



Policy Title: ACAOM Commission Actions Policy

Approved By: ACAOM Executive Committee

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Related Policies: [ACAOM Conflict of Interest and Disclosure Policy](#); [ACAOM Notification of Change Policy](#); [ACAOM Accreditation Procedures](#); ACAOM Eligibility Requirements; ACAOM Standards and Criteria for Accreditation; [ACAOM Fees and Dues Schedule](#); ACAOM Accreditation Manual; [ACAOM Public Disclosure Policy](#)

References: [20 U.S. Code § 1099b](#); [34 CFR § 602](#); This policy was adapted from WASC Senior College and University Commission's "Part IV: Commission Decisions on Institutions"; Middle States Commission on Higher Education's "Policy on Appeals from Adverse Accrediting Actions"; the Accrediting Bureau of Health Education Schools "Accreditation Manual", 17<sup>th</sup> Edition, Subsection 3/Appeals; and the Accreditation Commission of Career Schools and Colleges' "Instructions for Arbitration."

Responsible Official: ACAOM Executive Director

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**Policy Summary:** This guidance outlines formal actions available to the Commission and the process for reviewing and appealing Commission decisions.

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## Commission Actions – Generally

The Commission confines its review to the *Accreditation Record* when determining whether an institution/program meets *ACAOM Eligibility Requirements* and/or complies with *ACAOM Standards and Criteria for Accreditation and substantive change approval*. Based on its review, the Commission may take actions to ensure continued compliance, to obtain more information in order to make a decision regarding pre-accreditation, accreditation or substantive change approval, or simply to keep the Commission informed of institutional or programmatic progress.

The Commission is not bound by a rigid sequence of actions, nor precluded from acting at any time, as warranted by evolving circumstances. For example, the Commission may review an institution/program at any time if it has information that the institution/program may no longer meet *ACAOM Eligibility Requirements* or is not making progress toward meeting *ACAOM Standards and Criteria for Accreditation and substantive change approval*. Similarly, if an institution/program reports developments and changes or conducts activities that may affect its educational effectiveness, or its ability to meet *ACAOM Eligibility Requirements, ACAOM Standards and Criteria for Accreditation, and/or substantive change approval*, the Commission may review the institution's or program's pre-accreditation, accreditation, or substantive change approval status without regard to any previously established schedule.

When another accrediting body, the U.S. Secretary of Education, a state Department of Education, or state licensing agency issues a notification, warning, or takes adverse action against an ACAOM pre-accredited or accredited institution/program, the institution, consistent with ACAOM's Notification of Change Policy section 3.1, must immediately notify ACAOM, and the Commission will promptly review the institution/program to determine if it is in compliance with the *ACAOM Eligibility Requirements* and/or the *ACAOM Standards and Criteria for Accreditation and substantive change approval*. Except for good cause, the Commission will not knowingly take action to grant pre-accreditation, initial accreditation, substantive change approval, or continue accreditation to any institution/program that is the subject of an action potentially leading to suspension, revocation, or termination of accreditation, pre-accreditation, or authorization by a state agency, or by another accrediting agency, or to any institution/program that has been notified of a threatened loss of accreditation, pre-accreditation, or authorization by a state agency or by another accrediting agency. In such instances of good cause, the Commission will develop a thorough and reasonable explanation, consistent with its standards, why the action of the other accreditor or agency does not

preclude the Commission's grant of or continuation of pre-accreditation. Such explanation will be provided to the US Secretary of Education within 30 days of the Commission action.

## Examples of Possible Commission Actions

1. Grant Pre-accreditation, Initial Accreditation, or Substantive Change Approval
2. Deny Pre-accreditation, Initial Accreditation, or Substantive Change Approval
3. Defer Action
4. Continue Pre-accreditation or Accreditation
5. Issue a Formal Notice of Concern
6. Issue a Monitoring Action
7. Issue a Warning
8. Impose Probation
9. Issue an Order to Show Cause
10. Terminate Pre-accreditation or Accreditation

A report of Commission actions is published and distributed following Commission meetings, and each individual institution's status is noted on the Commission website.

Table 1. Time Frames Associated with Commission Decisions

DECISION	MAXIMUM TERM
Grant Pre-accreditation	Up to 3 years
Pre-accreditation Extension	Up to 2 years
Grant Initial Accreditation or Substantive Change Approval	Up to 7 years
Deny Pre-accreditation, Initial Accreditation or Substantive Change Approval	Maximum of 1 year before reapplying
Defer Action	Up to 1 year
Continue Accreditation	Up to 7 years
Issue a Formal Notice of Concern	Up to the next scheduled review
Issue a Monitoring Action	As specified in the respective monitoring action(s)
Issue a Warning	Up to 2 years
Impose Probation	Up to 2 years
Issue Show Cause Order	Up to 2 years
Extension for Good Cause	Up to 2 years
Terminate Pre-accreditation or Accreditation	Effective on date specified unless stayed by a request for reconsideration or appeal

### Grant Pre-accreditation

The institution must demonstrate that it meets all ACAOM *Eligibility Requirements at a minimum level and has a clear plan in place to meet ACAOM's Standards and Criteria for Accreditation* at a substantial level of compliance for accreditation. Initial pre-accreditation status is limited to three (3) years and is granted only when an institution can demonstrate that it is likely to become accredited within the three-year period.

### Pre-accreditation Extension

Initial pre-accreditation status is typically granted for a period of three (3) years. The Commission, for good cause, may deem it necessary to grant an extension of pre-accreditation status. However, no more than two (2) extensions may be granted for a combined total extension of two (2) years. Under no circumstances may the total period of pre-accreditation status exceed five (5) years.

## Grant Initial Accreditation or Substantive Change Approval

The institution has met all the ACAOM *Eligibility Requirements*, *ACAOM's Standards and Criteria for Accreditation*, and Substantive Change Approval in all material respects. Initial accreditation or substantive change approval is for a period not to exceed 7 years before the next comprehensive review.

## Deny Pre-accreditation or Initial Accreditation or Substantive Change Approval

Denial of pre-accreditation, initial accreditation, or substantive change approval reflects the Commission's findings that a program/institution has failed to demonstrate that it meets all ACAOM's *Eligibility Requirements* and/or is compliant in all material respects with ACAOM's *Standards and Criteria for Accreditation* and substantive change approval at the required levels. In its decision to deny pre-accreditation, initial accreditation or substantive change approval, Commission policy provides that a program/institution may reapply once it has demonstrated that it has addressed the issues leading to the denial. In all cases, it must wait at least one (1) year before reapplying. Denial decisions are subject to the Commission's reconsideration procedures, and its appeal process as outlined below.

## Defer Action

Defer action is not a final decision. It is interlocutory in nature and used when the Commission needs more information to determine whether an institution/program is meeting one or more accreditation standards and criteria. Deferrals are granted for a maximum period of one (1) year.

## Continue ("Reaffirm") Accreditation

Continuation (or reaffirmation) of accreditation occurs at the completion of a comprehensive review cycle or when the Commission removes a sanction previously imposed upon a program/institution. It indicates that the Commission has found a program/institution has met or exceeded the expectations of ACAOM *Eligibility Requirements* and *Standards and Criteria for Accreditation*. Continuation or reaffirmation is granted for a period not to exceed seven (7) years and may be accompanied by a Monitoring Action when the commission requires assurance that compliance will be sustained throughout the accreditation period.

## Notice of Concern

A Notice of Concern is used by the Commission to inform a program/institution that, while it currently meets ACAOM *Eligibility Requirements* and/or *Standards and Criteria for Accreditation*, it is in danger of being found out of compliance with one or more standards and/or criteria if current trends continue. A *Notice of Concern* may also be issued when a program/institution is removed from a sanction and the Commission wishes to emphasize the need for continuing progress and monitoring. Programs or institutions issued a formal *Notice of Concern* may also be subject to Monitoring Actions. If the Commission's concerns are not fully addressed by the time of the next review, a sanction is imposed, as described below.

## Monitoring Actions

A *Monitoring Action* is issued when the Commission or its staff identifies one or more ACAOM *Eligibility Requirements*, and/or *Standards and Criteria for Accreditation*, and/or substantive change approval with which a program/institution may not be or remain in compliance unless the program/institution gives careful attention and commitment to continuing progress. Types of *Monitoring Actions* include, but are not limited to, requiring programs or institutions to submit *Interim Reports*, *Annual Reports*, *Biannual Progress Reports*, *Supplemental Information Reports*, *Monitoring (Progress) Reports* and/or hosting interim site visits.

- A. **Interim Site Visit.** The Commission or its staff may require that an interim site visit be conducted in conjunction with other processes, including a request for a *Monitoring (Progress) Report*, *Interim Report*, or *Supplemental Information Report*. A visit may also be required if verification of program/institutional status, and/or progress, requires an on-site review in addition to a paper review. A visit is often required with a *Show Cause* action. A visit may be conducted by a staff or individual evaluator, by a small site visit team, or by a full site visit team, depending on the nature and number of the Commission or staff concerns.

- B. **Interim Report.** The Commission or its staff may direct the program/institution to describe in an *Interim Report* its progress relative to remediating findings of the Commission. The Commission or its staff may also require a program/institution to address activities that were being planned or implemented at the time of an on-site evaluation to enhance institutional or program effectiveness.
- C. **Monitoring (Progress) Report.** The Commission or its staff may request a *Monitoring (Progress) Report* when it has been determined that the program/institution is noncompliant with any *Eligibility Requirements, Standards and Criteria for Accreditation, and/or substantive change approval*, or it is concerned about the potential for future non-compliance with one or more requirements of pre-accreditation, accreditation, or substantive change approval, when issues are very complex or numerous, or when the issues require a more substantive, detailed response. Institutions/programs that are required to submit *Monitoring (Progress) Reports* must address compliance with specific eligibility requirements, or standards and criteria, at designated times prescribed by the Commission or its staff (e.g., quarterly, bi-annually).
- D. **Supplemental Information Report.** If information is insufficient to substantiate institutional/program compliance with one or more of *ACAOM's policies, Eligibility Requirements, Standards and Criteria for Accreditation, and/or substantive change approval*, the Commission or staff may request a *Supplemental Information Report* for review.

## Commission Sanctions

Under United States Department of Education regulations, when the Commission finds that a program/institution fails to meet one or more of the ACAOM's *Standards and Criteria for Accreditation*, it is required to notify the program/institution of these findings and give the program/institution up to two (2) years from the date of this determination to correct the situation. If a program/institution has not remedied the deficiencies by the conclusion of the maximum two-year period, the Commission is required, under the US Department of Education regulations, to take an "adverse action" defined in the law to include termination of accreditation, or to extend for "good cause" as described below. Thus, all institutions must address the areas cited by the Commission expeditiously, with seriousness and full attention of the program/institution's leadership. It is the responsibility of the Commission to determine, at the end of the sanction period (maximum two-years), whether the program/institution has corrected the deficiencies and has come into compliance with the Commission *Standards and Criteria for Accreditation*.

The Commission uses sanctions to inform the program/institution and the public of the severity of its concerns about the program/institution's failure to meet one or more of ACAOM's *Standards and Criteria for Accreditation*. Sanctions are not intended to be applied sequentially. When a program/institution is placed on a sanction, the Commission typically requests that a meeting be held between ACAOM staff, the program/institution's chief executive officer, representatives of the institutional governing board, and senior faculty leadership within 60 days following imposition of the sanction. The purposes of the meeting are to communicate the reasons for the Commission action, and to discuss the program/institution's plans for addressing the issues that gave rise to the sanction. In imposing a sanction, the Commission also may require that the program/institution undergo a special visit and/or produce interim reports (Monitoring Actions).

Federal law permits an extension of the maximum two-year time frame when "good cause" is found. The Commission may grant an extension for good cause only under exceptional circumstances and only when the following criteria are met:

1. The program/institution must have demonstrated significant accomplishments in addressing the areas of non-compliance during the period under sanction, OR
2. The program/institution must have demonstrated at least partial compliance with the ACAOM *Standard(s) and Criteria* cited and, for any remaining deficiencies, demonstrate an understanding of those deficiencies, as well as readiness, institutional capacity, and a plan to remedy those deficiencies within the period of extensions granted by the Commission.

In determining whether these conditions have been met, the Commission will also consider whether:

1. The quality of education provided by the program/institution is judged to be in material compliance with the ACAOM *Standards and Criteria for Accreditation* at the time of the extension, AND
2. The Commission has no evidence of any new or continuing violations of Standard 4, Criteria 4.4, regarding programmatic/institutional honesty and integrity, AND
3. The Commission has no evidence of other reasons or current circumstances why the program's or institution's accreditation should not be continued for "good cause."

For a showing of "good cause" by the program/institution, the Commission may extend accreditation to correct the situation up to a total of two (2) more years, not to extend past the program/institution's accreditation or reaffirmation date, depending on the seriousness of the issues involved, and on its judgment of how much additional time is appropriate. By the conclusion of the extension period identified by the Commission, the program/institution must prepare a report that details its progress on the cited deficiencies and its compliance with those *Standards and Criteria for Accreditation* cited by the Commission. Demonstrated compliance with Commission *Standards and Criteria for Accreditation* is required and must be supported by verifiable evidence. Progress, or promises of future action after such an extension, are not sufficient.

All sanctions are made public and published on ACAOM's website consistent with ACAOM's *Public Disclosure Policy*. To protect students and the public, the Commission reserves the right to make the final determination about the content of the public notice. The program/institution is also expected to notify its constituents about the Commission's action as outlined in ACAOM's *Public Disclosure Policy*.

### Types of Sanctions:

#### A. Issue a Warning

A warning reflects the Commission's finding that a program/institution fails to meet one or more of ACAOM's *Eligibility Requirements* and/or *Standards and Criteria for Accreditation*. The maximum period during which a pre-accredited or accredited program/institution may continue under a *Warning* condition is two (2) years – during which the program/institution continues its pre-accreditation or accredited status. Also during this period, the program/institution is not permitted to initiate or seek ACAOM approval for new programs or sites. (See the Commission's *Notification of Change* policy for details). A Commission action to impose a *Warning* is not subject to reconsideration or appeal.

#### B. Impose Probation

*Probation* reflects the Commission's findings that a program/institution fails to meet one or more of ACAOM's *Eligibility Requirements* and/or *Standards and Criteria for Accreditation*. *Probation* is notice to the program/institution that, if it does not substantially correct the deficiencies noted by the Commission by the end of the probationary period, pre-accreditation or accreditation status will be withdrawn. While on *Probation*, the program/institution is subject to special scrutiny by the Commission, which may include a *Monitoring Action*. In addition, while on *Probation*, the program/institution may not initiate or seek ACAOM approval for new programs or sites. (See the Commission's *Notification of Change* policy for details).

*Probation* is limited to a specific time-period, which may be extended by the Commission upon a showing of progress toward remediating the deficiency or deficiencies that led to the probation, and any other deficiencies that developed or became apparent in the interim provided. The probationary period, as extended, may not extend beyond one (1) year from the time probation began unless the Commission, for good cause, determines that an additional extension is warranted. *Probation* and all extensions cannot exceed or be extended beyond a maximum two-year timeframe. If all deficiencies are corrected within the probationary period, *Probation* status will be lifted. If all deficiencies are not corrected within the probationary period, pre-accreditation or accreditation will be withdrawn. Probationary status shall not extend beyond the maximum period of accreditation or pre-accreditation status, including any extensions thereto.

The pre-accredited or accredited status of the program/institution continues during the *Probation* period.

#### C. Issue an Order to Show Cause

An *Order to Show Cause* is a non-compliance action by the Commission to terminate the accreditation of a program/institution within a maximum period of one (1) year from the date of the Order, unless the program/institution can show cause why such action should not be taken. Such an Order may be issued when a program/institution is found to be in noncompliance with one or more ACAOM *Eligibility Requirements* and/or *Standards and Criteria for Accreditation* or, having been placed on *Warning* or *Probation* for at least one year, has not been found to have made sufficient progress to come into compliance with the *Standards and Criteria for Accreditation*. An *Order to Show Cause* may also be issued as a summary sanction for unethical programmatic or institutional behavior. In response to the Order, the program/institution has the burden of proving why its pre-accreditation or accreditation should not be terminated. The institution must demonstrate that it has responded satisfactorily to Commission



concerns, and has come into compliance with all Commission *Eligibility Requirements and/or Standards and Criteria for Accreditation*.

The pre-accreditation or accreditation status of the program/institution continues during the *Show Cause* period, but during this period, the program/institution is not permitted to initiate or seek ACAOM approval for new programs or sites. (See the Commission's *Notification of Change* policy for details). Additionally, the program/institution may be subject to *Monitoring Actions* (e.g., special scrutiny by the Commission, which may include special conditions and the requirement to submit prescribed reports or receive special visits by representatives of the Commission).

#### D. Impose Sanctions for Unethical Behavior

If it appears to the Commission or its staff that a program/institution is seriously out of compliance with ACAOM Standard 4, (Criterion 4.4: Integrity) in a manner that requires immediate action, an investigation will be made and the program/institution will be offered an opportunity to respond on the matter. If the Commission concludes that the program/institution is non-compliant with Standard 4, Criterion 4.4 it may:

1. Terminate its review process if the program/institution has applied, but not yet been granted pre-accreditation or accreditation, or
2. If the program/institution is pre-accredited or accredited, either:
  - i) Issue an *Order to Show Cause* why its pre-accreditation or accreditation status should not be terminated at the end of a stated period;
  - ii) In an extreme case, deny or terminate its relationship with the program/institution by denying or terminating pre-accreditation or accreditation status subject to appeal, or
  - iii) Apply less severe sanctions as deemed appropriate.

#### E. Terminate (Revoke) Pre-accreditation (Candidacy) or Accreditation

A decision to terminate or revoke pre-accreditation or accreditation is an adverse action taken by the Commission when a program/institution: (1) fails to timely pay required and uncontested fees and dues (See ACAOM Fees and Dues Schedule) within the time limit set by the Commission, (2) retaliates against an individual or entity that files a complaint in good faith with the Commission, or (3) has been found to be seriously out of compliance with one or more of ACAOM's Eligibility Requirements and/or Standards and Criteria for Accreditation. Although not required, a decision to terminate may be made after an Order to Show Cause or another sanction has been imposed and the program/institution has failed to come into compliance. When pre-accreditation or accreditation is terminated, a date of termination is specified. An action to terminate pre-accreditation or accreditation are subject to the ACAOM appeal process outlined herein. If a program/institution closes after a termination action, the institution must comply with federal requirements and ACAOM's Teach-Out Policy.

A program/Institution may begin the process of accreditation again by submitting a new Self-Study Report for pre-accreditation *no earlier than one calendar year* from the date pre-accreditation or accreditation was terminated or revoked. The institution/program must demonstrate that it has corrected the deficiencies noted in the former accreditation process.

## Commission Decision Reconsideration Process

### Commission Decisions Eligible for Reconsideration

Programs and institutions that are placed on *Probation*, or issued an *Order to Show Cause*, may request reconsideration of this decision. The reconsideration procedures are designed as a continuation of the accreditation peer review process and are therefore considered to be non-adversarial.

When the Commission issues a *Probation* or *Order to Show Cause*, ACAOM's Executive Director will notify the corresponding program/institution of the decision within 30 days of the Commission's decision. The notification will contain a succinct statement of the reasons for the Commission's decision and shall be accompanied by a copy of procedures for reconsideration outlined below.



## Reconsideration Procedures

1. Within fifteen (15) calendar days of receipt of a Commission decision eligible for reconsideration, the party seeking reconsideration must first file a written notice with the Chair of the Commission (with a copy to the ACAOM Executive Director) of its intention to seek reconsideration.
2. Then, within thirty (30) calendar days of receipt of a Commission decision eligible for reconsideration, the institution/program must file a written *Request for Reconsideration*, the associated reconsideration fee (See *ACAOM Fees and Dues Schedule*), and a concise statement setting forth the basis for the *Request*. **The Commission regards incomplete or untimely submitted *Requests for Reconsideration* as a waiver of the right to request reconsideration.**
3. The accreditation or pre-accreditation status of the institution/program automatically remains in effect until the expiration of the period within which the institution/program may file a *Request for Reconsideration*, or the completion of a subsequent appeals process, whichever shall later occur.

### Grounds for Reconsideration

Reconsideration will be granted when the institution/program demonstrates by clear and convincing evidence that:

1. the Commission failed to adhere to its published policies or denied the program/institution due process, and such failure or denial was materially prejudicial to the Commission's review of the program/institution, or
2. that the Commission decision was inconsistent with the official accreditation record and was arbitrary and capricious.

### Form of Request for Reconsideration

Except as otherwise provided in this section, a *Request for Reconsideration* shall be based solely upon the accreditation record before the Commission at the time the relevant Commission decision was made, and shall specify the specifically asserted error or errors in the Action. If the Commission decision was based *solely* upon the failure to meet the Commission's *Eligibility Requirements*, or its *Standards and Criteria for Accreditation* pertaining to finances, the program/institution may seek review during reconsideration of significant financial information that was unavailable to the program/institution prior to the Commission's decision and that bears materially on the financial deficiencies cited in the Commission's action letter. Financial information submitted to the Commission pursuant to this subsection will be included and considered by the Commission as part of the official record for the program/institution under review. The program/institution may seek Commission review of new financial information only once, and any determination by the Commission respecting that review shall not provide the basis for a separate appeal.

### Action on Request for Reconsideration

A Commission Review Committee composed of at least three (3) members having no a conflict of interest shall be convened to review a *Request for Reconsideration* together with all the Appellant's admissible submissions, including any new financial information submitted by the program/institution as outlined above, and shall issue a written decision whether to grant the *Request* within thirty (30) days of receipt of the *Request*. If a *Request for Reconsideration* is granted, the decision shall provide the Commission with such guidance as the Review Committee deems necessary to ensure that the issues raised in the *Request for Reconsideration* are properly addressed.

A Commission decision that has been remanded to the Commission for further proceedings shall not be subject to further *Requests for Reconsideration*, but shall be appealable in accordance with the Commission's *Appeal Process and Procedures* outlined below.

If the Review Committee denies the *Request for Reconsideration*, the Commission decision shall take effect on the seventh

calendar day after receipt by the institution/program of the notice of denial, unless the institution/program appeals the denial decision in accordance with the Commission's *Appeal Process and Procedures* outlined below.

## Commission Appeal Process and Procedures

### Definitions

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

**Administrator of the Appeal.** The Executive Director of the Commission will designate an administrator to carry out certain functions under these procedures.

**Adverse Accrediting Action or adverse action.** A decision to deny, withdraw, suspend, revoke or terminate accreditation or pre-accreditation (Candidacy), or any other comparable accrediting action ACAOM may take against an institution/program.

**Appeal.** A timely request by a program/institution made in writing and filed in accordance with these procedures for review by an independent hearing panel of an adverse accrediting action of the Commission.

**Appeal Committee.** A panel of at least three (3) individuals selected by the Administrator of the Appeal to consider a program/institution's appeal. The Appeal Committee will be selected in accordance with the procedure provided herein and shall be composed of a Public Representative and Peer Reviewers who are academic and administrative representatives from member institutions accredited by the ACAOM. No individual currently serving on the Commission may serve as a member of the Appeal Committee.

**Appellant.** A program/institution that is the subject of an adverse accrediting actions that has filed an Appeal in accordance with these procedures.

**Chair.** The chair of an Appeal Committee.

**Commission.** The Accreditation Commission for Acupuncture and Oriental Medicine, or ACAOM.

**Costs of Appeal.** The costs incurred by the Commission related to convening an Appeal Committee, reviewing, hearing, and deciding the Appeal. The Costs of Appeal include without limitation: the costs of reproducing the Accreditation Record for the parties and the Appeals Committee members; honoraria paid to Appeals Committee members and reimbursement for their associated travel and accommodations; transcript(s), facilities, technological support and other related costs; and the Appeal Committee'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 a program/institution seeking the Appeal, or by the Commission in responding to an Appeal, which shall be borne by each party.

**Counsel to the Appeals Committee.** An attorney designated to provide counsel to the Appeal Committee throughout the review period and hearing.

**Date of Filing.** A document is deemed to be filed on the day that it is received by the Commission.

**Date of Receipt.** The date a document is 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.

**Day.** Unless otherwise stated, a business day.

**Executive Director.** The Executive Director of the Accreditation Commission for Acupuncture and Oriental Medicine.

**Peer Reviewer.** An individual who represents the Accreditation Commission for Acupuncture and Oriental Medicine in an accreditation review.

**Public Representative.** A Public Representative is an individual who is not an employee, governing board member, owner, shareholder, or consultant of a program/institution accredited or pre-accredited 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; is not currently, nor has been, involved with a competitive program/institution in the same geographical area as the Appellant; and who otherwise has no conflict of interest as defined in the Commission's *Conflict of Interest and Disclosure Policy*.

## General Provisions

A program/institution subject to an *Adverse Accrediting Action* is entitled to an appellate review of the Commission's final decision by an independent Appeal Committee in accordance with the procedures outlined herein. The program/institution shall have the right to a review based on written statements filed with the Appeal Committee and may request a hearing to make presentations to the Appeal Committee.

### A. Notice of Adverse Accrediting Action.

Notice of an *Adverse Accrediting Action* shall be given to the program/institution in writing and shall specify the action taken by the Commission and the reasons for the action. The Notice shall be accompanied by a copy of these Procedures and a statement concerning the obligation of the Appellant to bear the *Costs of Appeal*.

### B. Notice of Appeal of an Adverse Accrediting Action.

A program/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 ACAOM'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 that materially affected the Commission's action, or
3. The decision of the Commission was arbitrary because the information in the *Accreditation Record* was not sufficient to support the Commission's action, or the decision was inconsistent with the published *Standards and Criteria of the Commission*.

The 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

A program/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 Executive Director of the Commission within ten (10) business days of receipt by the program/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 specific 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 and Criteria* of the Commission.
2. Whether an opportunity to appear before the Appeal Committee to make an oral statement, either in person or remotely, in support of the appeal is requested, or whether the appeal is to be decided based on written submissions. A waiver of the right to appear before the Appeal Committee shall be final. An Appellant may withdraw a request for a hearing when it files its brief in support of the appeal.

The *Notice of Intent to Appeal* shall be signed by Appellant's chief executive officer and 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 program/institution shall deliver the *Notice of Intent to Appeal* to the Executive Director of the Commission.

#### D. Costs of Appeal.

The Appellant shall be responsible to pay the *Costs of the Appeal*. To perfect the filing of the Appeal, the program/institution must remit a check, made payable to the Commission in the amount of \$25,000, as a deposit on the payment of costs, along with its *Notice of Intent to Appeal*. After issuance of the Appeal Committee'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 Appeal*.

#### E. Dismissal of Defective Appeals.

1. The Administrator of the Appeal may dismiss an appeal as administratively defective if the program/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 *Costs of Appeal*;
  - 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 business days of being advised that the Appeal would be dismissed if payment were not remitted immediately.
2. The Chair of the Appeal Committee may dismiss an Appeal for any procedural irregularities on the part of the program/institution in filing or prosecuting the appeal or a failure to prosecute the appeal by the program/institution.
3. The Executive Committee of the Commission, 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 Appeal Committee) and allow an Appeal to proceed on its merits.
4. In the event of a dismissal, the Commission's *Adverse Accrediting Action* shall become final.

#### F. Accreditation Status during Appeal Process.

Subject to the Commission's *Public Disclosure Policy*, the accreditation status of an Appellant remains in effect until the completion of the Commission's appeal process.

## Nature of the Appeal

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

## Burden of Proof

The burden shall be on the program/institution to demonstrate by clear and convincing evidence one or more of the grounds for appeal.

## Selection of Appeal Committee

Upon receipt of a timely Notice, the Executive Director of the Commission shall designate the Administrator of the Appeal. The Administrator shall select the *Appeal Committee* members from among experienced peer reviewers. The *Appeal Committee* shall consist of three (3) members and shall be comprised of one (1) Public Representative, one (1) academic, and one (1) college or university administrator. A peer reviewer is disqualified from serving on an *Appeal Committee* if he or she has a conflict of interest as defined in the Commission's *Conflict of Interest and Disclosure Policy*, 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 Appeal shall identify the names of three (3) peer reviewers to serve as the Appeal Committee. The Administrator of Appeal shall provide the *Appellant* and the Executive Director of the Commission with the names and biographical data of each person within five (5) business days of the receipt of the Notice.
2. An *Appeal Committee* member so selected who has a conflict of interest as outlined in the Commission's *Conflict of Interest and Disclosure Policy*, 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 *Appeal Committee* member based on a conflict of interest (as defined in ACAOM's *Conflict of Interest and Disclosure Policy*) or "for cause" 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 Appeal Committee members. The Commission Chair shall rule on such challenges, the benefit of the doubt to be afforded to the challenging party. In the event an *Appeal Committee* 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 *Appeal Committee* members. Preferences may be given to candidates with prior experience with appeals processes, and all actions of the *Appeal Committee* shall be by majority vote of all members.
5. The Chair of the *Appeal Committee* shall control the hearing and any other procedural issues that arise during this 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 *Accreditation Record*, and may extend any deadlines set forth in these procedures for good cause shown by a requesting party.
6. The Hearing shall be conducted in accordance with the Appeal Hearing Procedure set forth below.

## Selection of Counsel to Appeal Committee

Upon receipt of a timely Notice, the Executive Director of the Commission shall designate the *Administrator of the Appeal*. The Administrator shall select an attorney to serve as Counsel to the *Appeal Committee*. An attorney is disqualified from serving as Counsel to the *Appeal Committee* if she or he has a conflict of interest as defined in the Commission's *Conflict of Interest and Disclosure Policy*, 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*.

## Designation of Record

Within 10 business days of receipt of the *Notice of Intent to Appeal*, the Commission shall deliver to the *Administrator of the Appeal* the Accreditation Record for the adverse accrediting action.

Each page of the *Accreditation 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 *Accreditation Record* to the *Appellant*, its legal counsel (if any), the *Appeal Committee* members and counsel.

## New Information

Neither the Commission nor the program/institution may include or reference information or materials that are not part of the *Accreditation Record* in their statements, presented to the *Appeal Committee*, nor may they introduce new information during the hearing. If the program/institution failed to present documentation or information available at the time the Commission took an *Adverse Accrediting Action*, it may not make that information available for consideration by the *Appeal Committee*.

The only exception to this rule is where a program/institution's accreditation is being withdrawn solely for financial reasons, in which case, the program/institution or the Commission may present new and verifiable information relating to changes in the program/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 program/institution at the time the Commission voted on the *Adverse Accrediting Action*, and (2) the information is determined by the *Appeal Committee* 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 Accrediting Action*.

If an institution intends to present new information regarding its financial status to the *Appeal Committee*, it must provide the information to the Administrator and to the Executive Director of the Commission as promptly as possible, but at least 5 business 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 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 program/institution and the Commission's statement, if any, with the *Appeal Committee* Chair, who will determine whether the new financial information should be allowed. If an objection to the Chair's ruling is made by either party, the objection shall be heard by the *Appeal Committee*, who will make a final and binding decision on the program/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.

## Submission of Appellant

Within fifteen (15) business days of receipt of the *Accreditation Record*, the *Appellant* shall submit electronically to the *Administrator of the Appeal* a written statement in support of its Appeal, referencing the *Accreditation Record* as appropriate, and shall simultaneously provide it electronically to the Executive Director of the Commission. The submission shall include a request for oral statement, either in person or remotely, in support of the appeal or whether the appeal is to be decided based on written submissions. The Chair of the Appeal Panel will determine whether to grant a request to appear remotely.

## Response by Commission

Within fifteen (15) business days of receipt of the *Appellant's* written statement, the Commission may submit electronically any factual inaccuracies in the appellant's brief and new information not properly before the Appeal Panel, and shall simultaneously provide the submission to the *Appellant*.

## Scheduling of Hearing

The Administrator, in consultation with all parties, will determine dates and available options for the appeal hearing. While the Administrator will make every effort to honor the preferences provided by all parties, the date of the hearing will ultimately be determined by the Chair based on the availability of the members of the *Appeal Committee*. The decision of the Chair on any scheduling matters shall be final, and the Administrator will notify all parties of the scheduled date(s) of the hearing.

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

In-person *Appeal Committee* hearings shall be held at the offices of the Commissions, or such other locations within close proximity of the Commission's offices as the Chair shall deem.



In the event the *Appellant* has requested the opportunity to appear remotely before the *Appeal Committee* with the approval of the Chair, such meetings may be held by telephone/video conference or in person at such location or locations as may be convenient to the *Appeal Committee* members. The Administrator will coordinate technology requirements to accomplish the hearing. All risks, delays, and any burden, financial or other, encountered by the Appellant's request to appear remotely will be borne solely by the Appellant.

### Procedures for Conduct of Hearings.

1. The appellate presentation made to, and the review by, an *Appeal Committee* is not a 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 *Appeal Committee* is limited to consideration of information contained in the *Accreditation Record*, unless the introduction of new intervening financial information is permitted by the Chair. The Chair of the *Appeal Committee* shall ensure that extraneous information not properly in the *Accreditation 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 proceedings 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 *Appeal Committee* first. The Commission shall have an opportunity, but will not be required, to present a verbal response to the *Appellant's* contentions. The order of proceedings shall be determined by the Appeals Committee in conjunction with the parties.
5. The Hearing, but not the private discussion, deliberations, and votes of the *Appeal Committee* members 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 *Appeal Committee* requests additional briefing on specific issues.

### Decision of the Appeal Committee.

1. The *Appeal Committee* shall have the authority to affirm, reverse, amend, or remand the *Adverse Accrediting Action*.
  - a. The *Appeal Committee* 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 *Accreditation Record*, or that there was a clear error in the proceedings of the Commission that materially affected its decision. In determining whether the Commission's action was supported by the *Accreditation Record*, the Appeal Committee will interpret the requirements stated in ACAOM's *Accreditation Manual* using their plain meaning, and consistent with the usual and common practices of ACAOM, as evidenced by the manual requirements taken in its entirety and using past practices of ACAOM applying the provisions of the manual. The program/institution has the burden of demonstrating that the action of the Commission was not supported by the *Accreditation Record* or was otherwise erroneous.
  - b. The *Appeal Committee* 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 *Accreditation 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 *Accreditation Record*. In determining whether the Commission committed error in applying the facts to the accreditation requirements, the Appeal Committee will interpret the requirements stated in ACAOM's *Accreditation Manual* using their plain meaning, and consistent with

the usual and common practices of ACAOM, as evidenced by the manual taken in its entirety and past practices. A decision to reverse an action of the Commission will state the specific basis for the decision to reverse. A decision to reverse a withdrawal of accreditation will direct the Commission to set aside its decision to withdraw and to reinstate the accreditation of the program/institution as it was before the withdrawal decision. A decision to reverse an action to deny accreditation directs the Commission to award a specific grant of accreditation for a term determined by the *Appeal Committee*.

- c. The *Appeal Committee* shall **remand** a decision to the Commission when it finds that the Commission failed to consider a material fact before it in reaching its decision. In determining whether a fact is material and may, if considered, have caused the Commission to have reached a different result, the *Appeal Committee* will interpret the requirements stated in ACAOM's *Accreditation Manual* using their plain meaning, and consistent with the usual and common practices of ACAOM, as evidenced by the manual taken in its entirety and by past practices. Accreditation standards place the burden of demonstrating compliance on the party seeking to obtain or maintain accreditation. Therefore, the burden is on the appealing party to show that a material fact was before the Commission, and that the Commission more likely than not failed to consider it in reaching an adverse decision. A remand is a direction that the Commission reconsider its action using all relevant facts, including the specific material fact that is the basis for the remand. On remand the appeals panel must identify specific issues that the Commission must address.
  - d. The *Appeal Committee* shall **amend** the Commission's decision when necessary to address spelling, grammar, and/or non-substantive technical issues with the decision. The Appeals Committee shall amend the Commission's decision when it finds that the Commission's decision was not supported by the Accreditation Record at the time of the decision, or that the Commission's decision was clearly erroneous. In determining whether the Commission committed error in applying the facts to the accreditation requirements, the *Appeal Committee* will interpret the requirements stated in the ACAOM Accreditation Manual using their plain meaning, and consistent with the usual and common practices of ACAOM, as evidenced by the manual taken in its entirety and past practices. A decision to amend an adverse action will set forth the specific grounds for the decision and will direct the Commission to modify its decision in accordance with the specific direction of the *Appeal Committee*. The *Appeal Committee* may in its discretion amend a decision to deny accreditation by directing the Commission to grant accreditation while directing the Commission to consider the proper length of the grant consistent the direction of the Committee, the practices of the Commission, or in accordance with other guidance from the *Appeal Committee*.
2. The *Appeal Committee* shall render its decision in writing within twenty (20) business days of the conclusion of the Hearing unless further briefing is requested by the *Appeal Committee*, 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 *Appeal Committee* shall render its decision in writing within twenty (20) business days of the submission of the Commission's written statement.
  3. The *Appeal Committee* decision shall set forth whether its decision is to affirm, remand, amend, or reverse the Commission's *Adverse Accrediting Action* and summarize its reasons in support thereof. The *Appeal Committee* shall deliver the decision to the *Appellant*, the Commission and the *Administrator of the Appeal*.
  4. The decision of the *Appeal Committee* to affirm or reverse an *Adverse Accrediting Action* shall be deemed to be a final Accreditation Action of the Commission and shall not be subject to any further review or appeal. The Commission shall notify the appropriate public authorities of the decision in accordance with the law. (See Notification of Decisions herein.)

## Instructions for Initial Arbitration of an Adverse Appeal Decision

### Coverage of Binding Arbitration

1. 20 U.S. Code § 1099b(e) provides that "[T]he Secretary of Education may not recognize the accreditation of any institution unless the program/institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any legal action."

2. For the purposes of initial arbitration pursuant to these *Instructions*, an Adverse Accrediting Action is a decision by an independent *Appeal Committee* which results in the withdrawal of a program/institution's pre-accreditation or accreditation status, the denial of an application for initial accreditation, or any other Adverse Accrediting Action of the *Appeal Committee*.
3. A program/institution that believes that the decision by the *Appeal Committee* is not supported by substantial evidence in the *Accreditation Record* on which the *Appeal Committee* acted may seek review of that *Adverse Accrediting Action* through binding arbitration as outlined in these Instructions. This is the exclusive remedy for a program/institution that has received an adverse appeal decision, and governs all claims arising out of the adverse appeal decision, as well as the underlying or predicate actions of the Commission. A program/institution that does not participate in binding arbitration will not have exhausted its administrative remedies.
4. A pre-accredited or accredited program/institution maintains its status during the pendency of these arbitration proceedings and until the arbitrator renders a final decision. However, the program/institution will operate under a *Probation Order* during this period.
5. Arbitration proceedings shall be conducted in accordance with these Instructions, and the parties and the arbitrator shall maintain the confidentiality of the arbitration proceedings except in the cause of a judicial challenge or court order concerning the proceedings, or as otherwise required by law.

## Standard of Review in Arbitration and Available Remedies

1. The arbitration proceeding is not a *de novo* review. It is a review of the *Accreditation Record* and is limited to the question of whether the *Appeal Committee's* decision is supported by the evidence that was in the record when the Commission rendered its decision.
2. The arbiter may not consider evidence that was not considered in the *Accreditation Record* before the *Appeals Committee*.
3. The program/institution has the burden of proof in the arbitration proceedings.
4. The arbitrator shall only have the authority to affirm or reverse the decision of the *Appeals Committee*, subject to the limitations outlined below in these *Instructions*.

## Administration of the Arbitration

1. The arbitration shall be administered by an arbitrator selected from the National Roster of Commercial Arbitrators maintained by the American Arbitration Association (AAA).
2. The process for selecting the arbitrator is outlined below in these *Instructions*.

## Initiation of Arbitration Proceeding

1. Within 10 business days of receipt of a final adverse *Appeal Committee* decision, the program/institution may initiate an arbitration proceeding by providing a written *Notice of Intent to Arbitrate* to the Commission accompanied by the required fees as outlined below. The Notice shall contain a concise statement of the arguments that the program/institution intends to assert during the arbitration and the remedy which it intends to seek.
2. Within 15 business days of the receipt of the *Notice of Intent to Arbitrate*, the Commission shall file with the AAA:
  - a. A copy of the program/institution's *Notice of Intent to Arbitrate* and the statement of the arguments that the program or school intends to assert during the arbitration and the remedy which it intends to seek;

- b. A statement of the argument that the Commission intends to assert during the arbitration;
- c. The names and addresses of all parties;
- d. A copy of these *Instructions* governing the arbitration process, and
- e. The appropriate fees as specified by the AAA and as outlined below.

## Appointment of Arbitrator from AAA National Roster

1. The arbitration shall be heard and determined by one (1) arbitrator who shall be impartial and independent.
2. As soon as practicable after receipt of the materials from the Commission described above, the AAA shall simultaneously submit to the program/institution and the Commission an identical list of five (5) proposed arbitrators drawn from its National Roster from which one (1) arbitrator shall be appointed. The list of proposed arbitrators shall be accompanied by biographical descriptions of each arbitrator on the list. Proposed arbitrators shall have documented and substantial experience in higher education administration and/or higher education regulatory compliance.
3. The program/institution and the Commission may each strike two (2) names from the list, and return it to the AAA within 5 business days from the date of receipt of the list of arbitrators from the AAA. If for any reason the appointment of an arbitrator cannot be made from the list, the AAA may make the appointment from other arbitrators from the National Roster without the submission of additional lists to the program/institution or Commission, provided the arbitrator has substantial experience in higher education administration and/or higher education regulatory compliance.
4. The AAA shall promptly provide written notice to the program/institution and the Commission of the appointment of the arbitrator. The decision of the AAA shall be final.
5. If for any reason an arbitrator is unable to perform the duties or his/her appointment, the AAA may, on proof satisfactory to it, declare the position vacant and fill the vacancy with another arbitrator, provided the arbitrator has substantial experience in higher education administration and/or higher education regulatory compliance. Such action by the AAA shall be final.
6. Neither the program/institution, nor the Commission, nor anyone acting on their behalf, shall communicate *ex parte* with the Arbitrator or any candidate to be arbitrator.

## Creation of the Record for the Arbitration Proceeding

1. Within 15 business days from the date of the appointment of the arbitrator, the Commission shall submit to the arbitrator and the program/institution the Arbitration Exhibits, which shall include the *Accreditation Record* before the *Appeal Committee*, the program/institution's Grounds for Appeal, and the transcript of the hearing before the *Appeal Committee* (if any). The documents shall be true, legible, and complete copies.
2. Within 10 business days of receipt of the Arbitration Exhibits, the program/institution shall have the opportunity to file with the arbitrator and the Commission, for inclusion in the Arbitration Exhibits, any material relevant to the arbitration proceeding that was not included by the Commission. The program/institution shall not submit for inclusion in the Arbitration Exhibits any material that was not submitted to the Commission prior to the decision of the *Appeal Committee*. Within 10 business days of receipt of any documents proffered by the program/institution for inclusion in the Arbitration Exhibits, the arbitrator shall make the final decision as to whether such documents or materials shall be included in the Arbitration Exhibits. The arbitrator shall also decide any disputes over whether such documents or other materials should be included in the Arbitration Exhibits. All materials to be included in the Arbitration Exhibits shall be prepared in electronic format prescribed by the Commission.
3. The materials in the Arbitration Exhibits shall constitute the evidentiary record upon which the arbitrator shall render his/her decision.

## Program/Institution's Arbitration Brief, Commission's Response

1. Within 15 business days from the date the arbitrator deems the Arbitration Exhibits to be complete, the program/institution shall submit to the arbitrator and the Commission its written Arbitration Brief, which sets out the reasons why the decision of the *Appeal Committee* was not supported by substantial evidence in the *Accreditation Record* on which the *Appeal Committee* acted. The brief shall be no longer than 20 double-spaced pages.
2. Within 15 business days of receipt of the program/institution's Arbitration Brief, the Commission shall submit to the arbitrator and the program/institution a Response Brief, which shall be no longer than 20 double-spaced pages.
3. For good cause shown, the arbitrator may extend the length of a brief.
4. References to documents or other materials in the briefs shall include a reference to the documents as they appear in the Arbitration Exhibits.
5. All briefs shall be prepared in electronic format prescribed by the Commission.

## Discovery Not Available

Depositions, interrogatories, requests for admission, and other forms of adversarial discovery shall not be used during the arbitration proceeding.

## Arbitration Hearing

1. The program/institution and the Commission may agree to waive an oral hearing before the arbitrator and proceed to a decision on the documentary record only.
2. The program/institution and the Commission may also agree to a telephonic or video hearing before the arbitrator.
3. Upon the request of either the program/institution or the Commission, an in-person hearing shall be held. As outlined below, the convening of an in-person hearing will entail an additional AAA administrative fee and additional compensation for the arbitrator.
4. All in-person arbitration hearings shall be held in an area proximate to the Commission's office at a location selected by the Commission.
5. Where an in-person hearing has been requested, the arbitrator shall set the date and time for the hearing, to be held within 20 business days after receipt of all briefs. The program/institution and the Commission shall respond to requests from the arbitrator for hearing dates in a timely manner, be cooperative in scheduling the earliest practical date, and adhere to the established hearing schedule.
6. With 10 business days of the scheduling of an in-person hearing, the program/institution and the Commission shall submit to the arbitrator, and one another, the names of all individuals who will be representing them at the hearing.
7. The arbitrator will be requested to conduct the hearing expeditiously, determine the order of the hearing, direct the order of proof, and may direct the parties to focus their presentations on issues that could dispose of all or part of the hearing, or, if there was no hearing, from the date of the submission of all briefs and materials to the arbitrator. The decision shall be in writing, shall be signed by the arbitrator, and shall provide the reasons for the decision.

## Effect of Decision

1. The arbitrator shall have the authority to affirm or reverse the decision of the *Appeal Committee*, but shall have no authority to remand or amend the *Appeal Committee's* decision. The arbitrator shall not have the power to order other actions reserved to the Commission – e.g., order an on-site visit, compel the filing of reports or materials to the Commission, or other such actions.
2. If the arbitrator affirms the decision of the *Appeal Committee*, the Commission's action become final immediately. When a decision to withdrawal accreditation is final, the program/institution is removed from the Commission's list of accredited programs and institutions.
3. If the arbitrator reverses the decision of the *Appeal Committee*, the Commission shall carry out that decision in a manner consistent with the decision, except that the arbitrator shall have no authority to grant accreditation to the program/institution. Pursuant to the regulations of the US Department of Education, that power is reserved exclusively to the accreditation organization.

## Fees and Expenses

1. The AAA charges a fee to compensate it for the cost of providing administrative services related to the arbitration. The fee is specified in the current schedule of fees published by the AAA. The program/institution requesting arbitration is fully responsible for payment of this fee.
2. In addition to fees required of these *Instructions* above, the arbitrator shall be compensated at the rate specified in the current schedule published by the AAA.
3. Other than the AAA's administrative fee, the program/institution and the Commission shall be responsible for sharing equally the costs and expenses associated with the arbitration. If, however, the Commission prevails in the arbitration, the program/institution shall be responsible for all costs associated with the claims made against the Commission.
4. The program/institution's *Notice of Intent to Arbitrate* filed with the Commission shall be accompanied by a non-refundable fee of \$5,000 to cover the administrative costs borne by the Commission in preparation of the *Accreditation Record* by the Commission, securing the facility for the arbitration hearing (if an in-person hearing is held), and other expenses directly related to the administration of arbitration. The AAA's separate administrative fee, and the program/institution's share of the costs of the arbitrator's fee, and any other AAA arbitration administrative fees, must be paid in advance of the arbitration hearing or for fees accrued after the hearing within 10 business days of receipt of the billed amount. A failure to pay any required fee will halt the arbitration proceedings.
5. The AAA may require a deposit in advance of the hearing to cover the expense of the arbitration, including the arbitrator's fee. If a deposit is made, the AAA shall be requested to render an accounting to the program/institution and the Commission and return any unexpended balance following the proceeding.

## Arbitration of Other Claims Against the Commission

### A. Arbitration Process

1. Other than a claim for review of an *Appeal Committee's* decision under these *Instructions*, any claim or controversy:
  - a. Arising out of or related to the Commission's accreditation process, including challenges to a Commission decision to deny or withdraw accreditation, provided the program/institution has exhausted that challenge as provided herein, or



- b. Arising out of the relationship between the Commission and any Member-accredited program/institution or applicant for accreditation, shall be submitted to arbitration administered by AAA pursuant to the appropriate rules established by AAA.

## B. Fees and Expenses

1. The payment of fees and expenses incurred for arbitrating other claims against the Commission under this section shall be governed by these *Instructions*. Programs or institutions accredited by the Commission, or seeking accreditation by the Commission, understand and agree that such arbitration is the sole and exclusive remedy available to it to resolve such claims or controversies.
2. If the Commission prevails in the arbitration, the program/institution shall be responsible for all costs and fees associated with the claim(s) made against the Commission.

## Notification of Decisions

### Commission Decisions Regarding Accreditation Status

The Commission will provide written notice to the Secretary of the US Department of Education, the appropriate State licensing or authorizing agency, appropriate accrediting agencies, and the public at the same time it notifies the institution/program of the decision, but no later than 30 business days after it makes:

1. A decision to award initial accreditation or pre-accreditation to an institution/program;
2. A decision to renew an institution's or program's accreditation or pre-accreditation;
3. A final decision to place an institution/program on probation or an equivalent status;
4. A final decision to deny, withdraw, suspend, revoke, or terminate the accreditation or pre-accreditation status of an institution/program;
5. A final decision to take any other adverse action not listed in paragraph 4 above.

For any decision listed in 4 above, ACAOM will make available to the Secretary, the appropriate State licensing or authorizing agency, and the public, no later than 60 days after the decision, a brief statement summarizing the reasons for the agency's decision and the official comments that the affected program/institution may wish to make regarding that decision, or evidence that the affected institution/program has been offered the opportunity to provide official comment. Institutions/programs are not obligated to submit public comments; comments are voluntary. All public comments must be in summary form, professional in tone, and free of profanity and calumnious statements.

### Programmatic or Institutional Decisions Regarding Accreditation Status

The Commission will notify the Secretary of the US Department of Education, the appropriate State licensing or authorizing agency and, upon request, the public, within thirty (30) business days of when an accredited or pre-accredited program/institution:

1. Voluntarily withdraws from pre-accreditation or accreditation; or
2. Allows its pre-accreditation or accreditation to lapse.

### Regard for Decisions of Other Agencies

If the Commission is notified by another recognized accrediting agency that a pre-accredited or accredited program/institution has had a status of recognition with that agency denied, revoked, suspended or terminated, or has been placed on a publicly announced probationary status by such an accrediting agency, the Commission will review its own status of recognition of that program/institution to determine if the other agency's action resulted from a deficiency that reflects a lack of compliance with the

Commission's *Eligibility Requirements and/or Standards and Criteria for Accreditation*. If so, the Commission will determine if the program/institution's status with the Commission needs to be called into question, or if any follow-up action is needed. If the Commission is notified by a state agency that a pre-accredited or accredited program/institution has been informed of suspension, revocation, or termination of the institution's legal authority to provide postsecondary education, the Commission will review its own status of recognition for that program/institution to determine compliance with the Commission's *Eligibility Requirements and/or Standards and Criteria for Accreditation*. If the Commission finds the program/institution is no longer in compliance with its *Eligibility Requirements and/or Standards and Criteria for Accreditation*, the Commission will determine the appropriate action to be taken.

In implementing this policy, the Commission relies on other accrediting bodies and state agencies to inform the Commission of adverse action so that the Commission can undertake the review specified in this policy. Applicants for eligibility with the Commission shall provide information on any actions by a recognized accrediting association within the past five (5) years. In addition, the Commission requires programs and institutions holding accredited or pre-accredited status from more than one USDE-recognized accrediting body to keep each accrediting body apprised of any change in its status with one or another accrediting body.

**Revision History**

Date Revised	Summary of Revisions	Approved By
17 Jan 2017	New ACAOM <i>Commission Actions Policy</i> reflecting public comment input	ACAOM Exec Committee
8 March 2017	Paragraph E was revised to address adverse action for failure to timely pay required fees and dues, and for retaliation against good faith complaints.	Executive Director
15 May 2017	Addition of possible Commission actions related to substantive change requests	Executive Director
23 June 2017	Revisions to "Types of Sanctions, E." regarding when a program/institution may begin the accreditation process following an adverse action.	Executive Director
19 July 2017	Non-substantive revisions to notification of Commission decisions regarding accreditation status and public comments	Executive Director