

NACCAS Rules of Practice & Procedure
January 2014

Part 9 – The Appeal From Adverse Accreditation Status Decisions

Sub-Part A -- General Information

Section 9.0 Coverage of Appeals

The appeal procedure specified in [Sub-Part B](#) (see page 119) constitutes the exclusive remedy for an institution to appeal an adverse accreditation decision by the Commission. The Commission will only consider appeals filed pursuant to this procedure and will not act upon petitions for reconsideration, petitions for reinstatement, or any other such filing.

- (a) Only adverse accreditation decisions made by the Commission may be appealed. Adverse decisions are:
 - (1) Removal from candidate status;
 - (2) Denial of approval of a change under [Part 4](#) (see page 77) of the *Rules*;
 - (3) Denial of initial accreditation; and
 - (4) Withdrawal of accreditation.
- (b) All documents submitted to NACCAS on appeal must comply with the requirements of [Part 1](#) (see page 55) of these *Rules*, and must be sent by certified mail, return receipt requested, or an alternate traceable means.
- (c) The appeal procedures established by the Commission shall be construed to secure the just and expeditious determination of every appeal proceeding. An institution retains its accreditation status while undergoing an appeal.
- (d) Except as set forth in Section 9.0(e) below, if no letter of intent to appeal an adverse action is received by the Commission within the time frames specified in [Sub-Part B](#) (see page 119), the adverse action shall enter into effect on the twentieth day after the institution received official notice of the adverse action.
- (e) Receipt: The letter officially notifying an institution of the Commission's adverse accreditation decision shall be mailed by a traceable means.
 - (1) The date an institution receives notice of the adverse action is the date the Commission's official action letter is signed for, irrespective of who signs for it.
 - (2) If the first notice from the Commission is returned as undeliverable, the Commission shall attempt to contact the institution at its telephone, facsimile and/or email address of record to obtain an alternate address for delivery of the notice and, if successful, send a second notice to that alternate address. If the institution cannot be contacted by these means (or does not respond to the

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Commission's request for information within three business days), the Commission shall send a second notice to the institution's address of record (by an alternate traceable means, if available).

- (3) If the second notice from the Commission is returned as undeliverable, the adverse action shall enter into effect on the date the second notice is returned to the Commission.

Section 9.1 Grounds for an Appeal

An institution affected by an adverse status decision by the Commission may appeal that decision if it has reason to believe:

- (a) That the decision was erroneous as a matter of fact or law;
- (b) That there has been substantial and material oversight or omission in the Commission's decision-making process;
- (c) That the decision was arbitrary and capricious; or
- (d) That it can prove current compliance with NACCAS *Standards and Criteria, Rules of Practice and Procedure* and other accreditation requirements. The burden of proof of such compliance shall rest with the institution.

Section 9.2 Standard of Review on Appeal

- (a) On appeal, the institution has the burden of proving that the Commission's adverse status decision was erroneous, not supported by the evidence on the record, or was otherwise arbitrary and capricious. In addition, on appeal, the institution must prove conclusively that it meets NACCAS *Standards and Criteria, Rules of Practice and Procedure*, and other accreditation requirements.
- (b) While the Commission may accept on appeal evidence of remediation undertaken after the Commission's adverse status decision, the institution has the burden of conclusively proving that it is fully in compliance with the NACCAS *Standards and Criteria, Rules of Practice and Procedure*, and other accreditation requirements.
- (c) The record on an appeal shall include, as applicable, the Letter of Intent to Appeal, Appeal Document, Visit Report and institution's response thereto, as well as all other documents relevant to the appeal.

Sub-Part B -- Appeals Procedure

Section 9.3 Letter of Intent to Appeal – 20 Days

To initiate an appeal process, within twenty (20) days after receiving official notice of the adverse action, the institution must do the following:

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- (a) Write a letter of intent to appeal, addressed to the Executive Director of NACCAS. The letter must:
 - (1) State the specific grounds for the institution's appeal;
 - (2) Provide the names and titles of any representatives from the institution who will offer testimony or argument in an appeal hearing before the Commission, if one is requested; and
 - (3) Give the name and title of any outside counsel the institution is consulting for its appeal and indicate if this person will appear before an Appeal Review Panel in an appeal hearing, if one is requested.
- (b) Submit the appeal fee corresponding to an appeal based on a written record, or corresponding to an appeal based on a written record and an appeal hearing.

Section 9.4 **Appeal Document – 45 Days**

- (a) Within forty-five (45) days of receipt of the Commission's official notice of an adverse action, the institution shall submit ten (10) copies of an Appeal Document to the Executive Director of NACCAS. This Appeal Document shall set out in detail all of the facts and arguments which the institution believes support a reversal or modification of the Commission's adverse accreditation status decision. The statements shall be accompanied by all documents or other materials upon which the institution relies to support its appeal, including the evidence of remediation. The Appeal Document is the final opportunity for an institution to demonstrate remediation of any area of non-compliance or limitation on which the adverse accreditation decision was based.
- (b) If the appellant fails to timely meet any requirement on appeal, including the payment of appeal fees, the Appeal Review Panel has no obligation to review the appeal and the adverse accreditation action shall become effective in accordance with [Section 9.0\(d\)](#) (see page 118) of these *Rules*.
- (c) Notwithstanding [Section 9.4\(a\)](#) and [Section 9.4\(b\)](#) above, where the adverse action subject to appeal was based in whole or in part on a failure of the institution to comply with NACCAS' financial standards ([Standard VII](#), see page 16), the institution may submit new financial information for consideration by the Appeal Review Panel, at any time prior to the meeting of the Panel, provided that such information:
 - (1) Was unavailable to the institution until after the adverse action subject to appeal was taken by the Commission; and
 - (2) Is significant and bears materially on the financial deficiencies identified by the Commission.

Section 9.5 **Meetings and Deliberations of the Appeal Review Panel**

- (a) All appeals shall be heard by an Appeal Review Panel organized in accordance with [Sub-Part C](#) (see page 123) below.
- (b) The Appeal Review Panel shall establish a meeting schedule for each calendar year. The Panel shall meet at least twice a year, when there are appeals pending. A majority of

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Panelists shall constitute a quorum at any meeting of the Appeal Review Panel. The meeting of the Appeal Review Panel shall include review of the record on appeal, appeal hearings, deliberations, and rendering of decisions.

- (c) At least fifteen (15) days before a meeting of the Appeal Review Panel, each Panelist shall receive a complete copy of the appellant's record on appeal.
- (d) If any appellant has requested an appeal hearing, it shall take place at the first meeting of the Appeal Review Panel that is held more than twenty (20) days after the institution's appeal document is due.
- (e) At the Appeal Review Panel meeting, following any hearing(s) and after the appellants are no longer present, the Appeal Review Panel shall discuss the appellant's record on appeal, oral testimony, and answers to questions at the hearing, if any.
- (f) No members of the Commission or the public shall be allowed in the meeting of the Appeal Review Panel unless requested or required by the Panel. However, both parties shall be allowed to have counsel present and one or more staff members of NACCAS shall staff the Panel and be available throughout the meeting of the Panel for purposes of clarification of the Commission's Standards and Criteria. However, the staff shall not offer an opinion on the appeal.

Section 9.6 **Appeal Hearing Procedures**

As a general proposition, forty-five (45) minutes shall be allocated for an appeal presentation. The Chair of the Appeal Review Panel has the authority to grant additional time for the hearing, if he or she believes that it is needed.

- (a) The appeal hearing shall commence with an opening statement by the Chair of the Appeal Review Panel, which describes the applicable standard of review, and the procedures to be followed at the hearing.
- (b) The appealing institution's representative(s) shall then make its presentation in support of the appeal.
- (c) Any member of the Appeal Review Panel, other than any Panelist required to recuse, may question the representative(s) of the institution at any time during the presentation, including questions into any issue concerning the institution's compliance with NACCAS *Standards and Criteria* and other accreditation requirements.
- (d) At the conclusion of the oral argument, the hearing shall be adjourned.
- (e) The Appeal Review Panel may, in its discretion, accept new evidence, including evidence of remediation, at the appeal hearing.

Section 9.7 **Authority and Recommendations of the Appeal Review Panel**

- (a) The Appeal Review Panel has no authority to waive or otherwise modify the NACCAS eligibility criteria, *Standards and Criteria, Rules of Practice and Procedures, Policies*, or other accreditation requirements.

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- (b) The Appeal Review Panel may either:
- (1) Affirm the adverse accreditation decision of the Commission, in which case the decision shall be final;
 - (2) Reverse the adverse accreditation decision of the Commission, in which case the Commission shall implement the decision of the Appeal Review Panel, as provided in [Section 9.7\(c\)](#) (below) of these *Rules*;
 - (3) Amend the adverse accreditation decision of the Commission, in which case the Commission shall implement the decision of the Appeal Review Panel as provided in [Section 9.7\(c\)](#) (below) of these *Rules*;
 - (4) Remand the adverse accreditation decision to the Commission for further consideration, in which case the Commission shall reconsider the original decision as provided in [Section 9.7\(d\)](#) (below) of these *Rules*.

In all cases, the Appeal Review Panel shall provide the Commission with a written statement of the result of the appeal and of the basis for that result, together with the record on appeal, including the Appeal Document and appeal transcript.

- (c) If the Appeal Review Panel reverses or amends the adverse accreditation decision, the Commission shall implement the Appeal Review Panel's decision in a manner consistent with the Panel's decision and (if applicable) instructions, and with the Commission's accreditation standards and these *Rules*.
- (d) If the Appeal Review Panel remands the adverse accreditation decision to the Commission for further consideration, it shall provide the Commission with a written statement identifying specific issues that the Commission must address in rendering its final decision. In undertaking its reconsideration of a decision remanded by the Appeal Review Panel, the Commission shall act in a manner consistent with the Panel's decision and instructions (including with respect to the addressing the specific issues identified by the Panel), and with the Commission's accreditation Standards and these *Rules*. A decision by the Commission upon a matter remanded to it by the Appeal Review Panel shall be final and not subject to further appeal. The Commission shall send an official notification to the appellant in accordance with [Section 8.17](#) (See page 115) of these *Rules*.
- (e) In implementing any decision by the Appeal Review Panel, the Commission may impose any monitoring, reporting or other limitations or obligations on the accreditation of an institution consistent with these *Rules* and the decision of the Appeal Review Panel.
- (f) In the event that the Commission determines that it is incapable of implementing the Appeal Review Panel's decision in a manner consistent with the Commission's accreditation Standards and these *Rules* because the Appeal Review Panel has exceeded the limitations to its authority under [Section 9.7\(a\)](#) (see page 121) of these *Rules* by waiving or otherwise modifying the NACCAS eligibility criteria, *Standards and Criteria*, *Rules of Practice and Procedures*, *Policies*, or other accreditation requirements, the Commission shall remand the decision to the Appeal Review Panel and the Appeal Panel shall render a decision consistent with such eligibility criteria, Standards and Criteria, *Rules of Practice and Procedures*, policies, and/or other accreditation requirement.

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Section 9.8 **Record of Appeal Hearing**

The Appeal Review Panel shall record or stenographically transcribe any appeal hearing before it. A transcript of the hearing shall be provided to the institution upon written request and payment of a reasonable charge for transcription costs.

Section 9.9 **Expenses of Appeal**

- (a) The expenses incurred in the development and presentation of its appeal shall be borne exclusively by the institution filing the appeal, including the appeals fee as indicated in [Appendix #2](#) (see page 134) to these *Rules*.
- (b) The expenses involved in the arrangements for the location of the meeting of the Appeal Review Panel shall be paid by NACCAS.

Sub-Part C – Appeal Review Panel

Section 9.10 **Function of Appeal Review Panel**

The purpose of the Appeal Review Panel is to review the Appeal Document (if any) submitted by the appellant institution, conduct an appeal hearing (if requested by the appellant), and render a decision on the appeal, in accordance with [Section 9.5](#) (see page 120) through [Section 9.7](#) (see page 121) of these *Rules*.

Section 9.11 **Composition of Appeal Review Panel**

The Appeal Review Panel shall consist of seven (7) Panelists, of which:

- (a) Four (4) Panelists shall satisfy the qualifications set forth in NACCAS' [By-Laws](#) (see page 222) for a Commissioner representing schools in fields of training within NACCAS' scope; provided, however, that at all times at least three (3) of such Panelists shall satisfy the ownership requirements of [Article III, Section IV.A.4.](#), see page 225;
- (b) One (1) Panelist shall satisfy the qualifications set forth in NACCAS' [By-Laws](#) (see page 222) for a Commissioner representing professional services operations in fields within NACCAS' scope;
- (c) One (1) Panelist shall satisfy the qualifications set forth in NACCAS' [By-Laws](#) (see page 222) for an academic Commissioner; and
- (d) One (1) Panelist shall satisfy the qualifications set forth in NACCAS' [By-Laws](#) (see page 222) for a Commissioner representing the public interest.

Section 9.12 **Qualifications of Panelists**

- (a) In addition to satisfying the qualifications for the category of Panelist to which he or she is appointed (as set forth in [Section 9.11](#), see above), each Panelist must (i) have signed an agreement to abide by the NACCAS [Code of Ethics](#), found on the NACCAS website under "Other Key Documents" (including, without limitation, an agreement to disavow

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from discussion or voting on any matter where a conflict of interest exists); and (ii) either have attended a NACCAS accreditation workshop within the previous three (3) years or have signed an agreement to attend a NACCAS accreditation workshop prior to the first meeting of the Appeal Review Panel on which he or she will serve.

- (b) No sitting Commissioner may serve on an Appeal Review Panel, nor may any former Commissioner serve on an Appeal Review Panel until at least one (1) year after his or her term as Commissioner has ended.
- (c) No two people from the same business entity may be appointed to serve simultaneously on the Appeal Review Panel.
- (d) No Panelist may be appointed to more than two consecutive full terms on the Appeal Review Panel. For purposes of this section, a replacement Panelist who serves a partial term of less than one calendar year is not deemed to have served a full term. A Panelist who is disqualified from reappointment on account of serving two consecutive full terms shall remain disqualified for the three (3) years immediately following his or her last full term of service.

Section 9.13 **Selection of Panelists**

- (a) Each year, the Commission shall solicit, by public notice, applications from interested and qualified parties to replace Panelists whose terms of appointment will expire on December 31 of that year.
- (b) The Commission may, in its discretion, appoint a committee for the purpose of reviewing applications and making recommendations for appointment to the Commission.
- (c) Not later than December 31 of each year, the Commission shall review the applications received by NACCAS and make appointments to the Panel from the list of applicants whose applications show that they meet the qualifications for Panelists set forth in [Section 9.11](#) (see page 123) and [Section 9.12](#) (see page 123). Panelists shall be appointed by vote of the Commission. Appointments shall be publicly announced and the list of panelists shall be available on the NACCAS [website](#).

Section 9.14 **Term of Panelists; Resignation and Removal; Vacancy**

- (a) Each panelist shall be appointed for a three (3) year term; provided, however, that of the first seven (7) Panelists appointed pursuant to [Section 9.13](#) (above) of the *Rules*, two (2) Panelists (selected by lot) shall be appointed for a one (1) year term and two (2) Panelists (selected by lot) shall be appointed for a two (2) year term. Except in the case of a Panelist appointed to fill an interim vacancy (whose term shall begin immediately upon appointment), each Panelist's term shall commence on January 1, immediately following his or her appointment. Each Panelist shall serve until his or her term expires, or until his or her resignation or removal, as provided in these *Rules*.

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- (b) At each meeting of the Appeal Review Panel, each Panelist shall attest that he or she continues to satisfy the qualifications for the category of Panelist for which he or she was appointed. If the Panelist cannot do so, he or she shall resign immediately. Any Panelist who is absent from two (2) consecutive meetings of the Appeal Review Panel shall be deemed to have resigned his or her seat on the Panel.
- (c) The Executive Committee shall have the power to remove from office any panelist who, in the determination of the Executive Committee, (1) has ceased to satisfy the qualifications for the category of panelist for which he or she was appointed or (2) has violated his or her obligations under these *Rules* and/or the [Code of Ethics](#) (found on the NACCAS website under “Other Key Documents”).
- (d) In the event of any vacancy on the Appeal Review Panel, the Executive Committee shall appoint a replacement Panelist to serve the remainder of the term of the Panelist who is being replaced. The replacement Panelist must satisfy all of the qualifications for the same category of Panelist (e.g., school owner, academic, professional services or public interest representative) as the Panelist he or she is replacing.

Section 9.15 **Objections to Appeal Review Panel**

- (a) Each institution that has appealed an adverse action of the Commission pursuant to [Section 9.3](#) (see page 119) of these *Rules* shall be notified, in writing, whether its appeal will be heard (i) in the then-current calendar year or (ii) in the following calendar year. Institutions whose appeals will be heard in the then-current calendar year may, within ten (10) days from receipt of such written notification, submit to NACCAS, in writing, the name(s) of any Panelist(s) the institution believes is prevented by a conflict of interest from hearing the institution’s appeal. Institutions whose appeals will be heard in the following calendar year shall be notified in writing when the Panelists for the following year have been selected, and may object, in writing, to any such Panelists within ten (10) days of receipt of such notice.
- (b) An appellant objecting to a panelist must indicate in writing the specific violations of the NACCAS [Conflict of Interest Policy](#) (found on the NACCAS website under “Other Key Documents”) that require the challenged Panelist to recuse themselves from consideration of the institution’s appeal. In the event that the challenged Panelist does not voluntarily recuse themselves, the remaining Panelists, by majority vote, shall determine whether the institution has shown good cause for requiring such recusal, and the challenged Panelist shall abide by the decision of the Panel.

Section 9.16 **Special Panelists**

- (a) In the event that more than four (4) Panelists are required to recuse from any institution’s appeal, the Executive Committee shall appoint one (1) or more Special Panelists solely for purposes of hearing the affected institution’s appeal. The Special Panelist(s) must meet the qualifications for a panelist set forth in these *Rules*, other than the compositional requirements set forth in [Section 9.11](#) (see page 123).

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- (b) The affected institution shall be notified in writing of any Special Panelists appointed to hear its appeal, and shall have five (5) days to object to any such Special Panelists, on the terms set out in [Section 9.15](#) (see page 125). The appointment and objection process described in this Section 9.16 shall continue until there shall be at least three (3) Panelists (including Special Panelists) not disqualified from hearing the institution's appeal.

- (c) Where necessary to permit the appointment and objection period described in above to be completed in a timely manner, the Appeal Review Panel shall defer consideration of the objecting institution's appeal to a special meeting called specifically for that purpose. Such special meeting shall be held not later than thirty (30) days following the final selection of Special Panelists and, unless the appellant has requested an appeal hearing at which a representative of the institution will make a personal appearance, such special meeting may (in the Panel's discretion) be a telephonic meeting.