



MERIT SYSTEM PROTECTION BOARD

RACIAL EQUITY ACTION PLAN

Department: Montgomery County Merit System Protection Board

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MSPB's Equity Guiding Statements:

Mission Statement

The mission of the Merit System Protection Board (MSPB or Board) is to oversee the merit system and protect County government employee and job applicant rights guaranteed under the merit system law.

Commitment to Racial Equity and Social Justice

The MSPB recognizes that the history of racism in our country has led to many current day disparities in housing, education, and employment, among other things, and that racial inequities have become institutionalized in the policies and practices of many agencies and organizations, including governmental agencies.

When carrying out its quasi-judicial responsibilities, the Board must make decisions without regard to race, religion, gender, sex, national origin, age, marital status, or disability. Instead, to achieve racial equity and social justice, the Board (1) continuously reviews and updates the Board's adjudication policies to minimize implicit bias; (2) improves communication with County merit system employees and applicants for employment; (3) removes accessibility barriers for persons with disabilities; and (4) conducts periodic audits of the merit system to ensure fair and equitable administration of merit system principles.

This Commitment Statement is a living, enduring statement that captures the Board's ongoing commitment to advancing an equitable community and to affirmatively furthering racial equity and social justice in Montgomery County.

Departmental Context:

The MSPB is a three-member, quasi-judicial body that is supported by a staff of one full-time County employee and one part-time County employee. The Board is part of the legislative branch of the County government. The members of the MSPB are appointed by the Montgomery County Council and serve staggered three-year terms. No more than two members may be from the same political party.

Section 403 of the Montgomery County Charter establishes the Merit System Protection Board. The duties of the Merit System Protection Board are contained in the Charter of Montgomery County, Maryland, Article 4, Merit System and Conflicts of Interest, Section 404, Duties of the Merit System Protection Board; the Montgomery County Code, Article II Merit System, Chapter 33, Section 33-7; and the Montgomery County Personnel Regulations, Section 35. These duties include hearing direct appeals from County merit system employees who have been removed, demoted, suspended, or involuntarily resigned from County service. The Board also reviews appeals from grievance decisions filed pursuant to the merit system's grievance procedure found in Montgomery County Personnel Regulations, Section 34. The Board must protect employees and applicants for merit system employment rights from arbitrary and capricious or illegal recruitment and supervisory actions. The Board's remedial powers must be exercised as needed to rectify improper personnel actions. The Board is prohibited from making decisions based upon race, religion, gender, sex, national origin, age, marital status, or disability.

The Board must comment on any proposed changes in the merit system law or regulation, at or before the public hearing thereon. The Board conducts periodic independent audits of the merit system's classification and compensation systems, as well as other audits deemed necessary for the equitable and efficient administration of the merit system. Additionally, the Board conducts investigations into retaliation complaints involving "whistleblower" reports of fraud, waste, and abuse.

The Board's jurisdiction is not plenary but is limited to that which is granted to it by statute. *See* MSPB Case No. 10-09; MSPB Case No. 10-12; MSPB Case No. 10-16; *see also Blakehurst Lifecare Community v. Baltimore County*, 146 Md. App. 509, 519 (2002) ("An administrative agency is a creature of statute, which has no inherent powers and its authority thus does not reach beyond the warrant provided it by statute."); *King v. Jerome*, 42 F.3d 1371, 1374 (Fed. Cir. 1994) (U.S. Merit Systems Protection Board's jurisdiction is only over those actions which are specifically provided for by some law, rule, or regulation); *Monser v. Dep't of the Army*, 67 M.S.P.R. 477, 479 (1995).

Thus, the MSPB has no ability to act outside of the authority given to it legislatively by the County Council, and the Board cannot act independently to create new programs or to expand its jurisdiction. That can only be done by the County Council, through legislative enactments. Because the County Council has professional staff who analyze all newly proposed legislation for its racial equity and social justice impact prior to consideration of that legislation by the members

of the County Council, any new programs or duties that are assigned to the MSPB going forward should, by default, have been reviewed by Council staff for their racial equity and social justice impact, and that impact should have been considered by the members of the County Council prior to the enactment of any legislation that makes changes to the MSPB's authority and jurisdiction.

As a quasi-judicial agency, the MSPB is subject to certain legal and ethical constraints that prevent it from being able to directly collect and disaggregate data pertaining to the race and ethnicity of the participants in its quasi-judicial proceedings.¹ However, there are other methods for collecting data through MSPB's oversight and audit powers. The Board has made suggestions to address this in the past and reiterates those suggestions in its Action Plan.

Date: December 17, 2025

¹ The Maryland Rules of Judicial Conduct (Md Rule 18-102.3) prohibit judges from asking questions about race or ethnicity unless it is a factor in the case (such as human rights discrimination case). Case law indicates that these rules apply to quasi-judicial agencies such as the MSPB. The fact that our cases can be appealed to the courts makes having this information in the record problematic, whether it's voluntarily provided by the applicants on the application, or otherwise collected by the Board at or after the proceeding in some kind of post-proceeding survey.

RACIAL EQUITY ACTION PLAN GOALS

Goal 1: Review and update the Board’s adjudication policies, appeal and hearing attendance requirements, and training requirements to minimize implicit bias.

Actions:

- a. Review how the Board analyzes cases when issuing final decisions as well as how the Board addresses issues that arise during litigation to avoid inviting implicit bias into the Board’s deliberations.

Remove as much identifying information from case summaries so that the Board members are applying the law to facts and avoid the risk of implicit bias. Board members and staff must evaluate whether the nature of an appeal requires the Board to discuss, reference, or include certain identifying information of a litigant. If not, the Board must refrain from discussing such information to avoid the risk of implicit bias.

Standardize the deficient filing process so that all appellants are provided equal and ample opportunity to correct deficiencies. The Board seeks to remove any risk that an appellant is treated differently due to race, religion, gender, sex, national origin, age, marital status, or disability. With the standardization, the Board is limiting, but not eliminating, discretion to evaluating an appellant's explanation for deficiencies.

What external and internal partners will be engaged to develop and implement the action?	What's available and what is needed to carry out this action?	Responsible Parties: Who will be responsible for moving the work forward? (Should identify departmental titles, not just individuals)	Feasible timeframe for carrying out the action (beginning and end dates)	What performance measures will you use to track progress on this action?	What is the desired outcome of this action?	Where are you in the process? What's the plan to course correct? What is your plan of succession (to ensure the work continues)?
MSPB Staff; Board members	Evaluate prior MSPB practices and decisions	MSPB Ex. Dir.	Ongoing effort; no date	Update process as needed; respond to comments and complaints	Ensure implicit bias is excluded from Board decisions	Ongoing effort that will continue indefinitely

- b. Ensure that the appeal process and hearings are accessible to all potential litigants. Utilize remote hearing options to provide more accessibility for those with mobility issues. Provide interpreter services upon request.

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MSPB staff; CUPF; Council Clerk; TEBS staff; Council IT staff	Technology is available; for those without access to proper technology, hearing room availability	MSPB OSC; MSPB Ex. Dir.	Ongoing effort; no date	Update process as needed; respond to comments and complaints	Remove any barriers to participation	Ongoing effort that will continue indefinitely

- c. Ensure that Board members and Board staff have access to and complete racial equity and social justice training focusing on implicit bias.

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MSPB staff; MSPB Board members; ORESJ staff; OHR staff	Various trainings are available to MSPB staff; however, training is limited for Board members who are not County employees	MSPB Ex. Dir.; MSPB OSC; ORESJ staff; OHR staff	Ongoing effort; no date	MSPB staff should complete implicit bias training at least every two years; MSPB Board members should complete implicit bias training at the beginning of each appointment term	Ensure implicit bias is excluded from Board decisions	Ongoing effort that will continue indefinitely

Goal 2: Improve communication with County merit system employees and applicants for employment.

Actions:

a. Maintain a significant web presence. Users can find useful and up-to-date information about the MSPB on three County websites:

1. MSPB website

The public can obtain easily decipherable information on the MSPB website. To help inform the public about the Board and what it does, the Board's website includes plain language explanations of the various functions of the Board. In addition, to help inform the public about how to make submissions in the various types of cases handled by the Board, the Board's website includes an easy-to-follow online appeal submission tool. The public can also obtain information about the Board via telephone or in person. Board staff answer their phones to provide direct assistance to those persons seeking information or advice about Board processes and filing requirements. Board staff also meet with the members of the public in our office to help them with their questions. Additionally, the Board provides information on MC311. The Board includes access to the Board's annual reports, which date back to when the MSPB was formed, as well as access to audit reports and public meeting minutes and agendas. Finally, the Board provides access to the Board's decisions to allow litigants to perform legal research.

2. County Boards, Committees, and Commissions website

In addition to having informational material posted on the Board's website, the County's Boards, Committees, and Commissions webpage contains a paragraph about the MSPB, sets forth its statutory authority, and describes what the Board does, using plain language.

3. County Council website

Finally, the public can find information about the MSPB on the County Council's website, on their Boards & Commissions webpage. This information includes a brief, plain language description about what the Board does, and a button that takes the user to the Board's website.

What external and internal partners will be engaged to develop and implement the action?	What's available and what is needed to carry out this action?	Responsible Parties: Who will be responsible for moving the work forward? (Should identify departmental titles, not just individuals)	Feasible timeframe for carrying out the action (beginning and end dates)	What performance measures will you use to track progress on this action?	What is the desired outcome of this action?	Where are you in the process? What's the plan to course correct? What is your plan of succession (to ensure the work continues)?
MSPB Staff, Council IT Staff, TEBS Staff	Current staff available for this purpose	MSPB Staff, Council IT Staff, TEBS	Ongoing effort; no end date	Maintain web presence; update as needed; respond to complaints (if any)	Make information easily available to the public	This is an ongoing effort that will continue indefinitely

- b. Continually seek to improve the Board’s website. The Board continues to work on its own and with IT staff to make its website easier for the public to use by enhancing intuitiveness, improving navigability, and constantly striving to use plain language.

What external and internal partners will be engaged to develop and implement the action?	What’s available and what is needed to carry out this action?	Responsible Parties: Who will be responsible for moving the work forward? (Should identify departmental titles, not just individuals)	Feasible timeframe for carrying out the action (beginning and end dates)	What performance measures will you use to track progress on this action?	What is the desired outcome of this action?	Where are you in the process? What’s the plan to course correct? What is your plan of succession (to ensure the work continues)?
MSPB Staff, Council IT Staff, TEBS Staff	Current staff available for this purpose	MSPB Staff; Council IT; TEBS	Ongoing effort; no end date	Review and update MSPB website on a regular basis; respond to complaints (if any)	Make information easily available to and understandable by the public	This is an ongoing effort that will continue indefinitely

- c. Continually work to improve website accessibility. The Board continues to work on its own and with IT staff to make its website, and the content posted on its website, more accessible to all people, regardless of identity or ability. This work has included and will continue to include the re-formatting of content (past content and present/future content) to ensure accessibility by screen readers, the inclusion of a language translation feature, and information about how to request alternative formats and reasonable accommodations.

Update the Board’s appeal form with more concise and easier to understand language, as well as translatable.

What external and internal partners will be engaged to develop and implement the action?	What’s available and what is needed to carry out this action?	Responsible Parties: Who will be responsible for moving the work forward? (Should identify departmental titles, not just individuals)	Feasible timeframe for carrying out the action (beginning and end dates)	What performance measures will you use to track progress on this action?	What is the desired outcome of this action?	Where are you in the process? What’s the plan to course correct? What is your plan of succession (to ensure the work continues)?
MSPB Staff, Council IT Staff, TEBS Staff	Current staff generally available for this; may need outside assistance with technical aspects and with reformatting of existing materials to make accessible	MSPB Staff; Council IT; TEBS; ADA Compliance Manager; potentially outside contractor	Ongoing effort; no end date.	Persist with accessibility improvements; update as needed; respond to complaints (if any)	Make the MSPB website accessible to all	This is an ongoing effort that will continue indefinitely.

Goal 3: Develop and implement a non-biased process to gather feedback from participants in the Board’s proceedings.

Actions:

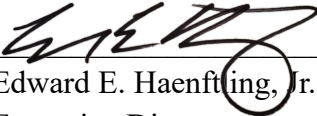
- a. Select/create a survey that asks participants in the Board’s quasi-judicial proceedings about (1) any barriers they encountered in accessing the Board’s processes, and (2) their perception of whether they were treated fairly.²

² This survey should not focus on outcome, which is determined by the application of the law to the facts of the individual case. The Board members do their best to adjudicate every case fairly under the law.

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MSPB can work with OZAH and BOA to recommend models that could be used for this survey to a third-party administrator	A third-party administrator, not employed by the MSPB, BOA, or OZAH, must be chosen to administer this survey; the hope was that this could be administered by OLO or Council staff; additional funding may be needed	BOA Ex Dir, OZAH Dir, MSPB Ex Dir, third party administrator	Within the next three years (by the end of FY28) with Council buy in; it is not known if there would be costs associated with this that would have be budgeted for	Survey data could be disaggregated to show (1) barriers encountered in accessing the Board’s processes, incl. by whom, and (2) participant’s perception of the fairness with which they were treated	Identify barriers to full participation and impediments to fairness	This was formally proposed to Council in 2024.

- b. Request that the County Council assign staff from a neutral third-party office not employed by the Board, such as staff from the Office of Legislative Oversight or Council staff, to collect, review and summarize the responses for the Board and interested Council staff.

What external and internal partners will be engaged to develop and implement the action?	What's available and what is needed to carry out this action?	Responsible Parties: Who will be responsible for moving the work forward? (Should identify departmental titles, not just individuals)	Feasible timeframe for carrying out the action (beginning and end dates)	What performance measures will you use to track progress on this action?	What is the desired outcome of this action?	Where are you in the process? What's the plan to course correct? What is your plan of succession (to ensure the work continues)?
BOA, OZAH, MSPB, OLO, County Council	A third-party administrator needs to be selected, a survey needs to be adopted, additional funding may be needed	BOA Ex Dir, OZAH Dir, MSPB Ex Dir, third party administrator	The BOA, OZAH, and MSPB continue to seek this	MSPB staff cannot collect or disaggregate data, but can review findings of third-party administrator	Identify barriers to full participation and impediments to fairness	This was originally proposed to Council by BOA in a written Memo in 2024. Seek to join BOA and OZAH in this endeavor



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 Merit System Protection Board