

Appeal of Adverse Action Policy

Scope of This Policy

In the interest of integrity in its decisions, and in keeping with federal policy (34 C.F.R § 602.25), the COCA ensures appeal rights to its member institutions under certain circumstances. When a COM has been notified of an appealable adverse action, it may formally appeal the decision prior to it becoming effective. A three-member ad-hoc Appeal Panel will consider the appeal in keeping with this policy.

Appealable Actions

The US Department of Education (34 C.F.R. § 602.3) defines an adverse action by an accrediting agency as the denial, withdrawal, suspension, revocation, or termination of accreditation or pre-accreditation, or any comparable accrediting action an agency may take against an institution or program. In keeping with this definition, the COCA deems the following adverse actions as appealable:

- The denial of Candidacy or Pre-Accreditation
- The withdrawal of Pre-Accreditation or Accreditation

When such an action has been taken, the COCA will communicate with the COM the next steps it must take should it consider an appeal. The COCA will also make this action, together with the notice of a right to appeal, available to the public on its website. The COM bears the burden of proof for an appeal.

Prior to initiating an appeal for an adverse action, a COM must first submit a request for reconsideration of that action, in keeping with the COCA Request for Reconsideration Policy. If the Commission upholds the original adverse action following this request, the COM may then initiate an appeal.

Procedures for Filing an Appeal

Within 14 days of the receipt of the Commission's action following the Request for Reconsideration, the chief executive officer of the COM must provide to the COCA Secretary a written letter of intent to appeal the decision. The letter must include a brief statement of the failures of procedure that serve as the grounds for the appeal. The Secretary will document the receipt of such notice to the COM within three business days of its receipt.

Within 45 days of its notification of intent to appeal, the COM must submit its documentation in support of the appeal. The appeal must be based on the documentation available to the Commission at the time of its adverse decision and support the assertion that the Commission's action was arbitrary and capricious. Documentation must not exceed 25 pages of narrative, exclusive of supporting exhibits. Within 45 days of receipt of this information from the COM, the COCA will submit a response. These documents will be the basis for consideration by the Appeal Panel.

The COM must submit with its notice of intent to appeal a fee for appeal as specified in the current COCA Dues and Fees schedule

Appeal Panel

When required, the COCA Secretary will select a three-person ad-hoc committee (“Appeal Panel”) from a pool of former Commissioners eligible for participation on an Appeal Panel to serve as the appellate panel for this appeal, none of whom were serving on the Commission at the time of the decision being appealed, and each of whom must comply with the COCA’s conflict of interest policy. One member of the panel will be a public member as defined by 34 C.F.R. § 602.3. The Secretary will identify the panel chair and notify the COM about the membership of the panel, providing a reasonable time for the COM to identify any potential conflicts of interest in its membership.

Process for Appeal

Timing: The panel will convene to consider the appeal as soon as practicable, but in no case more than 120 days following the action being appealed.

New Evidence: While an appeal action may not include new information, materials that were initially submitted and believed to have been improperly considered may be emphasized in the appeal.

If the adverse action by the Commission was based on the financial condition of the institution at the time of the action, the COM may submit current, relevant, and significant financial information to the COCA for consideration before an adverse action becomes final. The COCA will review additional financial information only once, and only if the remaining issue in support of the adverse action relates to finances; the determination arising from that review is not subject to further appeal.

Examination of Evidence: The hearing will take place at a time and place selected by the Secretary. The COCA will provide to the appeal panel all relevant documentation that was available to the Commission at the time of the decision. The COCA will advise the COM that it may seek to employ counsel to represent it during the appellate hearing.

Proceedings: Each party will be given one half hour to present its position to the appeals panel. The Panel Chair may grant additional time for each party as the Panel Chair may deem necessary.

Basis for Panel Decisions: The focus of these deliberations is on whether the original decision by the Commission was arbitrary or capricious and thus was not substantiated by the evidence available at the time of its deliberations.

Outcome of Proceedings: The panel’s role is not advisory. Its findings are binding on all parties. The panel will draw one of the following conclusions:

- If the COM fails to demonstrate that the Commission’s decision was arbitrary or capricious, the panel will **affirm** the original decision.
- If some aspects of the Commission’s original decision are found to have been in keeping with its established procedures, but others were found to be arbitrary or

capricious, the panel may **amend** the original action as it relates to specific elements without invalidating the other elements.

- If the Commission's decision as a whole is found to have been arbitrary or capricious, the panel may **remand** the decision to the Commission for a new deliberative process based on the findings of the panel. The panel will communicate its specific findings, which the Commission must incorporate in its deliberations.

If the decision being appealed is a decision denying or withdrawing pre-accreditation or accreditation, and if the appeal panel affirms the Commission's decision, the COM may seek reinstatement by complying with the requirements for Candidate status. The Commission may not return a COM from Accreditation status to Pre-Accreditation status. If a decision to withdraw accreditation is upheld by the panel, the COM must remain in accredited status long enough for currently enrolled students to obtain transfers to other institutions.

Reporting the Panel Findings

The panel Chair will report the findings of the panel, together with an explanation of its conclusions, at the same time to the COCA Secretary, the COM's executive officer, and Commission Chair for any subsequent action. The Commission must act in keeping with the panel's findings. If the panel's findings require the COCA to modify its public information about the COM, such changes will be made concurrent with its notification to the COM. No other information about the panel's composition, deliberations, or findings shall be released by the COCA. If an adverse decision is affirmed by the appeal panel, the COM must notify its students within seven days of notification of this decision.

Costs for Appeal

The appellate COM will submit an appeal fee as specified in the COCA Dues and Fees Schedule at the time of its submission of a letter of intent to appeal to the COCA. All other costs related to initiating and supporting its appeal will be the responsibility of the appellate COM.

Initial Arbitration

Federal requirement 20 U.S.C. 1099b(e) stipulates that the Secretary may not recognize the accreditation of any institution of higher education unless the institution of higher education agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action. While this imposes an obligation on the COM to abide by this agreement, the COCA provides for this process in keeping with its Initial Arbitration Policy.

Related Federal Requirements:

34 C.F.R. § 602.25(h)(1)(i-iii), (2)

34 C.F.R. § 602.3