

Procedures for Arbitration of Adverse Actions Following Appeal

Proposed changes further clarify the availability, timeline, and procedures for arbitration and add sections related to integrity and confidentiality of arbitration.

ABHE Institutional Accreditation Condition of Eligibility #26 and Programmatic Accreditation Condition of Eligibility #17 require the following attestation from all institutions seeking accreditation status with the ABHE Commission on Accreditation:

The institution must agree in writing to submit any dispute involving the final denial, withdrawal, or termination of accreditation or pre-accreditation (candidate status) to initial arbitration prior to any other legal action.

This requirement aligns with U.S. Department of Education regulations related to arbitration and adverse actions as documented in 34 C.F.R. 600.4(c), 600.5(d), 600.6(d), and 602.20(e). Arbitration is not available for disputes relating to any accreditation decision other than those noted in Condition of Eligibility #26 (#17 for programmatic accreditation) above.

In alignment with federal guidelines, ABHE procedures for any such arbitration are designed to

- provide due process in all aspects of the arbitration process,
- avoid giving ABHE an advantage over an institution in any aspect of the arbitration process,
- provide for equal input from ABHE and the institution in selecting and approving an arbitrator,
- include effective controls to prevent conflicts of interest between the arbitrator and ABHE or the institution, and
- provide for a transparent and reasonable timeframe for the resolution of the arbitration, typically no more than 120 days

Arbitration may not be initiated by an institution receiving an adverse action until after ~~the~~ all appeal processes as documented in the *Policy and Procedures for Appeals* is-are complete and final action on accreditation status has been taken. Public notice of the accreditation decision resulting from appeal will be posted in alignment with the *Policy on Communication of Accreditation Decisions and Negative Actions*. Should an institution decide to initiate arbitration, ABHE will update the public notice regarding the adverse action with information about the initiation and status of arbitration as available. Any decision of the Commission, including following an appeal, will not take effect until the Commission reviews and acts on the arbitrator's written decision.

The arbitration process is initial and non-binding. 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 arbitrator is not

a decision-making body of the ABHE Commission. Upon receipt of the arbitrator decision, the Commission on Accreditation will take action as appropriate. Following the arbitrator decision and Commission action, an institution may choose to challenge an adverse action as permitted by applicable law.

GROUNDINGS FOR ARBITRATION

Institutions must allege one of the following as appropriate grounds for arbitration:

1. The adverse action is not reasonably supported by the facts or evidence in the record at the time of the appeal.
2. The adverse action resulted from Appeal Panel or Commission appeal procedures inconsistent with COA policies, or
3. The adverse action is attributable to a misapplication of COA standards or policies.

NOTICE OF INTENT TO ARBITRATE

To initiate arbitration following appeal of an adverse action, an institution shall submit a letter of intent to arbitrate, signed by the CEO, to coa@abhe.org within 14 days from notification of the Commission decision following appeal. The letter should include the following:

1. Notice of intent to arbitrate
2. Grounds for arbitration
3. Issues to be resolved

If notice of intent to arbitrate is not received within 14 days of notification, the institution forfeits its right to arbitrate and the action taken by the Commission as the result of appeal stands.

SELECTION OF AN ARBITRATOR

Within 10 days of receipt of Notification of Intent to Arbitrate, the COA will initiate the process of selecting an arbitrator with experience in Christian higher education or related areas and familiarity with federal regulations governing accreditation and ABHE Accreditation Standards and policies.

ABHE and the institution will select an arbitrator by each nominating three individuals with the qualifications above as potential arbitrators. Parties are encouraged to consider qualified individuals from the JAMS Neutral Directory, but other qualified individuals may be considered. From the list of six individuals, the parties will strike potential arbitrators until they come to mutual agreement on an individual. Potential arbitrators may be struck without stating a reason.

If an arbitrator on the initial list cannot be agreed upon, the parties will repeat the process until a mutually agreed upon arbitrator is identified, or within 30 days from initiation of the selection process. If agreement on an arbitrator cannot be reached within 30 days, the parties will utilize the JAMS Managed Arbitration Process. During the selection process, all communication with potential arbitrators will involve both parties.

Prior to final selection of an arbitrator, the individual must affirm that he or she has no conflict of interest with the institution initiating arbitration as detailed in the *Policy on Conflicts of Interest*.

The individual must also affirm that he or she has no conflict of interest with the ABHE Commission on Accreditation that would affect his or her ability to conduct a fair and neutral review.

ARBITRATION MATERIALS

The arbitrator will be provided the following materials for review:

1. The materials considered by the ABHE Commission on Accreditation and/or Appeal Panel in taking the adverse action.
2. The administrative record related to the Appeal Panel decision and Commission action.

In addition, the parties may agree to exchange documents explaining their respective decisions and rationales. In such cases, the documents should include, at minimum, an institution brief and a COA response. Under no circumstances should either party conduct additional discovery or introduce new information as part of the arbitration process. The timing of document exchange will be determined by the arbitrator.

ARBITRATION PROCEDURES

The arbitration shall be administered by JAMS (www.jamsadr.com) pursuant to its Streamlined Arbitration Rules and Procedures, or its most applicable rules and procedures as determined by the arbitrator, except as otherwise specified in these Procedures for Arbitration of Adverse Actions Following Appeal ("these Procedures") or in a written agreement of the parties. In case of conflicts among competing rules, procedures, or interpretations thereof, the arbitrator shall conclusively resolve such conflicts with due regard for the plain language of these Procedures.

The ~~selected~~ arbitrator will work with both parties to establish a timeline and procedures for the arbitration consistent with the following:

1. The arbitrator will oversee the implementation of arbitration procedures.
2. The arbitrator will determine if one or more of the grounds for arbitration are met. If so, the arbitrator will work with both parties to schedule an arbitration hearing.
3. The arbitration hearing will be held via videoconference (or other means that allows the parties to engage in synchronous communication). The institution may request an in-person hearing, but bears all additional costs incurred. The arbitration hearing is not public.
4. During the hearing both parties will have an opportunity to present opening and closing statements, and the arbitrator will direct questions to both parties. There will not be any opportunity for parties to directly question one another.
5. The institution and/or the ABHE Commission may be represented by legal counsel during the arbitration process, including at the hearing.
6. The institution bears the burden of proof that the Commission on Accreditation's decision following appeal did not adhere to ABHE Standards or policies, based on information available at the time of appeal. The standard for review is preponderance of evidence.
7. Within 30 days of the hearing, the arbitrator will inform the institution and the Commission of his or her decision in writing. The decision will do one of the following: (1) affirm the Commission action, (2) affirm the action in amended form, (3) or remand the

action back to the Commission with recommendations. The arbitrator will provide a summary rationale for the decision to both parties.

8. The arbitrator will not have the authority to take accreditation actions, award monetary damages, or otherwise take any action.
9. The arbitration decision is non-binding; however, the Commission on Accreditation will review the arbitration decision within 30 days of notification for possible action.
- ~~9.~~10. The entire arbitration process, from the notice of intent to arbitrate until the issuance of the arbitrator's written decision, should conclude within 120 days, unless the arbitrator finds good cause to extend that period by up to 60 days, for a total of 180 days.

ARBITRATION EXPENSES

The institution and the Commission will evenly share the fees and expenses charged by the Arbitrator. The Commission will request that each party is billed separately. The expenses noted below may be incurred by the party or parties referenced:

1. The institution is responsible for the costs associated with an in-person arbitration hearing if it requests one. The convening of an in-person arbitration hearing may entail additional compensation for the arbitrator and expenses related to travel, accommodations, and meeting space.
2. The Commission will request a transcription of the arbitration hearing. The institution may receive a copy by paying related costs.
3. The institution and the Commission will bear its own legal fees for the Arbitration (if counsel is engaged), unless the arbitrator determines that the institution acted frivolously or in bad faith in commencing or continuing the arbitration process. In such cases any legal fees incurred by the Commission will be paid by the institution.

INTEGRITY OF ARBITRATION

The parties must include each other in all their communications with the arbitrator. Accordingly, there shall be no *ex parte* communications with the arbitrator by the Commission, by the institution, or by anyone acting on their behalves, unless otherwise required by law, the arbitrator, or a written agreement of the parties.

CONFIDENTIALITY OF ARBITRATION

The arbitration process and materials are to be held confidential, except as otherwise required by law or a written agreement of the parties.

Applicable Policies: *Policy and Procedures for Appeals*, *Policy on Communication of Accreditation Decisions and Negative Actions*

Adopted June 2024; Revised November 2024; Proposed February 2026