

## Policy on Institutional Appeals

January 2024

### Policy

Member institutions receiving notice of an appealable adverse action (as defined below) from the Accrediting Commission for Community and Junior Colleges (the “Commission” or “ACCJC”), are entitled to an appellate review of the Commission’s decision by an independent Hearing Panel in accordance with this Institutional Appeals Policy (“Policy”). During the course of an appeal, the institution (“Appellant”) retains its accreditation status prior to the appealable adverse action.

A member institution, through its Chief Executive Officer (“CEO”), may appeal the adverse action by filing a written request to appeal, following the appeals procedures as outlined in this policy. An appealable adverse action of the Commission is defined as

1. the denial or withdrawal of the candidacy status of an institution;
2. the denial of initial accreditation of an institution, unless the institution remains in candidacy status; or
3. the withdrawal of accreditation of an institution.

### Grounds for Appeal

Grounds for an appeal shall be based on one or more of the following:

- (a) the Commission’s adverse action was arbitrary, capricious, or not supported by substantial evidence;
- (b) the procedures used to reach the adverse action were contrary to the Commission’s established policies and practices, which prejudiced the Commission’s consideration; or
- (c) there was demonstrable bias or prejudice on the part of one or more members of the peer review team, Commission staff, or the Commission which materially affected the Commission’s adverse action.

Appeals are limited to only evidence that was provided to the Commission at the time it made its decision. The only exception to this rule is when the Appellant’s accreditation is being withdrawn **solely** for financial reasons (see Designation of the Record, below). The burden shall be on the Appellant to demonstrate, through evidence, that one or more of the grounds for appeal have been met.

### Nature of the Appeal

The purpose of the appeal is to provide an independent review to make certain the Commission’s adverse action was not arbitrary or capricious and the accreditation process was conducted in accordance with the established policies and procedures of the Commission. The Hearing Panel is not to substitute its judgement on the merits of the Commission’s decision on the underlying adverse accreditation action. The Hearing Panel’s decision shall be based solely on the Record and the condition of the Appellant existing at the time of the Commission’s adverse action.

Appeals are not public proceedings and the filings made during the course of an appeal and the proceedings, including any pre-hearing conference and the hearing, are to remain confidential, closed to the public, and shall not be released to the general public, the press, or posted to any website. Failure to respect confidentiality by the Appellant shall be grounds for the dismissal of the appeal by the Hearing Panel Chair.

## **Appeals Process**

The appeals process is administrative and not a judicial proceeding. The parties are not permitted to conduct discovery, present witnesses, cross-examine presenters of the other party, or exercise other evidentiary rights and privileges ordinarily provided to litigants. However, the Hearing Panel may ask questions of the Commission and Appellant representatives present at the hearing. The Appellant bears the burden of proof throughout the appeals process. The Commission recognizes the right of the institution to employ counsel to represent the institution during its appeal including to make any presentation that the Commission permits the institution to make on its own during the appeal.

The Hearing Panel may, at its discretion, retain counsel to advise it with respect to the appeals process. The Hearing Panel counsel must not be the same counsel representing the Commission at the hearing, and any proposed fees or costs associated with the counsel's representation must be approved by the Commission, which will be responsible for such fees and costs.

## **Notification of Intent to Appeal Adverse Action**

If an institution seeks to appeal an appealable adverse action by the Commission, its Chief Executive Officer must provide the ACCJC President with a written Notice of Intent to Appeal letter within fifteen (15) business days of the date of the institution's receipt of the ACCJC's official action letter. The Notification of Intent to Appeal must contain a short and concise statement alleging the failures of the procedural elements of the appealable adverse action serving as grounds for the appeal in accordance with the requirements of this policy and sufficient to determine that the allegations are more than mere speculation. Simple recitation of the grounds for appeal will not constitute adequate basis for appeal.

The ACCJC President will acknowledge receipt of the Notification of Intent Letter to the Appellant within fifteen (15) business days of receipt. The acknowledgement of receipt will also notify the Appellant of the name of the designated Administrator of the Appeal ("Administrator") and will provide the Appellant with the opportunity to challenge the designated Administrator according to the ACCJC's Conflict of Interest Policy. The Appellant must confirm or challenge the Administrator within five (5) business days of receiving the notification. Once the Administrator is confirmed, the Administrator will determine whether the grounds for appeal are met and will notify the Appellant of the decision within five (5) business days.

## **Costs**

The fee for an appeal is outlined in the ACCJC fee schedule and must be submitted to the ACCJC with the Notice of Intent to Appeal. The Appellant will be required to pay a portion of the costs associated with the Appeal as a deposit check in the amount to be determined by the ACCJC President, once the Appeal has been granted. All unused costs will be refunded to the Appellant, or any cost overages will be invoiced to the Appellant, at the conclusion of the hearing.

## **Selection of the Administrator of the Appeal, Appeals Hearing Panel Pool, and the Hearing Panel**

The Executive Committee of the Commission will designate an Administrator. Such designee shall not be a staff member of the Commission or a current Commissioner. The Administrator must abide by the Commission's Conflict of Interest Policy. The Administrator shall select the Hearing Panel members from among the Appeals Hearing Panel Pool.

The Appeals Hearing Panel Pool shall consist of at least fifteen (15) persons appointed by the Nominating Committee<sup>1</sup>. The Appeals Hearing Panel Pool shall include academics and administrators from member institutions, and representatives of the public. At least one-seventh of the pool shall be representatives of the public. Academic members shall bring faculty experience and may be a current faculty member, academic administrator, librarian, or other academic reflecting the diversity of the region and/or institutional membership. Administrators bring administrative experience as a current chief executive officer in a two-year institution or district/system. A public representative is someone who is not an employee, member of a governing board, owner, shareholder, or consultant to an institution that has applied for or is in candidacy or is accredited by the ACCJC; a member of any trade association or membership organization related to, affiliated with, or associated with the agency; or a spouse, child, parent, or sibling of such individuals.

In identifying the Appeals Hearing Panel Pool, the Nominating Committee shall also consider diversity in institutional characteristics, such as mission, size, geography, and location, and diversity in personal characteristics, such as ethnicity and gender, and in specialized professional experience. Individuals in the pool have appropriate qualifications, relevant experience or expertise, and/or training to be a member of an Appeal Panel. Members of the Appeals Hearing Panel Pool shall serve for three-year terms.

The Hearing Panel shall consist of five members and shall be composed of academics and administrators from member institutions, and at least one public representative. Hearing Panelists may not include current members of the Commission that took the adverse action. A Hearing Panel member will be disqualified from serving on the Hearing Panel if she or he has a conflict of interest as defined by the Commission's Conflict of Interest Policy.

1. Upon decision to move the appeal forward, the Administrator shall identify the names of the five members to serve as the Hearing Panel. The Administrator shall provide the Appellant and the ACCJC President with the names and biographical data of each proposed member within fifteen (15) business days of the Administrator's appointment.
2. A selected Appeal Panel member who has a conflict of interest, as defined in Commission's Conflict of Interest policy, shall immediately notify the Administrator, who shall thereupon identify a replacement.
3. The Appellant may challenge the selection of any Hearing Panel member on the basis that the member has a conflict of interest by giving notice of the basis of such challenge to the Administrator within five (5) business days of receipt of the list of Hearing Panel members. The Administrator shall rule on such challenges. In the event a Hearing Panel member must recuse, the Administrator of the Appeal shall identify a replacement, and such replacement shall be subject to the same challenge.
4. The Administrator shall select a chair from among the Hearing Panel members. Preference may be given to candidates with prior experience with appeal processes. The Chair of the Hearing Panel shall control the hearing and any other procedural issues that arise during the course of the appeal. The Chair may limit the duration of the

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<sup>1</sup> The Nominating Committee is comprised of four Commissioners and four individuals from member institutions per the ACCJC Bylaws.

hearing and shall endeavor to divide the time equitably among the parties. The Chair shall rule on all questions pertaining to the conduct of the hearing, including the supplement of the Record, and may extend deadlines set forth in these procedures for good cause shown by a requesting party. Except for decisions expressly granted to the Chair herein, all actions of the Hearing Panel shall be by majority vote of the full panel.

### **Designation of Record**

The Administrator shall deliver an electronic copy of the Record for the adverse action to the Appellant and Hearing Panel as soon as the Hearing Panel has been confirmed. The Record will include the Institutional Self-Evaluation Report, the Peer Review Team Report, minutes from the Commission's closed session where the adverse action was approved, the Commission's Action letter, and any other publicly documented notice explaining the Commission's decision.

Neither the Commission nor the Appellant may include or refer to information or materials that are not part of the Record in their statements presented to the Hearing Panel, nor may they introduce new institutional information during the hearing. If the Appellant failed to present documentation or information available at the time the Commission took adverse action, it may not make that information available for consideration by the Hearing Panel.

The only exception to this rule is when the Appellant's accreditation is being withdrawn **solely** for financial reasons, in which case the Appellant or the Commission may present new and verifiable information relating to changes in the Appellant's financial status since the Commission's adverse action. Updated financial information may only be offered if (1) the information was not available to the Appellant at the time the Commission voted on the adverse action, and (2) the information is determined by the Hearing Panel or its Chair to be significant and material, such that had it been available it is likely to have had a bearing on the decision of the Commission to issue an adverse action.

If the Appellant intends to present new information regarding its financial status to the Hearing Panel, it must provide the information to the Administrator as promptly as possible, but at least fifteen (15) business days in advance of the hearing, along with any available verification of the new information from third party sources. The Hearing Panel Chair will rule as to whether to accept the new financial information. In advance of the Chair's ruling on the introduction of the new financial information, the Commission shall have the opportunity to provide a statement as to whether such information is new and whether it might have had a bearing on the decision of the Commission. If an objection to the Chair's ruling is made, the objection will be heard by the Hearing Panel, who will make a final and binding decision on the Appellant's right to present the new financial information. An institution may seek the review of new financial information only once and any determination by the Hearing Panel made with respect to that review does not provide a basis for an appeal.

In the appeal process, the Appellant may not present new information following the date the Commission took adverse action to demonstrate they have resolved deficiencies and meet ACCJC Standards, unless the Commission's action pertained solely to financial reasons as described in the above section.

### **Schedule of Hearing**

The Administrator shall schedule the hearing at the earliest practicable date. At least forty-five (45) business days before the time set for the hearing, the Administrator shall notify the Appellant of the time and place of the hearing.

## **Submission of Appellant**

The Appellant shall submit electronically to the Administrator written statements in support of its Appeal, referencing the Record as appropriate, at least fifteen (15) business days prior to the hearing. The submission shall include a request for oral argument if the Appellant wishes such an opportunity.

## **Decision of the Appeals Panel<sup>2</sup>**

1. The Hearing Panel shall have the authority to affirm, remand, or amend the adverse action.
  - a. The Hearing Panel shall affirm the Commission's adverse action unless the Appellant proves, by clear and convincing evidence, that the Commission's action was arbitrary and without substantial evidence in the Record or that there was an error in the proceedings of the Commission that materially affected its decision. A decision to affirm the Commission's decision is final and binding on the parties.
  - b. The Hearing Panel shall remand the matter to the Commission if the Appellant proves by clear and convincing evidence that the Commission failed to follow its written procedures or there was an error in its proceedings and that the failure or error was significant in leading to the Commission's adverse action. The Hearing Panel must identify in its decision the specific policies and procedures the Commission failed to follow and must address the error in the proceedings with specific instructions to review the action, taking into consideration any findings of the Hearing Panel. In the event of a remand, the Commission shall take action in accordance with the Hearing Panel's instructions at its next regularly scheduled meeting.
  - c. The Hearing Panel shall amend the adverse action if the Appellant established by clear and convincing evidence that the action of the Commission was not supported by substantial evidence in the Record or was arbitrary, capricious, or biased, was unreasonable and not based on or consistent with the policies of the Commission or the information in the Record.
2. The Hearing Panel Chair shall render its decision in writing within fifteen (15) business days of the conclusion of the Hearing to the Administrator, who will then notify the Appellant and the ACCJC of the decision. The Hearing Panel decision shall set forth whether its decision is to affirm, remand, or amend the Commission's adverse action and summarize its reasons in support thereof. The Chair of the Hearing Panel shall deliver its decision to the Appellant, the Commission, and the Administrator.
3. Except as provided below, the decision of the Hearing Panel to affirm or amend an adverse action shall be deemed a final accreditation action of the Commission and shall not be subject to any further review or appeal. The Commission shall notify the appropriate public authorities of the decision in accordance with its policies and federal regulation.

## **Arbitration**

In the event of a final accreditation action involving any adverse action, including the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, member institutions must submit any dispute, challenge, or claim regarding such accreditation action to initial and non-binding arbitration.<sup>3</sup> The arbitration shall be administered by an arbitration service mutually agreed upon to ensure a fair and equitable process, and in accordance with ACCJC's protocol and procedures (attached).

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<sup>2</sup> 34 CFR § 602.25 (f)(1)(iii)(iv).

<sup>3</sup> 34 CFR § 602.20(e); 20 U.S.C. 1099b(e).

## Timetable for Institutional Appeals

Time	Responsible Party	Action
Within 15 business days of receipt of Commission Action Letter	Institution's CEO on behalf of Institution (Appellant)	Submit Notification of Intent to Appeal Adverse Action
Within 15 business days of receipt of institution's Notice of Intent to Appeal	ACCJC President	Confirm receipt of Notification and inform institution of designated Administrator of Appeal
Within 5 business days of receipt of ACCJC's letter on designation of Administrator	Appellant	Confirm or challenge designation of Administrator
Within 5 business days of receipt of institution's confirmation of designation of Administrator	Appeal Administrator (Administrator)	Determine whether grounds for Appeal are met and notify institution
Within 15 business days of the Administrator's appointment	Administrator	Notify Appellant and ACCJC President of selection of the Hearing Panel (including names and bios)
Within 5 business days of receipt of the list of Hearing Panel members	Appellant	Notify Administrator if challenge any member on basis of conflict of interest
As soon as the Hearing Panel has been confirmed	Administrator	Administrator shall deliver an electronic copy of the Record to the Appellant and Hearing Panel
At least 45 business days before the date set for the Hearing	Administrator	Notify the Appellant of the time and place of the Hearing
At least 15 business days in advance of the Hearing	Appellant	If applicable, present new financial information
At least 15 days prior to the Hearing	Appellant	Submit to the Administrator written statements in support of its Appeal and include a request for oral argument if the Appellant wishes such an opportunity
Within fifteen 15 business days of the conclusion of the Hearing	Hearing Panel Chair	Render its decision in writing to the Administrator, who will then notify the Appellant and the ACCJC of the decision

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### Arbitration of Adverse Actions Following Appeal Overview

ACCJC's Policy on Institutional Appeals provides that "in the event of a final accreditation action involving any adverse action, including the denial, withdrawal, suspension, revocation, or termination of accreditation or preaccreditation, member Institutions must submit any dispute, challenge, or claim regarding such accreditation action to initial and non-binding arbitration."<sup>4</sup> The arbitration shall be administered by an arbitration service mutually agreed upon to ensure a fair and equitable process."

These procedures further supplement ACCJC's policy by describing the procedures for any such arbitration.

An institution may only initiate arbitration following a decision by an Appeal Panel. Any decision of the Commission, including following an appeal, will not take effect until the conclusion of any arbitration. Consistent with ACCJC's Policy on Public Disclosure and Confidentiality in the Accreditation Process, ACCJC may issue and/or update a Public Disclosure Notice and/or Public Statement regarding the status of an arbitration.

The arbitration must be based on specific grounds as set forth in these procedures. The arbitration will be conducted by a single arbitrator who is mutually selected by the parties. The arbitration will be conducted according to the process and timeline detailed in these procedures, with further procedural details being established by the parties and the arbitrator as necessary. The parties may be represented by legal counsel for the arbitration.

The parties will endeavor to complete the entire arbitration process (from Notice of Arbitration to the arbitrator issuing a decision) within 120 days. However, this timeline may be adjusted to be longer or shorter, either by mutual written agreement of the parties or as otherwise determined by the arbitrator. The arbitrator may only act to affirm or reverse the decision of the Appeal Panel. The arbitrator will not have the authority to award monetary damages, to take accreditation actions, or to otherwise take any other action.

As necessary, the Commission will take further action to implement the arbitration decision.

### Grounds for Arbitration

The sole grounds for arbitration are as follows:

1. The decision of the Appeal Panel was arbitrary, capricious or not supported by substantial evidence in the record.
2. The procedures that the Appeal Panel used to reach the decision were contrary to ACCJC policies and procedures, and the procedural error unreasonably impaired the decision of the Appeal Panel.

An institution need only allege one of the above grounds to initiate arbitration.

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<sup>4</sup> 34 CFR § 602.20(e); 20 U.S.C. 1099b(e)

## **Notice of Intent to Arbitrate**

An institution shall initiate arbitration by notifying ACCJC of its intent to arbitrate and identifying the grounds for arbitration under these procedures. An institution must initiate arbitration no later than 14 days from the date of the notification of a determination by an Appeals Panel.

If an institution does not notify ACCJC of its intent to arbitrate within this time frame, the institution forfeits its right to arbitrate and the decision of the Appeal Panel will become final as detailed in ACCJC's Policy on Institutional Appeals.

## **Arbitrator Selection**

Upon receipt of the Notice of Intent to Arbitrate, ACCJC will contact the institution within 10 days to initiate the process of selecting an arbitrator. The arbitration will be conducted by a single arbitrator who is mutually selected by the parties. The arbitrator will be qualified, impartial, and independent.

The parties will select an arbitrator by each nominating three individuals as potential arbitrators. Potential arbitrators could include individuals with experience in higher education and/or accreditation. The parties are encouraged to consider individuals from the JAMS Neutral Directory, the AAA National Roster of Arbitrators and Mediators, or participate in the Council for Higher Education Accreditation (CHEA)'s arbitration program. From that list, the parties will each strike potential arbitrators until a mutually agreeable arbitrator is identified. Parties may strike potential arbitrators without stating a reason.

If no arbitrator can be identified from the initial list, the parties will repeat the nomination process until an arbitrator can be agreed-upon. If the parties are unable to agree on an arbitrator within 30 days, the parties will utilize the services of an agreed-upon arbitration management service. If the parties are unable to agree on an arbitration management service, the parties will utilize the JAMS Managed Arbitration Process.

Prior to being selected as an arbitrator, an arbitrator must affirm that they do not have a conflict of interest with the institution participating in the arbitration as detailed in ACCJC's Policy on Conflict of Interest for Commissioners, Evaluation Team Members, Consultants, Administrative Staff, and Other Commission Representatives. The arbitrator must also affirm that they have no conflicts of interest with ACCJC that would impede their ability to conduct a fair and objective review.

During the process of selecting an arbitrator, all communications with potential arbitrators will involve both parties. Unless otherwise agreed-upon, neither party will engage in any ex parte communications with a potential arbitrator.

The arbitrator is not a decision-making body of the Accrediting Commission for Community and Junior Colleges.

## **Arbitration Procedures**

Once an arbitrator is selected, the arbitrator will work with the parties to establish a timeline and procedures for the arbitration. The arbitrator will oversee the implementation of the arbitration procedures. At a minimum, the arbitration procedures will be consistent with the following:

- The arbitrator will review whether one or more of the grounds for arbitration are met. The standard of review is a preponderance of the evidence standard.
- The parties may agree to exchange documents explaining their respective positions and rationales (for example—brief from institution, response from ACCJC, rebuttal from

institution). To support these documents, the parties may only provide and the arbitrator may only consider the following materials:

1. Those materials previously considered by the Commission in taking the adverse action or considered by the Appeal Panel in making its decision.
2. The administrative record related to the Board's decision and the decision of the Appeal Panel (i.e.— the Board's action letter and the decision of the Appeal Panel).

Under no circumstances will the parties conduct discovery or otherwise introduce new factual information as part of the arbitration. Materials will be exchanged according to a schedule determined by the arbitrator.

### **Arbitration Hearing**

There will be an arbitration hearing held either in-person or via tele- or videoconference (or other technology that allows the parties to engage in synchronous communication). The hearing is not public. The parties will each have an opportunity to make an opening and final statement and the arbitrator will direct questions to the parties. There will not be an opportunity for the parties to pose questions directly to each other. The hearing will be transcribed and a transcript made available to each party following the arbitration hearing.

### **Decision**

The arbitrator will inform ACCJC and the institution of their decision in writing within 30 days of the conclusion of the arbitration hearing. The decision will either

- Affirm the decision of the Appeal Panel; or
- Reverse the decision of the Appeal Panel.

The arbitrator will not have the authority to award monetary damages, to take accreditation actions, or otherwise take any other action.

The Commission will consider the outcome of arbitration and implement a final decision within 30 days. This could include, for example, taking final action on a previous adverse action or taking other accreditation actions. The Commission has the discretion to define the terms and conditions of the institution's status in conjunction with its implementation of the decision (e.g., date of next evaluation, monitoring, sanction, etc.). The Commission will issue written notification to the institution of its decision within 14 days. An institution may legally challenge an arbitration decision as permitted by applicable law.

### **Representation by Counsel**

The institution and/or ACCJC may be represented by legal counsel during the arbitration process. The institution must promptly notify ACCJC of its intent to be represented by legal counsel in an arbitration.

Other than during the arbitration hearing, institutional legal counsel are expected to communicate solely with legal counsel for ACCJC and with the arbitrator. At the arbitration hearing, legal counsel for either party will be permitted to make any presentation that the party is permitted to make.

### **Disclosure Obligations**

ACCJC may issue and/or update a Public Disclosure Notice and/or Public Statement regarding the status of an arbitration. The institution is required to accurately disclose the disposition of the institution's accreditation relationship, including that ACCJC has taken an adverse action

which is not yet effective, that the institution submitted an unsuccessful appeal, and that arbitration remains ongoing.

### **Arbitration Records**

All records and information related to an arbitration will be managed by ACCJC in accordance with ACCJC Retention of Records protocol. After the conclusion of the arbitration, unless otherwise required by law, the arbitrator will destroy and not retain any documents, in whatever form, provided or produced during the course of the arbitration.

### **Fees and Expenses**

ACCJC will not move forward with an arbitration if an institution has past due dues or fees or any other outstanding ACCJC requirements to be fulfilled. Each party is responsible for its own costs and expenses related to an arbitration. To the extent that ACCJC manages the payment of costs or expenses for the arbitration, ACCJC may require a deposit from the institution prior to incurring any such costs. Any deposit that exceeds actual expenses may be applied to other amounts due to ACCJC and any remainder will be refunded to the institution following the conclusion of the arbitration.

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