



New England Commission of Higher Education  
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## **POLICY AND PROCEDURES FOR THE APPEAL OF ADVERSE ACCREDITATION ACTION AFFECTING INSTITUTIONAL ACCREDITATION OR CANDIDATE FOR ACCREDITATION STATUS**

**SECTION 1. Right of Appeal.** An institution shall have the right to appeal an accrediting action made by the New England Commission of Higher Education (“Commission”) or the Executive Committee of the Commission which is adverse to the institution’s accreditation. For purposes of this policy an adverse accrediting action includes probation, denial of candidacy for accreditation, withdrawal of candidacy for accreditation, denial of accreditation, or withdrawal of accreditation.

A copy of this Policy and Procedure shall be provided to the institution along with the notice of the adverse accrediting action.

The accreditation status of the institution shall not change until all rights of appeal pursuant to this Policy and Procedure are exhausted or extinguished.

Actions regarding adverse accrediting actions and the review of those decisions shall be carried out in a timely and expeditious manner so as to insure protection of the public interest and the institution.

**SECTION 2. Adverse Accrediting Action.** After the Commission approves an adverse accrediting action, if no notice of intent to appeal is filed as provided in Section 3 below, the adverse accrediting action becomes final. The Commission shall, no later than fourteen (14) days after the adverse accrediting action becomes final, notify the institution, the United States Secretary of Education and the appropriate state licensing or authorizing agency of its final decision. The notification shall be in writing and shall specify the standards and/or criteria not met. Within one (1) business day of notifying the institution of a final adverse accrediting action the Commission shall provide written notice to the public of the final adverse accrediting action.

**SECTION 3. Notice of Intent to Appeal and Filing the Appeal.** An institution may appeal the adverse accrediting action of the Commission by filing a notice of intent to appeal no later than seven (7) days following receipt of the written notice of the Commission’s adverse accrediting action. See Section 4 for the grounds for an appeal. A notice of an intent to appeal shall be filed only with the prior authorization of the governing board of the institution. The notice of intent to appeal shall be sent via email, return receipt requested, to the President of the Commission. The notice of intent to appeal shall contain a statement of the ground(s) on which the appeal will be made but need not provide evidence in support of the appeal.

The appeal will be administered by the Commission. Administration of the appeals process entails scheduling, making logistical arrangements, distributing materials, and securing legal counsel for the appeals panel.

Within fifteen (15) days of filing a notice of intent to appeal, the institution shall send its written appeal by email, return receipt requested, with the President of the Commission. The written appeal shall set forth the institution’s evidence and its argument in support of its appeal. There shall be no required format for the written appeal. The institution may retain legal counsel to assist it in the preparation of its appeal. At the time of filing the written appeal the institution shall advise the Commission President whether it shall present oral arguments at the appeal hearing, and if so, with or without legal counsel. In the event the institution determines not to attend the appeal hearing, then the Commission shall likewise not send representatives to the hearing, and the Appeal Panel shall be authorized to decide the appeal based upon the written submissions of the parties.

In filing an appeal, an institution must agree to submit any dispute involving an adverse action to arbitration before the institution initiates any other legal action. The procedures governing this process are outlined in the Commission's Instructions for Arbitration of an Adverse Appeal Decision

Within fifteen (15) days following receipt by the Commission of the written appeal, the Commission shall send its written response via email, return receipt requested, to the President of the institution. In the event the Commission has more than one appeal pending, the Commission may extend the time for the submission of its response to a newly filed appeal. The institution shall be notified of any such extensions. The decision to extend the response period shall be in the sole discretion of the Commission President.

**SECTION 4. Grounds for Appeal.** The grounds on which an appeal may be taken are (a) departure by the Commission from the procedures established by written policy or agreement or by recognized custom which is of such significance as to affect materially the Commission's adverse accrediting action; (b) the citing by the Commission of factually incorrect information as basis for its decision which is of such significance as to affect materially the Commission's adverse accrediting action; (c) bias, as evidenced by a demonstrable intent on the part of evaluators, the Commission, or the Commission's professional staff to prejudice the evaluation or other review of the institution's status of accreditation, such bias being of such significance as to affect materially the Commission's adverse accrediting action; or (d) the adverse accrediting action is arbitrary and capricious.

**SECTION 5. Appeal Panel.** Upon receipt of an appeal by an institution, the Commission President shall appoint individuals to the Appeals Panel. Individuals serving on the Appeal Panel for any given decision are drawn from the Appeals Panel Pool which consists of former Commissioners and other individuals with successful experience serving on or chairing evaluation teams. The Appeal Panel shall consist of not fewer than five (5) nor more than seven (7) persons. The Appeal Panel shall have at least one member who meets the Commission's definition of a commissioner who represents the public interest. The other members shall represent the academic expertise of institutions of higher education (such as a professor, department chair, or academic dean or provost) or the administrative expertise of institutions of higher education (such as president/chief executive officer, treasurer, director of finance, or vice president of administration). If the institution filing the appeal offers programs through distance education, that expertise will be represented on the Appeals Panel. If the institution filing the appeal is a single-purpose institution that prepares students for a specific profession, the Appeal Panel will include members who are practitioners, educators and/or employers in that profession. The Appeal Panel will not include anyone who was a member of the decision-making body that made the initial adverse decision that is being appealed. Members of the Appeal Panel will be provided with the Commission's Policy on Conflict of Interest and will verify that they do not have a conflict of interest in considering the appeal. The names of the Appeal Panel will be made public.

**SECTION 6. Appeal Review.** After consultation with the Appeal Panel, the Commission President shall establish a date and place for the appeal hearing which shall be no later than sixty (60) days after the filing of the notice of intent to appeal with the Commission President, provided, however that in extraordinary circumstances, the time may be extended by the mutual agreement of the institution and the chairperson of the Appeal Panel. The Commission President or his/her designee shall serve as the staff for the Appeal Panel.

The President of the Commission shall notify promptly the institution of the date and place of the hearing. The Commission President shall transmit a copy of the institution's appeal documents and the Commission's response to each member of the Appeal Panel in advance of its meeting.

The Commission President will secure legal counsel for the Appeal Panel. Before the beginning of the appeal hearing, the Appeal Panel will be trained by legal counsel on matters pertinent to their duties and responsibilities.

Evidence in support of the appeal shall be limited to that evidence presented to the Commission prior to making its adverse accrediting action except as hereinafter provided. The Appeal Panel shall consider evidence bearing only upon the grounds specified for the appeal. Additional written materials or evidence not presented to the Commission at the time of its original decision as a part of its review (or of its decision following a remand as provided below) may not be presented to the Appeal Panel. Other than at the appeal hearing, the Appeal Panel shall not meet with representatives of either the institution or the Commission. The decision of the Appeal Panel shall be determined by majority vote. In the event of a tie vote, the appeal shall be deemed denied. The Appeal Panel shall meet in executive session to reach its decision following the close of hearing.

Appeal hearings shall not be conducted as if they were judicial proceedings.

Rules of evidence, pre-hearing discovery, the right to subpoena witnesses, and the right to cross examine witnesses shall not be permitted, provided however, members of the Appeal Panel may ask questions of the institution's and the Commission's representatives present at a hearing.

The institution appealing an adverse accrediting action shall bear the burden of proof and may be represented by legal counsel at the hearing to present or assist in the presentation of the institution's appeal. The Commission may be represented by legal counsel at the hearing.

The chairperson of the Appeal Panel may limit the presentations of the institution and the Commission to one half hour each, provided however, the time for presentations and questioning may be extended to either or both parties as determined in the sole discretion of the chairperson.

The order of presentation shall be first, the institution and second, the Commission. Within the sole discretion of the chairperson as to time and scope, the Appeal Panel may permit the institution to present final comments and/or arguments following the Commission's presentation.

Nothing herein shall be deemed to require either the institution or the Commission to make any oral presentation at the appeal hearing, and the failure to do so shall have no bearing or relevance in reaching a decision by the Appeal Panel.

The Appeal Panel decision shall be defined as its final accrediting action and shall contain the Panel's ruling together with the reasons therefore as well as any additional information deemed pertinent by the Panel and shall be the only written decision of the Panel.

The Appeal Panel's final accrediting action shall be filed by the Appeal Panel with the Commission President on or before the tenth (10<sup>th</sup>) day following the close of the hearing.

The Appeal Panel shall have the authority to affirm, amend, or remand the adverse accrediting action and will direct the Commission to implement the decision in a manner consistent with the Appeal Panel's decisions or instructions. In a decision to remand the adverse action to the Commission for further consideration, the Appeal Panel must explain the basis for a decision that differs from that of the Commission and the Commission, in a remand, must act in a manner consistent with the Appeal Panel's decisions or instructions. The Appeal Panel shall inform the institution and the Commission of its final accrediting action within seven (7) days of filing its decision with the Commission President. The Commission shall inform the United States Secretary of Education and the appropriate state licensing or authorizing agency. Notifications to the Commission and the institution shall be sent by email, return receipt requested.

**SECTION 7. Costs.** At the time the institution submits its notice of intent to appeal, it shall also submit to the Commission President a deposit of \$75,000 payable to the Commission, to be held by the Commission and applied against certain costs of the appeal process as follows: costs of travel, meals, telephone, correspondence, meeting rooms, legal counsel, and any other costs directly attributable to the work of the Appeal Panel incurred by its members and reimbursed or paid directly

by the Commission following its policies. At the conclusion of the appeal process, the Commission President shall compute these costs, deducting the total amount from the deposit and remit to the institution any remaining sum along with an accounting of how the funds were spent. In the event the costs exceed the amount of the deposit, the institution will be responsible for the balance. The institution shall be responsible for its own costs and expenses.

**SECTION 8. Limitations.** If an institution fails to file its notice of intent to appeal or its written appeal within the time specified, or it fails to provide its deposit against costs, the appeal shall fail, and the Commission's adverse accrediting action shall be considered final.

**SECTION 9. New Evidence.** No later than fifteen (15) days prior to the date the Appeal Panel is scheduled to meet, the institution may file, in writing, with the Commission President on one occasion only, information including, but not limited to, financial information, which in the opinion of the institution's president constitutes evidence ("New Evidence") that (a) was not available to the institution at the time the Commission voted for the adverse accrediting action, and (b) is deemed to be so substantial and material that had it been available it is likely to have had a bearing on the decision of the Commission to issue an adverse accrediting action. The Commission President shall appoint a committee of not fewer than three (3) Commissioners (the New Evidence Committee) to review the New Evidence. If, in the sole judgment and discretion of the New Evidence Committee, acting by majority vote, the New Evidence is considered substantial and material to the decision and was not previously available to the institution for submission to the Commission, the Commission President, at the request of the New Evidence Committee shall postpone any further proceedings or action until the next meeting of the Commission at which time it will consider the New Evidence, and make a further decision upon the basis of all the evidence, including the New Evidence. Should the Commission reaffirm an adverse accrediting action, including any modifications or revisions thereto, the institution shall not have the right to appeal the reaffirmation as modified or revised. The decision by the New Evidence Committee that the New Evidence is not substantial and material or that such evidence was previously available to the institution for submission to the Commission shall not be subject to appeal.

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