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## Policy on Institutional Appeals

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*January 2021-June 2022*

### Policy

Member institutions receiving notice of an appealable adverse action (as defined below) from the Accrediting Commission for Community and Junior Colleges (“the Commission”), 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. deny or withdraw the candidacy status of an institution;
2. deny initial accreditation of an institution, unless the institution remains in Candidate status; or
3. withdraw 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 potentially 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 The only exception to this rule is when the Appellant’s accreditation is being withdrawn **solely** for financial reasons (see Designation of the Record, below).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.

### **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 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 of the Appeal within five (5) business days of receiving the notification. Once the Administrator of the Appeal 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 of the Appeal. Such designee shall not be a staff member of the Commission or a current Commissioner. The Administrator of the Appeal must abide by the Commission's Conflict of Interest Policy. The Administrator of the Appeal 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, 50% of whose members are not commissioners. 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 officers 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. ~~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.~~ Hearing Panelists may not include current members of the Commission that took the initial 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 of the Appeal shall identify the names of the five members to serve as the Hearing Panel. The Administrator of the Appeal 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 receipt of the Notice of Intent to Appeal~~ 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 of the Appeal, 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 of the Appeal within five (5) business days of receipt of the list of Hearing Panel members. The Administrator of the Appeal shall rule on such challenges,

with the benefit of doubt to be afforded to the challenging party. 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 of the Appeal 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 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. All actions of the Hearing Panel shall be by majority vote of the full panel.

### **Designation of Record**

The Administrator of the Appeal 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 External Evaluation Team Report, minutes from the Commission's closed session where the adverse action was approved, and the Reader Report Forms completed by the lead Commissioners assigned to the institution at the time of the Commission meeting.

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 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 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 of the Appeal 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.

No information concerning the remedying of deficiencies regarding ACCJC Standards since the

time of the adverse action shall be presented at or before the Hearing for any reason.

### **Schedule of Hearing**

The Administrator of the Appeal 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 of the Appeal shall notify the Appellant of the time and place of the hearing.

### **Submission of Appellant**

The Appellant shall submit electronically to the Administrator of the Appeal written statements in support of its Appeal, referencing the Record as appropriate, at least fifteen (15) 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>1</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 of the Appeal, 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 of the Appeal.

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

3. 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 an adverse action, including the denial, withdrawal, or termination of accreditation, member Institutions must submit any dispute, challenge, or claim regarding such accreditation action to final and binding arbitration in San Francisco, California before a single arbitrator.<sup>2</sup> The arbitration shall be administered by an arbitration service selected by the Commission. Judgment on the arbitration award may be entered in any court having jurisdiction. Any question regarding the arbitrability of disputes will be decided by the arbitrator.

| *Adopted June 2019; Revised January 2021; Revised June 2022*

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<sup>2</sup> 34 CFR § 602.20(e); 20 U.S.C. 1099b(e)