



# Appeals from Adverse Accrediting Actions

*(Effective April 21, 2017)*

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These procedures are established for the fair and expeditious processing of an Appeal of an adverse accrediting action by the Middle States Commission on Higher Education.

## I. Definitions

All capitalized terms in this Procedure have the meaning provided in this definitions section or section 602.3 of Title 34 of the Code of Federal Regulations.

- A. **Administrator of the Appeal.** The Chief of Staff of the Middle States Commission on Higher Education or an individual designated by the President to serve as an independent administrator to carry out certain functions under these procedures.
- B. **Adverse Accrediting Action.** A decision of the Commission to:
  - 1. deny the Candidate status of an institution;
  - 2. withdraw Candidate for Accreditation status of an institution;
  - 3. deny initial Accreditation; or
  - 4. withdraw Accreditation.
- C. **Appeal.** A timely request by an institution made in writing and filed in accordance with these procedures for a review by an independent hearing panel of an adverse accrediting action of the Commission.

- D. Peer Reviewer.** An individual who represents the MSCHE in an accreditation review.
- E. Appellant.** An institution that is the subject of an adverse accrediting action that has filed an Appeal in accordance with these procedures.
- F. Chair.** The chair of a Hearing Panel.
- G. Commission.** The Middle States Commission on Higher Education.
- H. Costs of Appeal.** The costs incurred by the Commission in connection with the Hearing Panel's reviewing, hearing, and deciding the Appeal. The Costs of Appeal include, without limitation, the cost of reproducing the Record for the parties and the Hearing Panel members, any Hearing Panel copying costs, travel, accommodation, transcript, facilities and other costs, as well as the Hearing Panel's legal fees (if any) associated with its review of an Appeal. Costs of Appeal do not include the costs or legal fees incurred by an institution seeking the Appeal, or by the Commission in responding to an Appeal, which shall be borne by each party.
- I. Counsel to Hearing Panel.** An attorney designated to provide counsel to the Hearing Panel throughout the review period and hearing.
- J. Date of Filing.** A document is deemed to be filed on the day that it is actually received by the Commission.
- K. Date of Receipt.** The date a document is actually received by a party, as evidenced by a postal service, courier or private carrier receipt, or an email receipt when email delivery is permitted under these procedures.
- L. Day.** Unless otherwise stated, a calendar day.
- M. Hearing Panel.** A panel of three (3) individuals selected by the Administrator of the Appeal to consider an institution's appeal. The Hearing Panel will be selected in accordance with the procedure provided in Section III.C and shall be composed of a Public Representative and Peer Reviewers who are academic and administrative representatives of member institutions. No individual currently serving on the Commission may serve as a member of the Hearing Panel.
- N. President.** The President of the Commission.
- O. Public Representative.** A Public Representative is an individual who is not an employee, governing board member, owner, shareholder, or consultant of an institution accredited by the Commission or a candidate for accreditation by the Commission; who is not a member of any trade association or membership organization related to, affiliated with, or associated with the Commission; and who is not a spouse, parent, child, or sibling of any of the above.

- P. Record.** The Commission's administrative record, as certified by the Administrator of the Appeal, consisting of the reviews, reports, the institution's responses, committee and Commission actions and any other information considered by the Commission in reaching an adverse accrediting action.

## II. General Provisions

An institution subject to an adverse accrediting action is entitled to an appellate review of the Commission's final decision by an independent Hearing Panel in accordance with the procedures outlined in these Procedures. The institution shall have the right to a review based on written statements filed with the Hearing Panel and may request a hearing to make presentations to the Hearing Panel.

- A. Notice of Adverse Accrediting Action.** Notice of an adverse accrediting action shall be given to the institution in writing and shall specify the final action taken by the Commission. The Notice shall be accompanied by a copy of these Procedures and a statement concerning the obligation of Appellant to bear the Costs of Appeal.
- B. Right to Appeal Adverse Accrediting Action.** An institution shall have the right to appeal an adverse accrediting action on the following grounds only:
1. there were procedural errors or omissions in carrying out the MSCHE's procedures on the part of the evaluation team or the Commission which materially affected the Commission's decision;
  2. there was demonstrable bias or prejudice on the part of one or more members of the evaluation team or Commission staff or Commission which materially affected the Commission's action, or
  3. the decision of the Commission was arbitrary because the information in the Record was not sufficient to support the Commission's action or the decision was inconsistent with the published standards of the Commission.

An Appellant has the right to be represented by legal counsel or other professional representative in such Appeal at its own expense.

- C. Timing and Form of Request for an Appellate Review.** An institution may request an Appeal of an adverse accrediting action by filing a Notice of Intent to Appeal, as specified herein, in writing with the President of the Commission within ten (10) days of receipt by the institution of the notice of the adverse accrediting action. The Notice of Intent to Appeal must state:
1. The specific grounds for the appeal by alleging any particular failure(s) of the Commission to follow its written procedures and/or the Appellant's factual basis for alleging that the action taken by the Commission was materially affected by the demonstrable bias or prejudice of a Commission-related person, or is arbitrary, not based on substantial evidence or materially inconsistent with the written standards of the Commission.

2. Whether an opportunity to appear before the Hearing Panel to make an oral statement in support of the appeal is requested or whether the appeal is to be decided on the basis of written submissions. A waiver of the right to appear before a Hearing Panel shall be final. An Appellant may withdraw a request for a hearing when it files its brief in support of its appeal.

The Notice of Intent to Appeal shall be signed by Appellant's chief executive officer or the chair of its governing board. If the Appellant is to be represented by legal counsel or other professional representative, the identity of the representative, as well as the address and contact information shall be included in the Notice.

The institution shall deliver the Notice of Intent to Appeal to the Commission President.

- D. Costs of Appeal.** The Appellant shall be responsible to pay the Costs of the Appeal. To perfect the filing of the Appeal, the institution must remit a check made payable to the Commission in the amount of \$20,000 as a deposit on the payment of costs with the Notice of Intent to Appeal. The payment shall be delivered to the Commission's Administrator of the Appeal together with a copy of the Notice of Appeal. After issuance of the Hearing Panel's decision, the Administrator of the Appeal shall collect all expense reports, pay all costs, and provide the Appellant with an accounting of the Costs of Appeal. If it is less than the deposit the Administrator of the Appeal shall enclose a refund of the excess deposit with the accounting. If the expenses exceed the amount of the deposit, the Administrator shall enclose a bill with the accounting of the Costs of the Appeal.

**E. Dismissal of Defective Appeals.**

1. The Administrator of the Appeal may dismiss an appeal as administratively defective if the institution fails to abide by these procedures, including without limitation:
  - a. fails to file a timely Notice of Intent to Appeal or fails to specify the specific grounds for the appeal in the Notice;
  - b. fails to remit the required deposit for the Costs;
  - c. fails to file a timely Statement in Support of the Appeal, or
  - d. is not current in the payment of its dues and fees to the Commission and has not cured the payment arrearage within 5 days of being advised that the Appeal would be dismissed if payment were not remitted immediately.
2. The Chair of the Hearing Panel may dismiss an Appeal for any procedural irregularities on the part of the institution in filing or prosecuting the appeal or a failure to prosecute the appeal by the institution.
3. The Executive Committee, in its sole discretion and for good cause shown, may overturn a dismissal by the Administrator of the Appeal (but not a dismissal by the Chair of the Hearing Panel) and allow an Appeal to proceed on the merits.
4. In the event of a dismissal, the Commission's adverse accrediting action shall be considered final.

- F. Accreditation Status during Appeal Process.** The accreditation status of an Appellant remains in effect until the completion of the Commission's appeal process.

### III. Appeal

## Process

### A. Nature of the Appeal.

1. The purpose of the Appeal is to provide an independent review to make certain that the Commission's action was not arbitrary and capricious and the accreditation process was conducted in accordance with the policies and procedures of the Commission.
  - a. The Hearing Panel is not to substitute its judgment on the merits of the Commission's decision on the underlying adverse accreditation action.
  - b. Except as provided in Section III.E. (relating to new financial information) the Hearing Panel's decision shall be based solely on the Record and the condition of the Appellant existing as of the time of the Commission's decision.
2. An Appeal is not a public proceeding and the filings made during the course of the Appeal and the proceedings, including any pre-hearing conference or the Hearing, are to remain confidential, closed to the public and not released to the general public, the press, or posted on any website, unless the institution, the Commission and the Hearing Panel mutually agree otherwise. Failure to respect this restriction by the institution shall be grounds for the dismissal of the Appeal by the Hearing Panel Chair. Failure to respect this restriction by the Commission shall be grounds for the Hearing Panel Chair to rule that the Commission shall pay the institution's Costs of Appeal.

**B. Burden of Proof.** The burden shall be on the institution to demonstrate by clear and convincing evidence one or more of the grounds for appeal.

**C. Selection of Hearing Panel.** Upon receipt of a timely Notice, the President shall designate the Administrator of the Appeal. The Administrator shall select the Hearing Panel members from among experienced peer reviewers. The Hearing Panel shall consist of three members and shall be comprised of one Public Representative, one academic, and one college or university administrator. A peer reviewer is disqualified from serving on a Hearing Panel if she or he has a conflict of interest as defined in the Commission's policy on that subject, participated in any way in the process leading to the action being appealed, or has had any prior employment relationship with the Appellant.

1. Upon receipt of a Notice of Intent to Appeal and the deposit for Costs of Appeal, the Administrator of the Appeal shall identify the names of three peer reviewers to serve as the Hearing Panel. The Administrator of the Appeal shall provide the Appellant and the President of the Commission with the names and biographical data of each such person within five (5) business days of the receipt of the Notice.
2. An Appeal Panel member so selected who has a conflict of interest, as such term is defined in Commission policy (*Conflict of Interest Commission Representatives*), shall immediately notify the Administrator of the Appeal, who shall thereupon identify a replacement member in the same manner.
3. Appellant and the Commission may challenge the selection of any Hearing Panel member on the basis that the member has a conflict of interest or should otherwise not participate in the proceeding, for cause as described in this

paragraph, by giving written 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 President of the Commission shall rule on such challenges, 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 appeals processes, and all actions of the Hearing Panel shall be by majority vote of the full panel.
5. 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 any of the deadlines set forth in these procedures for good cause shown by a requesting party.
6. The Hearing will be conducted in accordance with the Appeal Hearing Procedure set forth in Part J below.

**D. Selection of Counsel to Hearing Panel.** Upon receipt of a timely Notice, the President shall designate the Administrator of the Appeal. The Administrator shall select an attorney to serve as Counsel to Hearing Panel. An attorney is disqualified from serving as Counsel to the Hearing Panel if she or he has a conflict of interest as defined in the Commission's policy on that subject, participated in any way in the process leading to the action being appealed, or has had any prior employment or consultative relationship with the Appellant.

**E. Designation of Record.** Within ten (10) business days of receipt of the Notice of Intent to Appeal, the Commission shall deliver to the Administrator of the Appeal the Record for the adverse accrediting action.

Each page of the Record shall be individually numbered so that references can be made to it in the presentations and briefs of the parties. The Administrator of the Appeal shall deliver an electronic copy of the Record to the Appellant, its legal counsel (if any), and the Hearing Panel members.

**F. New Information.** Neither the Commission nor the institution 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 information during the hearing. If the institution 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 where an institution's accreditation is being withdrawn **solely** for financial reasons, in which case, the institution or the Commission may present new and verifiable information relating to changes in the institution's financial status since the Commission's action. Updated financial information may only be offered if (1) the information was not available to the institution 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

decision.

If an institution intends to present new information regarding its financial status to the Hearing Panel, it must provide the information to the Administrator and to the Commission President as promptly as possible but at least five (5) days in advance of the hearing, along with any available verification of the new information from third party sources. In advance of the Chair's ruling on the introduction of the new information, the Commission shall have an opportunity to provide the Administrator with a statement as to whether such information is new and whether it might have had a bearing on the decision of the Commission. The Administrator shall review the request to present new financial information from the institution and the Commission's statement, if any, with the Hearing Panel Chair, who will make a determination as to whether the new financial information should be allowed. If an objection to the Chair's ruling is made by either party, the objection will be heard by the Hearing Panel, who will make a final and binding decision on the institution's right to present the new financial information.

No information concerning the remedying of deficiencies since the time of the adverse accrediting action shall be presented at or before the hearing for any reason.

- G. Submission of Appellant.** Within twenty-one (21) days of receipt the Record, the Appellant shall submit electronically to the Administrator of the Appeal written statement in support of its Appeal, referencing the Record as appropriate, and shall simultaneously provide it electronically to the President of the Commission. The Submission shall include a request for oral argument if the Appellant wishes such an opportunity.
- H. Response by Commission.** Within twenty-one (21) days of receipt of Appellant's written statement, the Commission shall electronically submit to the Administrator of the Appeal written statement in support of its action, referencing the Record as appropriate, and shall simultaneously provide the submission to the Appellant.
- I. Scheduling of Hearing.** If an appearance before the Hearing Panel has been requested by Appellant, the Chair of the Hearing Panel shall notify the institution of the dates of the hearing:
1. For adverse accrediting actions taken in November, hearings will be held as early as possible in February of the following year, but no later than the third full week of the month.
  2. For adverse accrediting actions taken in March, hearings will be held as early as possible in May of the same year, but no later than the final week of the month.
  3. For adverse accrediting actions taken in June, appeal hearings will be held as early as possible in September of the same year, but no later than the fourth full week of the month.

The institution must notify the Administrator of its available days within the designated weeks. The Administrator will make every effort to honor that preference but cannot guarantee requested dates. The date for the hearing will be determined by the availability of members of the Hearing Panel to hear the appeal. The decision of the Chair on any scheduling matters shall be final.

The Chair may, but shall not be required to, convene a pre-hearing telephone conference call for the purpose of discussing any procedural matters or other concerns of the parties in advance of the hearing.

Hearings shall be held at the offices of the Commission or such other location as the Chair shall deem convenient to the parties, provided the Appellant or the Commission may petition the Chair, for good cause, to set the hearing for a different date or location. The decision of the Chair shall be final.

**J. Procedures When No Hearing is Requested.** In the event Appellant has not requested the opportunity to appear before the Hearing Panel, the Chair shall schedule the meeting of the Hearing Panel to consider the appeal for the appropriate date, during the designated hearing weeks, subject to the Hearing Panel's availability. Such meeting may be held in person or by telephone, at such location or locations as may be convenient to the Hearing Panel members.

**K. Procedures for Conduct of Hearings.**

1. The appellate presentation made to and the review by a Hearing Panel is not judicial proceeding and the rules of evidence do not apply. The parties are not permitted to conduct discovery, present or cross-examine witnesses or exercise other evidentiary rights and privileges ordinarily provided to litigants. The Hearing Panel is limited to consideration of information contained in the Record, unless the introduction of new intervening financial information is to be permitted by the Chair. The Chair of the Hearing Panel shall ensure that extraneous information not properly in the Record is excluded from consideration.
2. The procedural determinations of the Chair shall be final. The Chair may establish time limits on presentations by the parties.
3. The proceeding shall be closed to the public and attendance shall be limited to only the necessary representatives of the Commission and the Appellant. Appellant and the Commission may be represented by counsel, and their respective cases may be presented by counsel or any other designee or designees of their choice.
4. Appellant shall have the burden of going forward and the burden of proof in seeking to reverse or remand an adverse accrediting action and shall address the Hearing Panel first. The Commission shall have an opportunity to present its response to the Appellant's contentions. The members of the Hearing Panel may question either party at any point in the proceedings.
5. The Hearing, but not the discussions, deliberations and votes of the Hearing Panel, shall be recorded. A party requesting production of a transcript shall pay the entire cost of such transcription. At the request and expense of a party, a court reporter or other official stenographer may attend and record the proceedings.
6. No post-hearing submissions shall be permitted unless the Hearing Panel requests additional briefing on specific issues.

**L. Decision of the Hearing Panel.**

1. The Hearing Panel shall have the authority to affirm, amend, reverse, or remand the adverse accrediting action.

- a. The Hearing Panel shall affirm the Commission's decision 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 decision. The Hearing Panel must identify in its decision the specific policies and procedures that the Commission failed to follow and must address or 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 reverse the adverse accrediting 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 and capricious, that is, was unreasonable and not based on, or consistent with, the policies of the Commission or the information in the Record.
2. The Hearing Panel shall render its decision in writing within fifteen (15) business days of the conclusion of the Hearing unless further briefing was requested by the Panel, in which case the decision shall be rendered within fifteen (15) business days of the parties' submissions. If no oral appearance has been requested, and the Appeal is to be decided on the written submissions of the parties, the Hearing Panel shall render its decision in writing within thirty (30) days of the submission of the Commission's written statement.
  3. The Hearing Panel decision shall set forth whether its decision is to affirm, remand or reverse the Commission's adverse accrediting action and summarize its reasons in support thereof. The Hearing Panel shall deliver its decision to the Appellant, the Commission and the Administrator of the Appeal.
  4. The decision of the Hearing Panel to affirm or reverse an adverse accrediting 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 appropriate public authorities of the decision in accordance with law.

#### **IV. Subsequent Action**

The Commission reserves the right, at its sole discretion, to take any appropriate action throughout the period accreditation is in force following the final decision:

- 1. Request additional reports or information.**
- 2. Notify other agencies of the outcome of the Appeal and the reasons for the final action.**
- 3. Revise the Date of Withdrawal.**

**4. Rescind Prior Actions.** The Commission may, at any time for good cause shown and solely in the exercise of its discretion, rescind an adverse accrediting action previously taken.

## Overview of the Timetable for Appeals

Timeline	Party Responsible	Detail
Notice of Intent to Appeal must be filed within ten (10) days of receipt of notice of adverse accrediting action	Appellant	Section III.C requires a Notice of Intent to Appeal to be filed in writing with the President of the Commission within ten (10) days of receipt by Appellant of notice of the adverse accrediting action.
Selection of Hearing Panel must be within five (5) business days of receipt of Notice of Intent to Appeal	Commission, Administrator of the Appeal	Section III.D requires the Administrator of the Appeal to identify the names of three members peer reviewers to serve as the Hearing Panel and notify the parties within five (5) business days of receipt of the Notice of Intent to Appeal.
Designation of Record by Commission within ten (10) business days of receipt of Notice of Intent to Appeal	Commission	Section III.E requires the Commission to designate the Record and for the Administrator to deliver an electronic copy to the parties and the Hearing Panel within 10 business days of receipt of the Notice of Intent to Appeal.
Written statement of Appellant submitted within twenty (21) days of receipt of Record	Appellant	Section III.F requires Appellant to submit to the Administrator of Appeal five (5) copies of written statement in support of its appeal and three (3) copies to the President of the Commission within twenty (21) days of receipt of the Record.
Written statement of Commission submitted within twenty (21) days of receipt of Appellant's written statement	Commission	Section III.G requires the Commission to submit to the Administrator of Appeal five (5) copies of written statement in support of its action and three (3) copies to the President of the Commission within twenty (21) days of receipt of Appellant's written statement.
<p>Hearings for Adverse Accrediting Actions taken at the Commission's November meeting shall be held no later than the third full week of February.</p> <p>Hearings for Adverse Accrediting Actions taken at the Commission's March meeting shall be held no later than the final week of May.</p> <p>Hearings for Adverse Accrediting Actions taken at the Commission's June meeting shall be held no later than the fourth full week of September.</p>	Chair, Hearing Panel	Section III.F requires Appellant to request an appearance before the Hearing Panel with the submission of the written statement. If an appearance before the Hearing Panel is requested, Section III.H requires the Chair of the Hearing Panel to schedule the Hearing.

<b>Timeline</b>	<b>Party Responsible</b>	<b>Detail</b>
<p>Within fifteen (15) business days of the conclusion of the hearing or submission of post-hearing briefs, whichever is later</p> <p style="text-align: center;">--- OR ---</p> <p>Within thirty (30) days, if no oral appearance has been requested</p>	<p>Hearing Panel</p>	<p>Section III.K requires the Hearing Panel to render its findings and recommendations in writing.</p>

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