



APPEALS

Policy Change Approved on First Reading

The Higher Learning Commission (HLC) Board of Trustees (“the Board”) approved this policy on first reading at its meeting on November 7–8, 2019.

Background

The proposed revisions would accomplish the following primary goals:

1. Revise the definition of “adverse action” to conform with the Board’s elimination of its ability to move an institution from accredited to candidate status. See [adopted policy changes](#) related to Change of Control, Structure or Organization.
2. Reflect [forthcoming changes in federal regulations](#) that eliminate the ability of the Appeal Panel to directly reverse an adverse action.
3. Provide staff with the flexibility to make needed changes to the Appeals Procedures, including setting requirements related to confidentiality and conflict of interest and strengthening the due process mechanisms for institutions.
4. Make more explicit the relationship between the Appeals policy and the Board’s consideration of new financial information from the appealing institution.

Comments Invited

HLC invites comments on this change before the Board takes final action at its meeting on February 27–28, 2020. Comments can be sent to policycomments@hlcommission.org. Comments are due by January 13, 2020.

Proposed Change

Wording that was deleted or revised is shown as strikethrough (~~old wording~~); new language, whether through addition or revision, is shown in bold (**new wording**).

Policy Title: Appeals
Number: INST.E.90.010

An institution may appeal an adverse action of the Board of Trustees, prior to the action becoming final, by filing a written request to appeal **and supporting documentation according to** ~~following the Appeals Procedures of the Commission.~~ Adverse actions are defined as those that (1) withdraw or deny accreditation, except in denial of accreditation where the Board denies an early application for accreditation and continues candidacy ~~for accreditation status or extends it to a fifth year;~~ **or**, (2) withdraw or deny candidacy, ~~or (3) moves the institution from accredited to candidate status.~~

Grounds for Appeal

The grounds for such an appeal shall be:

- (a) ~~That~~ the Board's decision was arbitrary, capricious, or not supported by substantial evidence in the record on which the Board took action.;
- (b) ~~or T(b) that~~ the procedures used to reach the decision were contrary to the Commission's By-laws, Handbook of Accreditation, or other established policies and **procedures/practices**, and ~~that~~ the procedural error **unreasonably impaired/prejudiced** the Board's consideration.
- ~~(a)~~(c) **The institution has new financial information for consideration. New financial information will only form the basis for an appeal if, as determined in the discretion of the Appeal Panel:**
 - (i) the adverse action was based solely on financial grounds;
 - (ii) the financial information was not available at the time the adverse action was made; and
 - (iii) the financial information is significant and bears materially on the financial deficiencies that formed the basis for the adverse action.

Other than as detailed above in (c), ~~t~~The Appeal Panel will be limited to only consider such evidence as was provided to the Board at the time it made its decision.

Appeals Body and Appeals Panel

The Appeals Body will consist of 15 persons appointed by the Board of Trustees, following the Board's commitments to diversity and public involvement. From the Appeals Body, the President will establish an Appeals Panel of five persons to hear an institutional appeal. Members of the **Appeal Panel** will **not** include ~~no~~ current members of the Board of Trustees nor members of the Board at the time the adverse action was taken; ~~Panel members shall have no apparent conflict of interest as defined in Commission policies that will prevent their fair and objective consideration of the appeal.~~ One member of the Appeals Panel will be a public member, in keeping with Commission requirements for public members on decision-making bodies. **The Appeals Panel shall also include representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.**

Members of the Appeals Panel will receive training prior to the ~~appeal~~ Appeals Panel hearing. ~~The Appeals Panel~~ This will include ~~receive~~ appropriate training regarding **appeal procedures and Commission requirements** ~~its responsibilities and regarding the Criteria for Accreditation, Assumed Practices and Federal Compliance Requirements and their application.~~

Appeal Panel members shall have no conflict of interest that will prevent their fair and objective consideration of the appeal. ~~The Panel shall convene on a date no later than 16 weeks from the Board decision under appeal. At least one representative of the public shall serve on each Panel. Where necessary to avoid conflict of interest or in other exceptional circumstances, the President may select individuals outside the Appeals Body as Appeal Panel members. The President will designate o~~One member of the **Appeal Panel to serve** ~~will be designated~~ as the Chair. The President shall notify the institution of the individuals selected **to serve on** ~~for~~ the **Appeal Panel** and shall afford the institution the opportunity to present objections regarding conflict of interest. ~~T~~he President reserves final responsibility and authority for setting all Appeals Panels. ~~The Appeals Panel shall include representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education.~~

Appeal Panel members will be required to keep confidential any information learned as a result of participating in an Appeal Panel.

Appeals Procedures

The ~~Commission Board of Trustees~~ shall **establish appeals procedures** ~~approve an APPEALS PROCEDURE~~ that, **among other things**, identifies the materials for an appeal, and sets out the required timetables and procedures of ~~an appeal~~. ~~These~~**This procedures document** will be available on the Commission ~~web~~**Web**-site.

Throughout the appeals process, the institution shall have the right to representation of, and participation by, **legal counsel** at its own expense. **HLC may also be represented by legal counsel, both as process advisors and in an advocacy role.**

As further described in the Commission's appeals procedures, ~~t~~The Appeals Panel has the authority to make a decision to affirm, ~~amend,~~ **or remand** ~~or reverse~~ the adverse action. **If the Appeal Panel affirms or amends the Board's determination regarding an adverse action,** ~~t~~The Appeal s-Panel then conveys that decision to the Board of Trustees, which must implement the Appeals Panel's decision regarding the status of the institution in a manner consistent with the decision. ~~If the The Appeals Panel also has the authority to~~ **remands** the adverse action to the Board of Trustees for additional consideration, **it will provide with** an explanation of its decision to remand. **Upon remand,** ~~t~~the Board of Trustees may affirm, amend or reverse its action after taking into account those issues identified by the Appeals Panel in the explanation of its remand.

The Commission will notify the institution of the result of the appeal and of the final action by the Board ~~of Trustees~~ and the reason for that result.

Academics and Administrators

~~The Commission will assure that on the Appeals Body and each Appeals Panel there is representation of individuals who are academics, including faculty members, academic deans or others who have a primary responsibility in the teaching and learning process, and administrators who have a primary responsibility of providing oversight in an institution of higher education. The staff of the Commission will be responsible for developing selection criteria and for implementing a nomination process to assure such representation on the Appeals Body subject to review by the Board of Trustees when it elects IAC members. The President of the Commission will be responsible for assuring such representation on each Appeals Panel.~~**An institution may only file a single appeal related to an adverse action.**

Conflict of Interest

The Commission will not knowingly allow to participate in an appeal any Appeals Panel member whose past or present activities or relationships could affect his/her ability to be impartial and objective in that appeal. Therefore, an Appeals Panel member must agree to act with objectivity and without conflict of interest when reviewing an appeal. An Appeals Panel member confirms agreement to abide by this policy in a Statement of Conflict of Interest, Confidentiality, and Disclosure provided annually to the Appeals Body and to a Panel member prior to hearing an appeal. This Statement will identify situations involving conflict of interest and provide examples of situations that raise the appearance or potential of conflict of interest. The Statement will require that the Panel member affirm prior to participating in an appeal that he/she has no conflicts, predispositions, affiliations or relationships known to that Panel member that could jeopardize, or appear to jeopardize, objectivity and indicate his/her agreement to follow this policy. If an Appeals Panel member has such conflicts, predispositions, affiliations or relationships that he/she believes or, the Commission determines, constitute a Conflict of Interest, that Panel member must withdraw from the appeal.

An Appeals Panel member agrees to keep confidential any information provided by the institution under review and information gained as a result of participating in an appeal. Keeping information confidential requires that the Panel member not discuss or disclose institutional information except as needed to further the purpose of the Commission's decision making processes. It also requires that the Panel member not make use of the information to benefit any person or organization. Maintenance of confidentiality survives any action and continues after the process has concluded. (See PEER.A.10.040, Standards of Conduct, for a list of examples of confidential information available to IAC members.)

Submission of Financial Information Subsequent to Adverse Action

When the Board of Trustees takes an adverse action based solely on or involving financial grounds, the institution shall have an opportunity to submit financial information to the Board of Trustees to be considered prior to the action becoming final. The financial information must be: 1) significant and material to the financial deficiencies cited in the grounds for the adverse action; 2) not available at the time of the adverse action. The institution may submit this material on one occasion only prior to the formal consideration of any appeal filed by the institution. The Board of Trustees will determine at its sole discretion whether the information is significant and material, and, if it is material, whether this information would cause it to take a different action. The Board's decision whether the

~~information is significant and material and whether to continue with its action subsequent to reviewing this material is final and not appealable.~~

~~An institution may submit financial information under this policy in addition to filing an appeal or it may submit financial information instead of, or in lieu of, filing an appeal. Should it submit financial information and forego requesting an appeal by the deadline stated in the APPEALS PROCEDURE, it shall also submit a formal waiver in writing of its right to appeal in conjunction with the adverse action.~~

~~The APPEALS PROCEDURE identifies the materials for, and sets out the required timetables and procedures of, submission of financial information. This document shall be available on the Commission's Web site.~~

Institutional Change During Appeal Period

During the period in which an appeal from a decision of the Commission by an institution is under consideration, the institution cannot initiate any change that would by policy require Commission approval.

Policy History

Last Revised: February 2019

First Adopted: February 2001, February 2009, January 1983

Revision History: October 2003, June 2006, February 2009, June 2009, February 2010, February 2011, November 2012, April 2013, February 2019

Notes: Policies combined November 2012 - 2.6(d), 2.6(d)1, 2.6(d)2, 2.6(d)3, 2.6(d)4

Related Policies: