

POLICY AND PROCEDURE
FOR THE APPEAL OF ADVERSE ACTION
AFFECTING INSTITUTIONAL ACCREDITATION
OR CANDIDATE FOR ACCREDITATION STATUS

Approved by the NEASC Board of Trustees on December 3, 2008 and revised on March 5, 2009.

SECTION 1. Right of Appeal. An institution shall have the right to appeal to the Board of Trustees of the Association a decision made by a Commission which is adverse to the institution's accreditation. For purposes of this policy those decisions include denial of candidacy for accreditation, termination of candidacy for accreditation, denial of accreditation, placement on probation, or termination of accreditation.

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

Actions regarding adverse decisions 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 Decision. After a Commission votes for an adverse decision, if no notice of intent to appeal is filed as provided in section 3 below, its decision becomes final. The commission shall no later than fourteen (14) days after the final decision notify the institution in writing, delivered by certified mail (or an equivalent private delivery service), return receipt requested. The Commission shall also notify 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 twenty four (24) hours of notifying the institution of a final adverse decision the Association shall provide written notice to the public of the final adverse decision. A copy of this Policy and Procedure shall also be provided to the institution along with a notice of the adverse decision.

SECTION 3. Notice of Intent to Appeal and Filing the Appeal. An institution may appeal to the Board of Trustees of the Association to review an adverse decision of a 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 decision. A notice of 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 delivered by certified mail (or an equivalent private delivery service), return receipt requested, to the Executive Director of the Association. 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.

Within fifteen (15) days of filing a notice of intent to appeal, the institution shall file copies of its written appeal by certified mail (or an equivalent private delivery service), return receipt requested, with the Executive Director of the Association who shall promptly transmit copies of the written appeal to 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 Executive Director whether it shall present oral arguments at the appeals hearing, and if so, with or without legal

counsel. In the event the institution determines not to attend the appeals hearing, then the Commission shall likewise not send representatives to the hearing, and the Appeals Committee shall be authorized to decide the appeal based upon the written submissions of the parties.

Within fifteen (15) days following receipt by the Commission from the Executive Director of the written appeal, the Commission from whose adverse decision the appeal is being taken shall submit its response in writing to the Executive Director with a copy to the institution by certified mail (or an equivalent private delivery service), return receipt requested. In the event the Commission has more than one appeal pending, the Commission may request from the Executive Director an extension of the time for the submission of its response to a newly filed appeal. The institution shall be notified of any such extensions by certified mail (or an equivalent private delivery service), return receipt requested. The decision to grant an extension shall be in the sole discretion of the Executive Director.

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 decision; (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 decision; (c) bias, as evidenced by a demonstrable intent on the part of evaluators, a 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 decision; or (d) the decision is arbitrary and capricious.

SECTION 5. Appeals Committee. Upon receipt of notice from the Executive Director that an appeal has been filed the Chairperson of the Board of Trustees shall appoint an Appeals Committee consisting of not less than five (5) Trustees, or their designees at least three (3) of whom shall be employed by an institution which is a member of the Commission from which the appeal is being taken. Three members, at least two of whom shall be from the constituency of the Commission which decision is being appealed, shall constitute a quorum of the Appeals Committee. The Executive Director shall notify promptly the institution and the particular Commission of the names of the members of the Appeals Committee and the date and place of the hearing. Notification shall be by certified mail (or an equivalent private delivery service), return receipt requested. The Executive Director shall transmit a copy of the institution's appeal documents and the Commission's response to each member of the Appeals Committee in advance of its meeting.

SECTION 6. Appeals Review. After consultation with the Appeals Committee, the Executive Director shall establish a date and place to review the appeal which shall be not later than sixty (60) days after the filing of the notice of intent to appeal with the Executive Director, provided, however, the time may be extended by the mutual agreement of the institution and the chairperson of the Appeals Committee. The Executive Director or his/her designee shall serve as the staff for the Appeals Committee.

Evidence in support of the appeal shall be limited to that evidence presented to the Commission prior to making its adverse decision except as hereinafter provided. The Appeals Committee 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 Appeals Committee. Other than at the appeals hearing, the Appeals Committee shall not meet with representatives of either the institution or the Commission. The decision of the Appeals Committee shall be determined by majority vote. In the event of a tie vote, the appeal shall be deemed denied. The Appeals Committee shall meet in executive session to reach its decision following the close of hearing.

Appeals 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 Appeals Committee may ask questions of the institutions and the Commission's representatives present at a hearing.

The institution appealing an adverse decision 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 institutions' appeal. The Commission may be represented by legal counsel at the hearing, except as noted above.

The chairperson of the Appeals Committee will 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 Appeals Committee 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 Appeals Committee hearing and the failure to do so shall have no bearing or relevance in reaching a decision by the Appeals Committee.

The Appeals Committee decision shall contain the Committee's ruling together with the reasons therefore as well as any additional information deemed pertinent by the Committee and shall be the only written decision of the Committee.

The Appeals Committee decision shall be filed by the Appeals Committee with the Executive Director on or before the tenth (10th) day following the close of the hearing.

If the Appeals Committee finds that the appeal should be sustained, it shall remand the Commission's adverse decision to the Commission for reconsideration of the adverse decision along with its reasons for the remand. The accreditation status of the institution shall not change during reconsideration. If the Appeals Committee determines that the appeal should be denied, it shall inform the institution, the Commission, the Board of Trustees, the United States Secretary of Education and the appropriate state licensing or authorizing agency of its decision within seven (7) days of filing its decision with the Executive Director. All notifications of the Appeals Committee shall be hand delivered or sent by certified mail (or an equivalent private delivery service), return receipt requested.

SECTION 7. Board of Trustees Action. The decision rendered by the Board of Trustees through its designated Appeal Committee shall be final and is not subject to further appeal.

SECTION 8. Costs. At the time the institution submits its notice of intent to appeal, it shall also submit to the Executive Director a deposit of \$10,000 payable to the Association, to be held by the Association and applied against certain costs of the appeals process as follows: costs of travel, subsistence, telephone, correspondence, meeting rooms, legal counsel and any other costs directly attributable to the work of the Appeals Committee sustained by its members and reimbursed or paid directly by the Association following its policies. At the conclusion of the appeals process, the Executive Director 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 9. 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 decision shall be considered final.

SECTION 10. New Evidence. No later than fifteen (15) days prior to the date the Appeals Committee is scheduled to meet, the institution may file with the Executive Director, on one occasion only, information which in the opinion of the institution's chief administrative officer constitutes evidence ("New Evidence") that (a) was not available to the institution at the time the Commission voted for the adverse decision, 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 decision. Such filings shall be in writing, delivered by certified mail (or an equivalent private delivery service); return receipt requested, to the Executive Director of the Association.

The Executive Director, upon receipt of the New Evidence, shall forward the New Evidence to the Director of the appropriate Commission, who shall appoint a committee of not fewer than three (3) Commissioners from that Commission (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 Executive Director, 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 decision, including any modifications or revisions thereto, the institution shall 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. The Commission's adverse decision, as revised or modified, shall be forwarded to the Board of Trustees for action consistent with this Policy and Procedure.

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