

## Policy and Procedures for ~~Reviews and Appeals~~

Key to Changes: ~~Delete~~, Add, Explanation

**Proposed changes streamline the appeal process by removing the option of Commission Review prior to Appeal. Changes also update language related to virtual appeal meetings.**

### Introduction

In the interest of providing appropriate and fair procedures for ~~the review or~~ appeal of decisions to deny or terminate an accreditation status, ~~issue a show cause order, or place an institution on probation,~~ the Commission on Accreditation (COA) ~~establishes~~ has established the following policies and procedures.

### ~~Introduction~~

An institution/program has the right to ~~request a review or to~~ appeal the decisions of the COA and receive an impartial response in a timely fashion. ~~Normally this process begins with a request for a COA review of a decision. Alternatively, an institution or program may petition directly to an appeal panel. In either case, documentation must meet the requirements of this policy including filing deadlines.~~ An “appeal” is a review of the COA’s decision by a panel of prior Commissioners and/or experienced evaluators who were not involved in the original COA decision. Pending the outcome of ~~all reviews and an appeals,~~ the institution ~~will continue~~ in the accreditation status ~~enjoyed it had~~ prior to the appeal action.

~~A “review” is a re-examination of the decision by the COA. An “appeal” is a review of the COA’s decision by a panel of prior Commissioners and/or experienced evaluators who were not involved in the original COA decision.~~

### Actions That May be ~~Reviewed or~~ Appealed

1. Denial or termination of candidate status,
2. Placement on probation,
3. Issuance of an order to show cause why status should be continued, or
4. Denial or termination of accredited status.

### Grounds

A request for ~~review or~~ appeal of a COA decision must be based upon at least one of the following grounds:

That the action of the COA is believed to be

1. Based upon a misunderstanding or misinterpretation of the documentation submitted or testimony presented.
2. A failure of the COA to follow its own policies and procedures.
3. A misinterpretation or inconsistent application of ABHE Standards or policies by the COA.
4. Influenced by (a) person(s) with a significant conflict of interest not known prior to the COA action.
5. No longer warranted because new financial Information is available that may influence the decision.

With the exception of finances (see ground #5), an institution may not base requests for ~~reviews or~~ appeals on developments that occur following the meeting of the COA in which adverse action is taken. In certain cases, the COA's decision may have been based solely upon the failure of an institution or program to meet a standard or criterion pertaining to finances. In such instances, before a final adverse action is taken, an institution will be permitted an opportunity to provide ~~the COA~~ current financial information where the previously unavailable financial information may have had a material bearing on the institution's capacity to comply with the financial standard or criterion. An institution may not, however, file a separate appeal on the grounds that the **Appeal Panel** failed to give adequate weight to the newly introduced financial information.

### **COA Review: Finances**

~~The institution requesting a review will include a non-refundable \$500.00 filing fee. The institution will pay the following fees plus any additional expenses incurred by the process.~~

<i>Description</i>	<i>Non-refundable Fee</i>
Filing fee	\$500.00
Review requiring a face-to-face meeting	\$3,000.00
Review requiring a focused team visit	\$2,500.00

~~Note: The fees are cumulative. If a face-to-face meeting is required, the total is \$3,500: the \$500 filing fee plus the \$3,000 face-to-face meeting fee. If the COA requires a focused team visit as part of resolving the request, the fee total will be \$6,000 (\$500 filing fee + \$3,000 face-to-face meeting fee + \$2,500 focused visit fee). **The institution will pay the travel and hosting costs for a face-to-face meeting and/or a visiting team in addition to the fees above.**~~

### **COA Review: Procedures**

- ~~1. A written request for a review of an action taken by the COA must be made by the institution's chief executive officer or board chair and be postmarked or filed electronically within ten (10) calendar days of the date of the official letter conveying the COA's action. The written notice of intent must include (1) a request for the COA to~~

~~reconsider the action (2) indication as to whether the institution desires a teleconference review or a face-to-face review, (3) if a teleconference review is requested, indication as to whether the institution desires to make oral presentation or waives participation in the teleconference, (4) the grounds upon which the request is being made, and (5) a check for the appropriate fee(s), postmarked within 24 hours of submission of the request for a review.~~

- ~~1. Documentation to support the review must be received in the ABHE office within twenty (20) calendar days of the notification of intent to initiate a review.~~
- ~~2. The COA Executive Director or Director's representative will confirm receipt of the request and inform the COA of the request within fifteen (15) calendar days of the receipt of the written request. The Executive Director or Director's representative will poll Commissioners for available dates, allowing thirty (30) days lead time for document submission and review.~~
- ~~3. COA Review. To review its decision, a quorum (half or more) of the COA members is required. The COA will meet within thirty (30) days (or as quickly thereafter that a quorum can be established) of receipt of documentation from the COA office. This meeting will be via telecommunications, unless the institution requests a face-to-face review, which would be held at the ABHE Office. The COA will consider the grounds for review and the documentation in support of the institution's request. It will then take one of the following actions:
  - ~~a. Uphold the original decision,~~
  - ~~b. Request a focused team visit and consider the resultant focused visit report no later than its next regularly scheduled meeting, or~~
  - ~~c. Make a new decision based upon the evidence submitted.~~~~

~~In the case of a face-to-face review, the institution may be advised and represented by whomsoever it may choose. The COA office is to be informed in advance of who will be representing the institution. The COA Chair will preside and may limit the testimony of witnesses. If the COA Chair is unavailable, the Vice Chair or next senior Commissioner will preside. Unless otherwise ordered by the COA, a review will last not more than two hours.~~

- ~~4. The COA will provide written notification to the institution of its decision, including the rationale for the decision, within thirty (30) days of the review meeting.~~
- ~~5. If the institution is not satisfied with the decision of the COA review, it has the option to file a request for an Appeal Panel to evaluate the decision. Such request must be received within ten (10) calendar days of notification of the COA's review decision.~~

## **Appeal: Finances**

The institution requesting an appeal will include a non-refundable \$500.00 filing fee. The institution will pay the following fees plus any additional expenses incurred by the process.

<i>Description</i>	<i>Non-refundable Fee</i>
Filing fee	\$500.00
Appeal requiring a face-to-face meeting	\$3,000.00
Appeal requiring a focused team visit	\$2,500.00

Note: The fees are cumulative. If a face-to-face meeting is required, the total is \$3,500: the \$500 filing fee plus the \$3,000 face-to-face meeting fee. If the COA requires a focused team visit as part of resolving the appeal, the fee total will be \$6,000 (\$500 filing fee + \$3,000 face-to-face meeting fee + \$2,500 focused visit fee). **The institution will pay the travel and hosting costs for a face-to-face appeal meeting and/or a focused team visit in addition to the fees above.**

### Appeal: Procedures

1. If an institution elects to appeal the COA's ~~original and/or review~~ decision, a written request for reconsideration of the decision must be made by the institution's chief executive officer or board chair and be postmarked or filed electronically within ten (10) calendar days of the date of the official letter conveying the COA's action ~~or the subsequent notification of the COA's decision following a review~~. The written notice of intent must include (1) a request to appeal the COA's ~~most recent~~ decision (2) indication as to whether the institution desires a ~~teleconference virtual appeal~~ or a face-to-face appeal meeting, (3) ~~if a teleconference appeal is requested, indication as to~~ whether the institution desires to make oral presentation or waives participation in the ~~teleconference appeal~~, (4) the grounds upon which the appeal is being made, and (5) a check for the appropriate fee(s), postmarked within 24 hours of submission of the request for an appeal. ~~Once the request for appeal is received, it cannot be withdrawn.~~
2. Documentation to support the appeal must be received in the ABHE office within twenty (20) calendar days of the notification of intent to appeal a decision. ~~The affected institution may present mitigating information regarding the evidence upon which the COA's sanctions were based. With the exception of finances, institutions may not provide new information, but they may clarify information already submitted. Institutions are permitted an opportunity to provide updated financial information at the time of appeal.~~
3. The COA Executive Director or Director's representative will confirm receipt of the request and inform the COA Chair of the request within fifteen (15) calendar days of the receipt of the written request. The Executive Director or Director's representative will poll members of the appeal panel pool for available dates, allowing thirty (30) days lead time for document submission and review.

4. The COA Executive Director, in cooperation with the COA Chair, will select an Appeal Panel of five (5) persons to consider the appeal, and appoint an Appeal Panel Chair from among the selected members. (See “Appeal Panel” below concerning the pool of potential members of this body.)
5. The Appeal Panel will meet within thirty (30) days (or as quickly thereafter that Appeal Panel scheduling permits) of having received documentation and its charge from the COA Executive Director. This meeting will be **via telecommunications virtual** unless the institution requests a face-to-face meeting. The COA Executive Director will serve the Appeal Panel in a non-voting, advisory role.
6. ~~In the case of a face-to-face appeal, the~~ **The** COA Executive Director or Director’s representative will inform all parties concerned of the time, date, and place of the meeting at least thirty (30) days in advance. This communication will be in writing to the institution’s president and board chair. ~~The institution may be advised and represented by whomever it may choose. The Appeal Panel Chair will preside and may limit the testimony of witnesses.~~ Unless otherwise ordered by the Appeal Panel, a face-to-face appeal will last no more than one day.
7. The appealing institution has the right to appear before the Appeal Panel to present its case. Its appearance can be **via telecommunications virtual** or, ~~in the case of a~~ face-to-face ~~meeting, in person at the ABHE Office.~~ The institution has the right to be represented by whomsoever it wishes, including legal counsel. The COA office is to be informed in advance of who will be representing the institution. **The Appeal Panel Chair will preside and may limit the testimony of witnesses.**
8. The Appeal Panel will consider the grounds for the appeal, the documentation in support of the institution’s allegations, the procedures followed by the COA, the team report(s), the staff visit report(s), and/or the action of the COA. In its consideration of this information, the COA Executive Director will direct the Appeal Panel not to consider any institutional efforts to comply with Standards that were subsequent to the COA’s original action. The Appeal Panel will have the authority necessary to affirm, amend, or remand the COA’s adverse decision with respect to an institution or program. Upon the completion of its deliberations, it will take one of the following actions:
  - a. *Affirm* the original adverse action
  - b. *Amend* the adverse action only with regard to areas of non-compliance with accreditation Standards or policies,
  - c. *Direct* that a focused visit be granted and a report be submitted for consideration by the Appeal Panel, or
  - d. *Remand* the adverse action to the Commission for final action. The Appeal Panel must explain the basis for a decision that differs from that of the original decision of the COA with regard to (1) denial or termination of candidate status, (2) placement on probation, (3) issuance of an order to

show cause why status should be continued, or (4) denial or termination of accredited status, and the COA must act in a manner consistent with the Appeal Panel's decision.

9. The Commission on Accreditation implements all actions resulting from the Appeal Panel process. Final decisions are disseminated as required by the ABHE Policy on Communication of Accreditation Decisions.

## **Appeal Panel**

This special-purpose panel will consist of four persons selected from a pool of qualified personnel from accredited institutions or former Commissioners who are not current members of either the Association's Board of Directors or the COA and who were not members of the evaluation team that visited the institution in question. The Appeal Panel will include representation from qualified administrators and qualified academicians. In addition to the personnel from accredited institutions, a fifth, public member will be included on the panel who clearly meets the requirements of ABHE's Policy on Public Representation. To establish an Appeal Panel with sufficient expertise to address the issues being appealed while, at the same time, avoiding conflicts of interest, a pool of ten (10) to twenty (20) potential panelists will be maintained. The COA Executive Director, in cooperation with the COA Chair, will nominate a potential pool of members for appointment by the COA. The COA will review the membership of the pool on an annual basis: adding, deleting, or reappointing members as it sees fit to maintain the level of competence desired.

The qualifications of an Appeal Panel member will include 1) prior experience as a Commissioner or extensive service as a team evaluator and 2) completion of a specific program of training regarding ABHE Standards, policies, and procedures. Appeal Panelists must also complete the evaluation team training for distance education and graduate education prior to service on an appeal. Administrative representatives must be currently or recently engaged in a significant manner in program or institutional administration at the postsecondary level; academic representatives must be currently or recently engaged in a significant manner in postsecondary teaching and/or research (including learning resource and research support, and/or curriculum development). The public representative must not be affiliated with an ABHE institution as specified in the Policy on Public Representatives. Members of the ABHE staff will not be eligible for service on an Appeal Panel. ABHE will provide regular training regarding its Standards, policies, and procedures through written materials, workshops, seminars, and online educational opportunities.

## **Conflicts of Interest**

A pool of potential Appeal Panel members has been determined to ensure the availability of panel members who are free of conflicts of interest. Conflicts of interest are described in the ABHE Policy on Conflict of Interest. Persons serving on the Appeal Panel for a given case will be required to sign the Appeal Panel Member Conflict of Interest Form that will be provided by

the ABHE staff at the time of their appointment to consider the appeal of a specific institution or program. In the unlikely event that it is impossible to develop a panel free of bias within the established pool, the COA Executive Director will work with the COA officers to identify additional suitable panelist(s) for the situation under appeal.

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