The Charter forbids the use of a noncompetitive hiring process based on an immutable, non-merit factor such as a disability.”*
 - *See Appendix, Attachment 4, July 29, 2009 MEMO.*
 - *As referenced in the June 10, 2008 OLO Report 2008-9 Recommendations (Chapter X), Montgomery County does not have “a special hiring authority to hire persons with disabilities into the merit system.” [page 93]*
 - *The June 10, 2008 OLO Report recommended that “the Council explicitly discuss and decide whether to pursue a Charter amendment to enable the County Government to establish a special hiring authority for persons with disabilities.” [page 93]*
2. Have any merit system jobs been split for this purpose? If so, which ones and in which departments?

RESPONSE:

- *No.*
- *The county fiscal conditions that required Reductions In Force have demanded the priority attention of Office of Human Resources personnel.*
- *Work completed in consultation with TRANSCEN provides a preliminary assessment of county positions that may be appropriate for structuring in a*

manner that provides opportunities for work experience internships and employment opportunities for persons with disabilities.

- *Attention will be given by staff to follow up on the preliminary assessment completed by TRANSCEN regarding positions identified as entry-level positions in county departments and divisions. .*

3. Have any persons with disabilities been hired as a part of this effort?

RESPONSE:

- *No.*
- *Based on the July 29, 2009 County Attorney opinion, the County Charter requires that all personnel actions under the merit system be “based on demonstrated merit and fitness. The Charter forbids the use of a noncompetitive hiring process based on an immutable, non-merit factor such as a disability.” See pages 7 and 8 in the county attorney Memo, Attachment 4 in the Appendix.*

4. What was the FY09 funding for this effort? FY10 funding?

RESPONSE:

- *The amount of \$10,000 was allocated for the FY09 effort.*
- *No funding was allocated for FY10.*

APPENDIX

Reference documents included in the Appendix include the following:

Attachment 1. [Pages 14-16]

Office of Human Resources website pages related to persons with disabilities.

Attachment 2. [Pages 17 – 22]

Copy of The Americans with Disabilities Amendment Act, 2008 Reasonable Accommodations and Worker’s Assistance Countywide Procedures Manual

Attachment 3. [Page 23]

Office of Human Resources Mandatory Training Schedule for the Americans With Disabilities Act – Employment Law.

Attachment 4. [Page 24]

July 29, 2009 Memo regarding Noncompetitive Hiring of Persons with Disabilities

cc: Kathleen Boucher, ACAO
Steven Emanuel, Director, DTS
Patrick Lacefield, PIO

Attachment 1.

Website Accessibility Issues / Office of Human Resources web pages

The following documents are posted on the Office of Human Resources Website pages.

Item 1.

CAREERS webpage -- see page 14

Item 2.

How To Apply webpage – see page 15

Item 3.

Reasonable Accommodations – see page 15

Item 4.

Internship Frequently Asked Questions – [excerpt only] see page 16.

Item 1.

CAREERS webpage

Source

<http://www.montgomerycountymd.gov/content/ohr/career/splash.asp>

PLEASE NOTE

Due to current fiscal constraints, the County is under a hiring freeze. Positions listed on the career website with a * are only open to current County employees. Applications from other candidates for these positions will not be processed. Positions without a * on the career website are open and all applicants are encouraged to submit an application.

The Office of Human Resources does not accept hard copy resumes or application forms. Instead, applicants for County positions must apply on-line. First-time users will need to create an account and can then apply for jobs and check the status of submitted applications on-line at any time. Please see the section below titled "How to Apply" for detailed instructions regarding how to use the on-line application system. Public access computers are available in the Office of Human Resources and at all County Libraries. Users who lack computer skills or need help with the application process should visit the Office of Human Resources or call 240-777-5000 Voice or 240-777-5126 TTY for assistance.

Montgomery County Government is an equal opportunity employer, committed to workforce diversity. Accordingly, as it relates to employment opportunities, the County will provide reasonable accommodations to applicants with disabilities, in accordance with the law. Applicants requiring a reasonable accommodation for any part of the application and hiring process should contact the Office of Human Resources and request a Human Resources Specialist at 240-777-5000 Voice or 240-777-5126 TTY for assistance and guidance. You may also request a reasonable accommodation for the selection process via email to Special.Accommodations@montgomerycountymd.gov. Individual determinations on requests for reasonable accommodation will be made in accordance with all applicable laws.

Thank You.

Joseph Adler, Director

Item 2.

How To Apply. Excerpt of WEBPAGE

Source:

<http://www.montgomerycountymd.gov/content/ohr/career/level4.asp?groupid=N&inkid=How+to+Apply>

How to Apply

To apply for jobs with Montgomery County, an applicant must use our online application system. We no longer accept hard copy paper resumes or resumes submitted via email or fax. All applications must be completed online and submitted by the requisition closing date. Appended below are instructions on how to apply online. Public access computers are available in the Office of Human Resources and at all County Libraries. If you need assistance with the online application process, please call the Office of Human Resources at 240-777-5000 Voice or 240-777-5126 TTY.

- Montgomery County Government is an equal opportunity employer, committed to workforce diversity. Accordingly, as it relates to employment opportunities, the County will provide reasonable accommodations to applicants with disabilities, in accordance with the law. Applicants requiring a reasonable accommodation for any part of the application and hiring process should contact the Office of Human Resources and request a Human Resources Specialist at 240-777-5000 Voice or 240-777-5126 TTY for assistance and guidance. You may also request a reasonable accommodation for the selection process via email to Special.Accommodations@montgomerycountymd.gov. Individual determinations on requests for reasonable accommodation will be made in accordance with all applicable laws.

Item 3.

Reasonable Accommodations

Source:

<http://www.montgomerycountymd.gov/content/ohr/career/level4.asp?groupid=N&inkid=Reasonable+Accommodations>

Reasonable Accommodations

The County will provide, upon request, reasonable accommodations to qualified applicants and employees with disabilities, unless doing so would cause an undue hardship to the agency. A reasonable accommodation is any change in the hiring process or work environment or in the way work is performed that results in equal employment opportunity for an individual with a qualifying disability.

• **Applying for a job:**

Applicants requiring a reasonable accommodation for any part of the application and hiring process should contact the Office of Human Resources and request a Human Resources Specialist at 240-777-5000 Voice or 240-777-5126 TTY for assistance and guidance. You may also request a reasonable accommodation for the selection process via email to Special.Accommodations@montgomerycountymd.gov. Individual determinations on requests for reasonable accommodation will be made in accordance with all applicable laws.

Applicants who need assistance with the online application process are welcome to come to the Office of Human Resources where staff will be happy to assist you. The Office of Human Resources is located at 101 Monroe Street, 7th floor, Rockville, Maryland.

• **Interviewing for a job:**

Applicants who need a reasonable accommodation for the interview process should request the accommodation from the hiring manager at the time the interview is scheduled. However, applicants with disabilities are not required to disclose their disability prior to or during an interview. An interviewer may ask questions about job qualifications and about how the applicant can perform the essential functions of the job. An interviewer is prohibited from asking questions about an applicant's disability that are not relevant to the applicant's ability to perform the essential job functions of the vacancy at issue.

• **If you are hired:**

Qualified individuals with disabilities may be provided reasonable accommodations, upon request, during the period of employment. Individuals who need reasonable accommodation are responsible for making their needs known to their supervisors or Occupational Medical Services. Reasonable accommodations can apply to the duties of the job, and/or where and how job tasks are performed. Examples of reasonable accommodations include providing interpreters or readers; modifying job duties; restructuring work sites; providing flexible work schedules; and providing accessible technology or other workplace adaptive equipment.

Item 4.

Internship Frequently Asked Questions

Source:

<http://www.montgomerycountymd.gov/content/ohr/career/level4.asp?groupid=I&linkid=Internship+Frequently+Asked+Questions+%28FAQs%29>

EXCERPT OF WEB PAGE

Does the County's Internship Program accept individuals with disabilities?

Yes. The County is an equal opportunity employer. Placement is based on qualifications and performance, regardless of your race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. If you need accommodation for the application process or the internship assignment, please contact us at 240-777-5000, 240-777-5126(TTY), or email us at Special.Accommodations@montgomerycountymd.gov.

Attachment 2:

The Americans with Disabilities Amendment Act, 2008 Reasonable Accommodations and Worker's Assistance Countywide Procedures Manual

The Americans with Disabilities Amendment Act, 2008 Reasonable Accommodations and Worker's Assistance Countywide Procedures Manual

Introduction:

The American's with Disabilities Act 1990 and Amendments Act 2008 are federal anti-discrimination statutes designed to remove barriers which prevent qualified individuals with disabilities from enjoying the same employment opportunities that are available to persons without disabilities.

Like the Civil Rights Act of 1964 that prohibits discrimination on the bases of race, color, religion, national origin and sex, the ADA seeks to ensure access to equal employment opportunities based on merit. It does not guarantee equal results, establish quotas, or require preferences favoring individuals with disabilities over those without disabilities.

However, while the Civil Rights Act of 1964 prohibits any consideration of personal characteristics such as race or national origin, the ADA necessarily takes a different approach. When an individual's disability creates a barrier to employment opportunities, the ADA requires employers to consider whether reasonable accommodation could remove the barrier.

The ADA thus establishes a process in which the employer must assess a disabled individual's ability to perform the essential functions of the specific job held or desired. While the ADA focuses on eradicating barriers, the ADA does not relieve a disabled employee of applicant from the obligation to perform the essential functions of the job. To the contrary, the ADA is intended to enable disabled persons to compete in the workplace based on the same performance standards and requirements that employers expect of persons who are not disabled.

However, where an individual's functional limitation impedes such job performance, an employer must take steps to reasonably accommodate, and thus help overcome the particular impediment, unless to do so would impose an undue hardship. Such accommodations may be adjustments to the way a job customarily is performed or to the work environment itself.

This process of identifying whether, and to what extent, a reasonable accommodation is required should be flexible, and should involve both the employer and the individual with a disability. Of course, the determination of whether an individual is qualified for a particular position must necessarily be made on a case-by-case basis. No specific form of accommodation is guaranteed for all individuals with a particular disability. Rather, an accommodation must be tailored to match the needs of the disabled individual with the requirements of the job's essential functions.

This case-by-case approach is essential if qualified individuals of varying abilities are to receive equal opportunities to compete for an infinitely diverse range of jobs.

Purpose:

The purpose of this manual is to provide information to Montgomery County Government applicants and employees in the way of Reasonable Accommodations under Title I (Employment) of the ADA. In addition, this manual's purpose is to assist in helping one to distinguish the differences between an applicant and employee covered to receive a reasonable accommodation under Federal Law.

Lastly, the purpose of this manual is to provide funding information concerning the procurement of reasonable accommodations in the workplace.

Disability under the ADA:

An individual with a disability under the ADA is a person who has:

- a physical or mental impairment that substantially limits one or more major life activities;
- a record of such an impairment; or
- is regarded as having such an impairment.

Reasonable Accommodation Defined:

Reasonable accommodation is a modification or adjustment to a job, the work environment, or the way things are usually done that enables a qualified individual with a disability to enjoy an equal employment opportunity. An equal employment opportunity means an opportunity to attain the same level of performance or to enjoy equal benefits and privileges of employment as are available to an average similarly situated employee without a disability. The ADA requires reasonable accommodation in three aspects of employment.

- to ensure equal opportunity in the application process;
- to enable a qualified individual with a disability to perform the essential functions of a job; and
- to enable an employee with a disability to enjoy equal benefits and privileges of employment.

Examples of Reasonable Accommodation:

- restructuring a job by reallocating or redistributing marginal job functions;
- altering when or how essential job function is performed;
- obtaining or modifying equipment or devices;
- modifying examinations, training materials or policies;
- providing qualified readers and interpreters;
- reassignment to a vacant position;
- allowing an employee to provide equipment or devices that an employer is not required to provide.

NOTE: The examples in this manual cannot cover the range of potential accommodations, because every reasonable accommodation must be determined on an individual basis.

Applicant Request for Reasonable Accommodation:

An applicant can make a request for reasonable accommodations at two (2) junctures:

- 1) At such a time when contacted by the Human Resources Recruiter to be informed of the opportunity to participate in an interview, considered the *pre-employment job offer phase*; and
- 2) At the *post-conditional job offer phase* after the position has been offered, during the medical examination phase.

Examples of pre-employment job offer phase

- An applicant is called for an interview and needs assistance in effectively performing the interview by, perhaps, having a sign language interpreter;
- Or, requesting any written materials to be provided in Braille;

- Or, requesting that the interview be in an accessible location.

Examples of post-conditional offer phase

- An applicant indicates during this phase, a request for reasonable accommodation to effectively perform the job.

How an Applicant Makes the Request:

- 1) If an applicant desires to make a request for the interview, he or she does this by indicating such to the HR Recruiter. The recruiter will contact the County Disability Program Manager for assistance.
- 2) If an applicant desires to make a request at the post-conditional offer phase, such request can be indicated on a Medical History Form or at the completion of the physical examination.

At either juncture, a determination will be made as to if the request can be granted, and or denied.

Employee Request for Reasonable Accommodation:

An employee may make a request for reasonable accommodation at any point during the course of employment with the County.

How an Employee Makes the Request:

An employee can make a request for reasonable accommodation through a number of ways:

- 1) Verbally indicating the request to their supervisor,
- 2) Contacting the County Disability Program Manager, or
- 3) Applying for the request through the ADA Reasonable Accommodation Request Form via the Office of Human Resources' webpage.

What happens once the request is made?

Once the request is made, the individual with the disability is contacted by the Disability Program Manager to engage in the "interactive process". The interactive process is the moment in which the employer and individual discuss the request and identifies what types of reasonable accommodations may be effective in removing workplace barriers of a particular job.

How are reasonable accommodations identified?

A review of the individual's particular job classification specification is performed to capture the essential functions. The essential functions are then paired with the limitations of the individual's disability. After which, the specific request is considered for "reasonableness" between the employer and employee. If the request is "reasonable" and effectively removes the workplace barriers, the employee or applicants preferred request is selected.

If, however, the request is not reasonable and non-effective, the Disability Program Manager determines the type of reasonable accommodation to be applied as the accommodation.

What if the accommodation offered is not what I requested?

An accommodation can sometimes not be exactly what an applicant or employee has requested; the law does not require the employee to receive the specific request but rather what is effective and reasonable.

What difference does it make if my disability is obvious or not?

It makes a big difference. An individual with an obvious disability may not be required to show medical documentation of their condition; while, an individual with a chronic-non-obvious medical condition will need to make their disability known to their employer, through medical documentation if requesting a reasonable accommodation.

Examples of obvious disabilities:

- Blindness
- Deafness
- Wheelchair Bound

Examples of chronic non-obvious disabilities:

- Diabetes
- Sickle Cell Disease
- Cancer
- Bi-polar disorder

NOTE: Listed above is only a small representation of the many chronic medical conditions that could potentially rise to the level of an ADA defined disability.

How are reasonable accommodations implemented?

Once the appropriate reasonable accommodation has been identified and selected, a recommendation in the form of a memorandum from the County Disability Program Manager is sent to the hiring department for implementation.

Who pays for my reasonable accommodations?

As you may know, some reasonable accommodations are tactile and others are abstract in nature. Tactile-type reasonable accommodations typically have a direct cost associated with them. Meaning, an augmentative or adaptive device like voice-activated software, may have to be purchased before implementation. While, an abstract-type reasonable accommodation may only have marginal functions-modification associated to them.

Depending on the type of reasonable accommodation you have, the hiring department pays for up-to the first \$500.00 of the cost and the County Office of Human Resources pays for the remaining portion.

The Montgomery County Office of Human Resources has a reasonable accommodations budget of \$15,000.00, useable for assisting County department with accommodations cost.

Is there an instance in which I could be denied a reasonable accommodation?

The ADA requires that if an employer has to deny a reasonable accommodation, that the reason be that providing such an accommodation would create Undue Hardship to the employer.

What constitutes an Undue Hardship?

An action that requires a significant difficulty or expense in relation to the size of the employer, the resources available and the nature of the operation.

What is the definition of an Undue Hardship?

An Undue Hardship defined by the ADA is an action that is:

- a) unduly costly;
- b) extensive;
- c) substantial;
- d) disruptive; or
- e) that would fundamentally alter the nature or operation of the business.

Appeals Process for Reasonable Accommodation if denied

Montgomery County Government allows for an appeals-process through the County Office of Human Resources to the OHR Director, and ultimately the County Chief Administrative Officer.

How do I appeal?

If you are denied a request for a reasonable accommodation, you may write a letter of appeal to the care of the Office of Human Resources Director.

What should my letter of appeal include?

A letter of appeal should include:

- a) the type of reasonable accommodation requested and; b) the rationale for your request.

What happens after I file an appeal?

The OHR Director, in consultation with the Disability Program Manager, will discuss and review the elements of your request in order to render an equitable decision in the way of fair-balance for both you as an employee and the County as the employer. After review and discussion, you will be issued a memorandum from the OHR Director indicating a decision to the appeal.

What if I want to appeal the OHR Director's decision?

If you want to appeal the OHR Director's decision, you may write a letter of appeal to the CAO (Chief Administrative Officer) of the County.

What should my letter of appeal include to the CAO?

A letter of appeal to the CAO should include: a) the reason you disagree with the OHR Director's decision regarding your appeal for reasonable accommodation; b) the type of reasonable accommodation requested; and, C) the rationale for your request for a reasonable accommodation.

The CAO will make a decision on the basis of your appeal and will provide the decision to you in a memorandum format.

NOTE: Decisions from the CAO are final regarding the appeal of a reasonable accommodation.

Worker's Assistance Program

Montgomery County Government provides the Worker's Assistance Program to employees that have medical conditions for which do not rise to the level of an ADAA'08 disability. The program seeks to assists employees with temporary medical conditions secure assistance in some a way that may aid in adjusting to the work environment more effectively.

Examples of such aid-types could be:

- a) a humidifier
- b) a small fan
- c) a lumbar pillow

Because the Worker's Assistance Program is a service offered by the County, with no Federal mandates associated; an employee's hosting department maintains full discretion to approve or deny any request under worker's assistance. This means, unlike the reasonable accommodation process, an employee may be denied a worker's assistance request, without recourse to an appeals process.

NOTE: Through the Worker's Assistance application form, monitoring is performed to identify if a temporary medical condition may potentially rise to the level of an ADAA'08 disability. If such an identification is captured, the Disability Program Manager will engage the employee in an interactive process to explore the details of the medical conditions long-term indicators. If long-term indicators are determined, the DPM will recommend the track or ADAA'08 Reasonable Accommodation.

Contact Information for questions:

Ricky L. Wright, M.S., Disability Program Manager
Office of Human Resources
Occupational Medical Services

240-777-5045

Attachment 3

Office of Human Resources Mandatory Training Schedule for the Americans With Disabilities Act – Employment Law.

The following training course schedule is listed on page 56 of the FY 2010 Planning for the Future: FY 10 Training Catalog. County staff can register for the course online.

Source webpage:

<http://www.montgomerycountymd.gov/content/ohr/ResourceLibrary/files/Final%20Catalog.pdf>

AMERICANS WITH DISABILITIES ACT - EMPLOYMENT LAW

Dates:

October 22, 2009	- class id # 29587
November 20, 2009	- class id # 29588
December 15, 2009	- class id # 29589
January 26, 2010	- class id # 29590
February 23, 2010	- class id # 29591
March 25, 2010	- class id # 29592
April 21, 2010	- class id # 29593
May 25, 2010	- class id # 29594
June 24, 2010	- class id # 29595

Time: 9:00 a.m. - 12:00 noon

Length/CEU's: One day course / no CEU's

Target Audience: All employees

Instructor: Staff from the Office of Human Resources, Occupational Medical Services Team

Description:

This course focuses on the Title I portion of The Americans with Disabilities Act 2008 as Amended (ADAA). The Title I "employment portion" of the ADAA concentrates on specific provisions regarding Reasonable Accommodations, Medical Examinations, Interview Techniques and overall approaches to diminishing attitudinal and institutional barriers associated with myths regarding individuals with disabilities. In this course you will learn about Title I and how to be more inclusive in the hiring process while balancing the needs of this population against fair and equitable facilitation in management and supervision.

ATTACHMENT 4.

MEMO: July 29, 2009 Noncompetitive Hiring of Persons with Disabilities

MANDATORY COURSES

Montgomery County is committed to providing a workplace that promotes fairness, equity and safety for all its employees. We also have a responsibility to comply with federal, state and county laws. To ensure managers and employees are aware of the County's policies, we provide mandatory training for all employees. It is the responsibility of employees and their managers to ensure that appropriate training is taken.

Check the training catalog for course descriptions and dates.

County Employees of all Grades are required to take the following courses:

- ❖ **Preventing Workplace Harassment** (formally called Sexual Harassment)
 - All employees must complete this course in the first three months of employment.
 - Employees are also required to take a refresher course every 3 years.
- ❖ **Security Awareness (ISATP)**
 - Required computer based training course (CBT) for all employees with a County username and password. The CBT should be completed in the first three months of employment - <http://portal.mcgov.org/ft/>
- ❖ **Limited English Proficiency**
 - Required for all frontline employees.
- ❖ **Interviewing and Selecting Employees**
 - Required for all interviewing panels and hiring managers

Managers and supervisors are required to take the following courses:

- ❖ **American's with Disability Act: Employment Law** **New Requirement**
- ❖ **Basic Labor/Employee Relations**
- ❖ **Planning for Excellence: Performance Management Basics**
- ❖ **EEO/Diversity Management**
 - This course serves as a refresher; required every 3 years.
- ❖ **Linking Pay to Performance**
 - Required for all managers and supervisors of non bargaining unit employees.
- ❖ **Substance Abuse in the Workplace**
 - For supervisors of CDL holders.
- ❖ **Leadership Institute (for MLS)**

To register using the new web Training Registration and Management System, go to the link: <https://int01.mcgov.org/ent/s1/ohr/> and login using your county username and password.

If you do not have access to a County username and password, you may register by using the Automated Training Registration Line (240) 777- 5122.

If you need special services or reasonable accommodations to participate in any training opportunity provided by the Office of Human Resources, please call 240-777-5116 at least 10 days prior to the course starting date.

If you should have any questions, please call a member the Training and Organizational Development Team on 240-777-5116.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Isiah Leggett
County Executive

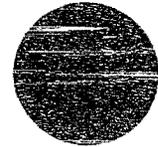
May 29, 2009

Uma Ahluwalia
Director

The Honorable Phil Andrews, President
Montgomery County Council
100 Maryland Avenue
Rockville, Maryland 20850

In File

049450



Dear Mr. Andrews:

As you know people with severe developmental disabilities of all ages are in crisis. Their needs are intense, continuous, unrelenting, and life-long. We see it every day in our interactions in the community, in requests for assistance made to public agencies, in collaborations with schools and service providers, and in our day-to-day encounters with families. For the past year, a committed group of family members, advocates, service providers and Montgomery County government staff have contributed their time, creativity and expertise to consider how we might help address this challenge. As a result of this collaboration, we are proud to present two reports: *Partnerships for a Positive Future: 2009 Study Results from the Workgroup on the Future for People with Severe Developmental Disabilities, Including Autism and A Call to Action: Strategic Steps for Real Change.*

This two-part report highlights the *need for urgency* in addressing the needs of people with severe developmental disabilities and their families, and presents a *call to action*, with priorities and recommendations—many of which can be accomplished with little or no cost.

The priorities in the reports offer recommendations that so that we can:

- ◆ Respond proactively to people in crisis who are on waiting lists;
- ◆ Provide support for individuals and families through life cycle transitions;
- ◆ Increase support to families across the lifespan;
- ◆ Increase the number of highly-skilled, responsive, and adequately paid direct support and clinical professionals; and
- ◆ Identify and utilize the full array of community services and support available to all County residents.

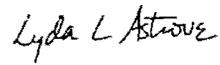
Please read through our Study's findings and share this information with others who can assist in implementing its recommendations. The reports also can be accessed at <http://www.montgomerycountymd.gov/hhstmpl.asp?url=/content/hhs/ads/disabilitysite.asp>.

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Aging and Disability Services

Only by working together, tapping into the existing resources, and collaborating to create additional supports and services can we address the needs of our neighbors with disabilities and their families. Join us in creating a positive future that enhances the community for us all.

Sincerely,



Lyda Astrove



John J. Kenney, Ph.D.
Workgroup Co-Chairs