

## 2. Appealing Commission’s Adverse Decision

### ***Procedure for Requesting Reconsideration or Appealing a Negative Commission Decision on Accreditation, and Post-Hearing Arbitration***

The institution may request reconsideration of the action of the Commission or appeal the action. The request for reconsideration or appeal must be made using the Application for Appeal or Reconsideration (E.3.). The application must be sent with the required fees (see E.1.) to the Executive Director of the Accrediting Commission within 10 days of the receipt of the Commission’s letter advising the institution of the decision to deny or withdraw accreditation. The institution’s failure to submit the application and fees within 10 days will be deemed a waiver of its right of reconsideration or appeal and cause the Commission’s action to become final.

The institution shall file a written statement of the grounds for its request for reconsideration or appeal within 30 days of receipt of the notification of the Commission’s action. An institution deciding to challenge the Commission’s action must choose either to request reconsideration of the action **or** to appeal the action. Final action on reconsideration is not subject to appeal and final action on appeal is not subject to reconsideration.

An institution electing either an appeal or a reconsideration has the right to employ counsel to represent it during its hearing before the Commission or the Appeals Panel, including the right of counsel to make an oral presentation. The institution also has the right—at its election and expense—to have a transcript made of the portion of the hearing where they are present. The Commission shall schedule the reconsideration or appeal hearing and shall designate the time and place the hearing will be held.

The processes of reconsideration and appeal provide the institution that has had its accreditation denied or withdrawn the choice of one of two alternatives for challenging the Commission’s action. Choosing reconsideration allows the institution to make changes and provide new information to the Commission. The choice to appeal the decision limits the institution to the items in the Commission’s record and the decisions in which the Commission carried out its own policies and procedures.

If the institution’s reconsideration or appeal request is not successful, where the decision to deny or withdraw accreditation is upheld and becomes final, the institution is not eligible to re-apply for accreditation for a period of one year from the date of the final action.

### **The Reconsideration Process**

The grounds for the request for reconsideration may include material not in the record before the Commission when the decision was made to deny accreditation or re-accreditation. The grounds may also include evidence showing that the institution has been brought into compliance with the specific standards or policies identified as the basis for the Commission’s decision.

A reconsideration consists of a hearing before a quorum of the Commission members and will allow opportunity for the institution and its counsel to make a statement before the Commission and respond to questions. New documentation not previously submitted with the grounds for reconsideration may not be introduced at the time of the reconsideration hearing.

In reconsidering its action to deny or withdraw accreditation, the Accrediting Commission may: 1) set aside its action and accredit or continue the institution’s accreditation; 2) set aside its action and accredit or continue accreditation with conditions which the institution must agree to meet within a stated time period; 3) set aside its action and direct that a new accreditation examination take place; or 4) sustain its original decision. If the decision to deny or withdraw accreditation is sustained, the Commission’s action is final and the institution may not appeal.

### **The Appeal Process**

In the appeal process, the institution’s appeal is heard by an independent panel. The panel consists of three people appointed by the Accrediting Commission from a list of former Commissioners who are free from any conflicts of interest. Conflicts of interest are addressed in D.8. Standards of Ethics and Professionalism for Accreditation Participants. One member is designated Chair. The appeals panel may decide to affirm the Commission’s action, or it may decide to amend, reverse or remand an adverse accrediting action.

The institution must set forth the specific grounds for its appeal in writing in the time specified above and state the reasons the institution believes the adverse decision should be changed. In making its appeal, the institution must endeavor to show that the Commission’s decision resulted from errors or omissions in the execution of Commission policies and procedures, or that the decision was arbitrary or capricious and was not based on substantial evidence on the record.

The appeals panel will consider the grounds for the appeal, the institution’s oral presentation, and the record that was before the Commission when it made the decision to deny accreditation or re-accreditation. The appeals panel may, at its discretion, remand the adverse action to the Commission for further consideration. If it elects to remand, the panel must identify specific issues that the Commission must address. In lieu of such a recommendation by the panel, the Commission will implement the decision consistent with the panel’s decisions and instructions.

The Commission itself will be responsible for implementing the decision of the appeals panel. If the panel denies the appeal, the Commission’s decision stands. If the panel upholds the appeal, it will state the reasons and decide to amend, reverse or remand an adverse accrediting action.

### **Hearing Procedure, Reconsideration or Appeals**

At the reconsideration or appeal hearing, the institution shall have the opportunity to make an oral presentation. The oral presentation shall not exceed twenty minutes. If the institution desires to make an oral presentation, the chief executive officer of the institution should make the request in writing to the Executive Director of the Accrediting Commission not less than 30 days prior to the date of the hearing. The names and affiliations of those appearing to make the oral presentation must be included with the request. The institution, at its option and its expense, shall have the right to the presence of its counsel at, and a transcript of, such oral presentation.

The reconsideration or appeal hearing is not adversarial and the school does not have the right to cross-examine. The oral presentation should provide information relevant to the specific grounds for the reconsideration or appeal. No new materials may be presented for the Commission’s consideration at the time of the hearing.

Within **30** days following the conclusion of the reconsideration or appeal hearing, the Commission shall send the institution a written statement advising of the action and the basis for that action on the reconsideration or appeal.

## Arbitrating Post-Hearing Decisions

The *DETC Constitution and Bylaws*, under Section 12.2. provide that:

### Section 12.2 - Interpretation and Appeal

*An institution challenging a final adverse decision on accreditation must submit to binding arbitration pursuant to the appropriate Commission policy in the DETC Accreditation Handbook. An institution which seeks to overturn an adverse arbitration decision, or filing suit for any other reason, must bring the suit in the Federal Court for the District of Columbia and escrow sufficient funds to guarantee that the Commission will recover its legal fees in defending the suit if the institution does not prevail. Should the institution prevail over the Commission, the escrow will be returned.*

Below are the procedures adopted by the Commission for institutions electing to seek binding arbitration on a final adverse accrediting decision:

1. Upon being notified that its appeal or reconsideration did not change an adverse Accrediting Commission decision, an institution will have five business days to request arbitration, during which no public notification of the Commission action will be made, and no new students may be enrolled. When the institution remits an arbitration fee (using E.13. Application for Arbitration) established by the Commission, an arbitrator will be selected by a recognized national agency. Early resolution of such disputes being in the public good, the parties shall make every effort to expedite the arbitration.
2. The analytic framework used for the arbitration will be that developed by the Federal Courts, particularly the Circuit Courts, and selected excerpts are cited in an appendix to this procedure. Courts have described their role as not one of making a de novo review, but of determining whether the accrediting association’s decision was arbitrary or capricious. In like manner, the arbitration should make this determination, assessing whether the association confined its action to the contours of due process and fundamental principles of fairness, while recognizing the special nature of accreditation and according deference to the rules and processes of accrediting associations.
3. The arbitrator will be provided with all of the information available to the Accrediting Commission when it made the adverse decision, and the procedures used to reach the decision. Along with the presentation by the parties, this will allow for a through consideration of whether the association’s decision was arbitrary or capricious, or reached in an unfair manner. Additional discovery activity and witnesses should not be required. In an exceptional circumstance, where the arbitrator finds that additional information is essential to reaching a fair decision, limited discovery may be authorized.
4. Both parties may appear before the arbitrator with legal counsel to present their position, and each may file a written brief, subject to the fifteen-page limit used by the Department of Education’s appeals division, and up to five exhibits.
5. The arbitrator’s decision will be admissible in any subsequent proceeding where it is relevant.

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