

# Arbitration of Adverse Actions Following Appeal

## Overview

The [Obligations of Membership](#) of the Higher Learning Commission (HLC) provide that:

Prior to taking legal action, the institution agrees to submit to initial arbitration any dispute regarding adverse actions taken by HLC that the institution disputes and that it is not able to resolve through HLC's processes.

This requirement aligns with requirements in federal regulations for accreditors and institutions, including the federal definition of adverse actions. See 34 CFR §600.4(c); 34 CFR §600.5(d); 34 CFR §600.6(d); 34 CFR §602.3(b) and 34 CFR §602.20(e), referencing 20 USC §1099b(e).

These procedures further supplement HLC policy by describing the procedures for any such arbitration. These procedures provide due process in all aspects of the arbitration process, including providing a transparent and reasonable timeframe for resolution of the arbitration. These procedures also avoid giving HLC an advantage in the arbitration process over an institution.

An institution may only initiate arbitration following a decision by an Appeal Panel. Any decision of the HLC Board of Trustees ("the Board"), including following an appeal, will not take effect until the conclusion of any arbitration. Consistent with HLC's [Notice of Accreditation Actions, HLC Public Notices and Public Statements policy \(COMM.A.10.010\)](#), HLC may issue and/or update a Public Disclosure Notice and/or Public Statement regarding the status of an arbitration.

The arbitration must be based on specific grounds as set forth in these procedures.

The arbitration will be conducted by a single arbitrator who is mutually selected by the parties.

The arbitration will be conducted according to the process and timeline detailed in these procedures, with further procedural details being established by the parties and the arbitrator as necessary.

The arbitration will use a preponderance of the evidence standard of review.

The parties may be represented by legal counsel for the arbitration.

In keeping with the requirement that the arbitration process be completed within a reasonable timeframe, the parties will endeavor to complete the entire arbitration process (from Notice of Arbitration to the arbitrator issuing a decision) within 120 days. However, this timeline may be adjusted to be longer or shorter, either by mutual written agreement of the parties or as otherwise determined by the arbitrator.

The arbitrator may only act to affirm or reverse the decision of the Appeal Panel. The arbitrator will not have the authority to award monetary damages, to take accreditation actions, or to otherwise take any other action.

An arbitration decision is binding. However, an institution may legally challenge an arbitration decision as permitted by applicable law.

The arbitrator is not a decision-making body of HLC. As necessary, the Board will take further action to implement the arbitration decision.

# Grounds for Arbitration

The grounds for arbitration are as follows:

1. The decision of the Appeal Panel was arbitrary, capricious or not supported by substantial evidence in the record.
2. The procedures that the Appeal Panel used to reach the decision were contrary to HLC's policies and procedures, and the procedural error unreasonably impaired the decision of the Appeal Panel.

An institution need only allege one of the above grounds to initiate arbitration.

## Notice of Intent to Arbitrate

An institution shall initiate arbitration by notifying HLC of its intent to arbitrate and identifying the grounds for arbitration under these procedures. An institution must initiate arbitration no later than 14 days from the date of the notification of a determination by an Appeals Panel. The notice of intent to arbitrate must be submitted electronically as a single PDF file that does not contain links to external websites or documents to <https://spaces.hightail.com/uplink/HLC-LRA>. No hard-copy submissions will be accepted.

If an institution does not notify HLC of its intent to arbitrate within this time frame, the institution forfeits its right to arbitrate and the decision of the Appeal Panel will become final as detailed in HLC's [Appeals procedure](#).

## Arbitrator Selection

Upon receipt of the Notice of Intent to Arbitrate, HLC will contact the institution within 10 days to initiate the process of selecting an arbitrator.

The arbitration will be conducted by a single arbitrator who is mutually selected by the parties. The arbitrator is required to be qualified, impartial and independent.

The parties will select an arbitrator by each nominating three individuals as potential arbitrators. Potential arbitrators could include individuals with experience in higher education and/or accreditation. The parties

are encouraged to consider individuals from the JAMS Neutral Directory or the AAA National Roster of Arbitrators and Mediators.

From that list, the parties will each strike potential arbitrators until a mutually agreeable arbitrator is identified. Parties may strike potential arbitrators without stating a reason.

If no arbitrator can be identified from the initial list, the parties will repeat the nomination process until an arbitrator can be agreed-upon. If the parties are unable to agree on an arbitrator within 30 days, the parties will utilize the services of an agreed-upon arbitration management service. If the parties are unable to agree on an arbitration management service, the parties will utilize the JAMS Managed Arbitration Process.

Prior to being selected as an arbitrator, an arbitrator must affirm that they do not have a conflict of interest with the institution participating in the arbitration as detailed in HLC's applicable [policies and procedures regarding conflict of interest and objectivity](#). The arbitrator must also affirm that they have no conflicts of interest with HLC that would impede their ability to conduct a fair and objective review.

During the process of selecting an arbitrator, all communications with potential arbitrators will involve both parties. Unless otherwise agreed-upon, neither party will engage in any *ex parte* communications with a potential arbitrator.

## Arbitration Procedures

Once an arbitrator is selected, the arbitrator will work with the parties to establish a timeline and procedures for the arbitration. The arbitrator will oversee the implementation of the arbitration procedures. At a minimum, the arbitration procedures will be consistent with the following:

### Scope and Standard of Review

The arbitrator will determine whether one or more of the grounds for arbitration are met and, if so, will review whether to affirm or reverse the decision of the Appeal Panel.

The standard of review is a preponderance of the evidence standard.

## Materials to be Considered

The parties may agree to exchange documents explaining their respective positions and rationales (for example—brief from institution, response from HLC, rebuttal from institution). To support these documents, the parties may only provide and the arbitrator may only consider the following materials:

1. Those materials previously considered by the HLC Board in taking the adverse action or considered by the Appeal Panel in making its decision.
2. The administrative record related to the Board's decision and the decision of the Appeal Panel (i.e., the Board's action letter and the decision of the Appeal Panel).

Under no circumstances will the parties conduct discovery or otherwise introduce new factual information as part of the arbitration. Materials will be exchanged according to a schedule determined by the arbitrator.

## Arbitration Hearing Procedures

There will be an arbitration hearing held either in-person or via tele- or videoconference (or other technology that allows the parties to engage in synchronous communication). The hearing is not public. The parties will each have an opportunity to make an opening and final statement and the arbitrator will direct questions to the parties. There will not be an opportunity for the parties to pose questions directly to each other. The hearing will be transcribed and a transcript made available to each party following the arbitration hearing.

## Decision

The arbitrator will inform HLC and the institution of their decision in writing within 30 days of the conclusion of the arbitration hearing. The decision will either:

- Affirm the decision of the Appeal Panel; or
- Reverse the decision of the Appeal Panel.

The arbitrator will not have the authority to award monetary damages, to take accreditation actions, or otherwise take any other action.

The decision of the arbitrator is binding. However, an institution may legally challenge an arbitration decision as permitted by applicable law.

## Further Board Action

The arbitrator is not a decision-making body of HLC. The HLC Board of Trustees will act to implement the decision of the arbitrator within 30 days of the transmission of the decision. This could include, for example, taking final action on a previous adverse action or taking other accreditation actions.

The Board has the discretion to define the terms and conditions of the institution's status in conjunction with its implementation of the decision (e.g., date of next evaluation, monitoring, sanction, etc.).

HLC will issue written notification to the institution of its decision within 14 days of the Board taking final action.

## Other Information

### Representation by Counsel

The institution and/or HLC may be represented by legal counsel during the arbitration process.

The institution must promptly notify HLC of its intent to be represented by legal counsel in an arbitration.

Other than during the arbitration hearing, institutional legal counsel are expected to communicate solely with legal counsel for HLC and with the arbitrator. At the arbitration hearing, legal counsel for either party will be permitted to make any presentation that the party is permitted to make.

### Disclosure Obligations

HLC may issue and/or update a Public Disclosure Notice and/or Public Statement regarding the status of an arbitration. The institution is required to accurately disclose the disposition of the institution's accreditation relationship, including that HLC has taken an adverse action which is not yet effective, that the institution submitted an unsuccessful appeal, and that arbitration remains ongoing.

### Arbitration Records

All records and information related to an arbitration will be managed by HLC in accordance with HLC's [Management of HLC Records and Information policy \(COMMA.10.020\)](#). After the conclusion of the arbitration, unless otherwise required by law, the arbitrator will destroy and not retain any documents, in whatever form, provided or produced during the course of the arbitration.

## Fees and Expenses

The fees for arbitration are outlined in HLC's [Dues and Fees Schedule](#). HLC will not move forward with an arbitration if an institution has past due dues or fees or any other outstanding HLC requirements to be fulfilled.

Each party is responsible for its own costs and expenses related to an arbitration. To the extent that HLC manages the payment of costs or expenses for the arbitration, HLC may require a deposit from the

institution prior to incurring any such costs. Any deposit that exceeds actual expenses may be applied to other amounts due to HLC and any remainder will be refunded to the institution following the conclusion of the arbitration.

### Questions?

Contact HLC at [legalaffairs@hlcommission.org](mailto:legalaffairs@hlcommission.org).