

NACCAS Rules of Practice & Procedure
June 2017

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 129) constitutes the exclusive remedy for an institution to appeal an Appealable Action 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 Appealable Actions made by the Commission may be appealed. Appealable Action decisions are:
 - (1) Removal from candidate status;
 - (2) Denial of approval of a change under [Part 4](#) (see page 82) 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 59) 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 Appealable Action is received by the Commission within the time frames specified in [Sub-Part B](#) (see page 129), the Appealable Action shall enter into effect on the twentieth day after the institution received official notice of the Appealable Action.
- (e) Receipt: The letter officially notifying an institution of the Commission's Appealable Action shall be mailed by a traceable means.
 - (1) The date an institution receives notice of the Appealable 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 Appealable 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 Appealable Action by the Commission may appeal that decision if it has reason to believe:

- (a) That the decision was clearly erroneous, not supported by the evidence on the record at the time the Commission took action, or was otherwise arbitrary and capricious; or
- (b) If, but only if and only to the extent that, the Appealable Action resulted from a finding that the institution has failed to comply with NACCAS' financial viability requirements under NACCAS' [Standard VII, Criterion 1](#), see page 17, that it can prove current compliance with [Standard VII, Criterion 1](#), see page 17.

Section 9.2 **Standard of Review on Appeal**

- (a) In all cases, the institution bears the burden of proof on appeal.
- (b) Except for the consideration of new financial information as permitted under [Section 9.5](#), see page 130, of these Rules, the Appeal Review Panel shall only consider evidence in the record at the time the Commission took action. The Appeal Review Panel shall not consider evidence of compliance or remediation after the date the Commission took the Appealable Action.
- (c) In reaching a determination that the Commission's decision was clearly erroneous, not supported by the evidence on the record at the time the Commission took action, or was otherwise arbitrary and capricious, the Appeal Review Panel shall not substitute its judgment for that of the Commission. A finding by the Appeal Review Panel that the Commission acted in error must be based on the conclusion that no reasonable decision-making body would have reached the decision on appeal, taking into account the evidence in the record at the time the Commission took action, and the requirements of the Commission's *Standards, Criteria, Rules* and other accreditation requirements.
- (d) The record on an appeal shall include, as applicable, the Letter of Intent to Appeal, Appeal Document and all documents cited therein, together with all other documents and information in the record at the time the Commission took the Appealable Action under appeal and relevant to the reasons stated by the Commission for taking such action and/or the grounds for appeal stated in the Appeal Document.

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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 Appealable Action, the institution must do the following:

- (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; and
 - (2) Indicate whether the institution intends to pursue an administrative appeal, a documentary appeal or a personal appearance appeal (as defined in NACCAS' [Schedule of Fees](#)).
- (b) Submit the appeal fee corresponding to an administrative appeal, a documentary appeal or a personal appearance appeal (as defined in NACCAS' [Schedule of Fees](#)).

Section 9.4 Appeal Document – 45 Days

- (a) In support of its appeal, the institution shall submit an Appeal Document, prepared and submitted in accordance with the provisions of this Section 9.4, to the Executive Director of NACCAS. The Appeal Document shall set out in detail all of the facts and arguments which the institution believes support its claim that the Commission's decision was clearly erroneous, not supported by the evidence on the record at the time the Commission took action, or was otherwise arbitrary and capricious. The Appeal Document must address each of the bases for the Appealable Action stated by the Commission in the Commission's official notification letter to the institution.
- (b) In its Appeal Document, the institution shall support its argument on appeal by specific reference to information and documentation in the record at the time the Commission took the Appealable Action, identifying where in the record that information or documentation may be found. (The institution may include copies of relevant documents, but each such document must be identified by the location of such document in the record.)
- (c) The institution's appeal is not an opportunity to introduce evidence not in the record at the time the Commission took the action being appealed (including, but not limited to, evidence of remediation). Except as permitted by [Section 9.5](#), see page 130, the Appeal Document may not include or refer to information or documentation not in the record at the time the Commission took the Appealable Action.
- (d) The Appeal Document must be organized in accordance with the Commission's Requirements for Organization of Document Submissions to NACCAS and the requirements of [Part 1.6](#), see page 64, of these Rules. The institution shall submit three (3) copies of the Appeal Document in hard-copy format and one (1) copy in electronic (WORD or PDF) format (which may be delivered electronically to NACCAS or on a flash drive or other portable data storage device).
- (e) The Appeal Document must be received by NACCAS not later than forty-five (45) days after the receipt by the institution of the Commission's official notice of an Appealable

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Action. Except as provided in [Section 9.5](#), below, the Appeal Review Panel shall not review or otherwise take into consideration any additional documentation or appeal materials received after the submission deadline; provided, however, that the Panel may consider Appeal Documents received after the 45-day deadline if, but only if, the institution can demonstrate that the Appeal Document was shipped not less than three (3) days prior to the deadline, by a means reasonably calculated to ensure receipt by NACCAS by that deadline. In addition, 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 127) of these *Rules*.

Section 9.5 **New Financial Information**

(a) **Submission of New Financial Information.** Notwithstanding [Section 9.4](#) (see page 129), where the Appealable Action subject to appeal was based in whole or in part on a failure of the institution to comply with [Standard VII, Criterion 1](#) (see page 17), 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 Appealable Action subject to appeal was taken by the Commission; and
2. Is significant and bears materially on the financial deficiencies identified by the Commission.

(b) **Significance and Materiality of New Financial Information.** [Standard VII, Criterion 1](#) establishes three separate, alternative tests for demonstrating financial viability. Each of these tests requires review of specific financial information, presented in a specified format. Accordingly, new financial information presented on appeal satisfies the “significance and materiality” test of Section 9.5(a)(2) above if, and only if, it consists of the information required to establish that the institution meets the requirements of [Standard VII, Criterion 1](#) under one of these three tests.

- (1) **Standard VII, Criterion 1(a) or 1(b):** Compliance with [Standard VII, Criterion 1\(a\)](#) and/or [1\(b\)](#) is demonstrated by calculation of certain financial scores or ratios derived from 12-month audited financial statements ([Standard VII](#)). Institutions may demonstrate compliance with [Standard VII, Criterion 1\(a\)](#) or [1\(b\)](#) by submission of audited 12-month financial statements covering a period more recent than that of the financial statements last reviewed by the Commission (which, for purposes of appeal, need not be the institution’s regular fiscal year).
- (2) **Standard VII, Criterion 1(c):** Compliance with [Standard VII, Criterion 1\(c\)](#) requires (i) demonstration of certain documented financial ratios and (ii) Commission determination of financial viability based on its review of a report of an onsite evaluation conducted by an independent certified public accountant approved by the Commission and conducted under a series of agreed upon published procedures determined by NACCAS.

If an appellant institution elects to demonstrate compliance with [Standard VII, Criterion 1](#) utilizing the method described under [Criterion 1\(c\)](#), the institution shall bear the burden of ensuring that all elements of the [Criterion 1\(c\)](#) process

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are complete and available for review by the Appeal Review Panel prior to the date on which the Panel must consider the institution's appeal (as determined under Section 9.6 of these Rules, see below). If a [Criterion 1\(c\)](#) report is not final and available for review when the Appeal Review Panel meets to consider the institution's appeal, the Panel (i) has no power to defer action on the appeal to a later date (see Rules, [Section 9.8\(b\)](#)), see page 132, and (ii) may not remand the matter to the Commission for consideration at a later date unless the Panel determines that the institution's failure to submit the required [Criterion 1\(c\)](#) report is the direct result of unreasonable delay by NACCAS.

Section 9.6 **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 133).
- (b) The Appeal Review Panel shall meet at least twice a year, when there are appeals pending. The Panel shall establish a meeting schedule for each calendar year and shall establish, for each meeting date, an agenda closure date based on the Commission's meeting schedule, such that all perfected appeals from Appealable Actions at any meeting of the Commission shall be heard by the same Panel.
- (c) A majority of 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, personal appearance appeal hearings, deliberations, and rendering of decisions.
- (d) At least fifteen (15) days before a meeting of the Appeal Review Panel, each Panelist shall receive a complete copy of the appellant's Appeal Document.
- (e) At the Appeal Review Panel meeting, following any personal appearance 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 9.7 **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.

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- (b) The appealing institution's representative(s) shall then make its presentation in support of the appeal. The institution, in presenting its argument, may reference its Appeal Document and any other information or documentation in the record that is relevant to the grounds for appeal cited in its Appeal Document, but may not introduce or refer to any evidence not in the record at the time the Commission took the Appealable Action being appealed (except as permitted by [Section 9.5](#), see page 130).
- (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, on any matter relevant to the Commission's written reasons for taking the Appealable Action under appeal and/or the grounds for appeal cited in the institution's Appeal Document.
- (d) All Panelists shall be required to recuse from discussion and voting on any matter when required to do so to comply with the requirements of the NACCAS Code of Ethics, or the provisions of [Section 9.13](#), see page 134. In addition, any Panelist holding an ownership interest in, or serving as an administrator of, a NACCAS-accredited school that is subject to an open Show Cause Order shall recuse from discussion and voting on all matters before the Appeal Review panel until such time as that order has been closed.
- (e) At the conclusion of the question and answer period, the institution may make a brief closing statement, after which, the hearing shall be adjourned.

Section 9.8 **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.
- (b) The Appeal Review Panel may either:
 - (1) Affirm the Appealable Action of the Commission, in which case the decision shall be final;
 - (2) Reverse the Appealable Action of the Commission, in which case the Commission shall implement the decision of the Appeal Review Panel, as provided in [Section 9.8\(c\)](#) (see page 133) of these *Rules*;
 - (3) Amend the Appealable Action of the Commission, in which case the Commission shall implement the decision of the Appeal Review Panel as provided in [Section 9.8\(c\)](#) (see page 133) of these *Rules*;
 - (4) Remand the Appealable Action to the Commission for further consideration, in which case the Commission shall reconsider the original decision as provided in [Section 9.8\(d\)](#) (see page 133) 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 transcript of the personal appearance hearing (if any).

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- (c) If the Appeal Review Panel reverses or amends the Appealable Action, 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 Appealable Action 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 123) 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 9.8\(a\)](#) (see page 132) 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.

Section 9.9 Record of Appeal Hearing

The Appeal Review Panel shall record or stenographically transcribe any personal appearance 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 9.10 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 145) 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 9.11 Function of Appeal Review Panel

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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 9.6](#) (see page 131) through [Section 9.8](#) (see page 132) of these *Rules*.

Section 9.12 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 238) 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 238;
- (b) One (1) Panelist shall satisfy the qualifications set forth in NACCAS' [By-Laws](#) (see page 235) 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 235) for an academic Commissioner; and
- (d) One (1) Panelist shall satisfy the qualifications set forth in NACCAS' [By-Laws](#) (see page 235) for a Commissioner representing the public interest.

Section 9.13 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 9.12](#), 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 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 person may serve as a Panelist if he or she holds an ownership interest in, or serves as an administrator of, a NACCAS-accredited school whose accreditation status is "Accreditation on Probation." In the event that an accredited school with which a sitting Panelist is so affiliated is placed on Probation, that Panelist shall be immediately disqualified from further service on the Appeal Review Panel, and the vacancy created on the Panel shall be filled by the Executive Committee in accordance with [Section 9.14](#) of these Rules (see page 135). A Panelist who becomes disqualified from Panel service because of his or her affiliation with a NACCAS-accredited school that is on Probation is not permanently disqualified from service on the Panel, and may be re-appointed to the Panel in a future election cycle if he or she has become eligible for Panel service again.

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- (c) 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.
- (d) No two people from the same business entity may be appointed to serve simultaneously on the Appeal Review Panel.
- (e) 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 9.14 **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 9.12](#) (see page 134) and [Section 9.13](#) (see page 134). 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 9.15 **Term of Panelists; Resignation and Removal; Vacancy**

- (a) Each panelist shall be appointed for a three (3) 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*.
- (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

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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 9.16 **Objections to Appeal Review Panel**

- (a) Each institution that has appealed an Appealable Action of the Commission pursuant to [Section 9.3](#) (see page 128) 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 9.17 **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 9.12](#) (see page 134).
- (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 9.16](#) (see above). The appointment and objection process described in this Section 9.17 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

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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.