

INSTRUCTIONS FOR ARBITRATION

I. BINDING ARBITRATION OF AN ADVERSE APPEAL DECISION

A. Coverage of Binding Arbitration

1. The Department of Education's regulations governing institutions of higher education (34 CFR § 600.4(c)) provide that the Secretary of Education does not recognize the accreditation of an institution unless the institution agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to arbitration.
2. The Commission's *Bylaws* provide that by applying for accreditation with the Commission, the school agrees to exhaust all appeal opportunities and to submit fully and faithfully to final, binding arbitration proceedings.
3. For the purposes of binding arbitration pursuant to these *Instructions*, an Adverse Appeal Decision is a decision of an independent Appeals Panel pursuant to *Section VIII (E), Rules of Process and Procedure* which results in the withdrawal of a school's accreditation, the denial of an application for initial accreditation, or any other adverse decision of the Appeals Panel.
4. A school that believes that the decision of an independent Appeals Panel is not supported by substantial evidence in the record on which the Appeals Panel took action may seek review of that decision through binding arbitration as described in these *Instructions*. This is the exclusive remedy for a school which has received an Adverse Appeal Decision and governs any and all claims arising out of the Adverse Appeal Decision as well as the underlying or predicate actions of the Commission. A school which does not participate in binding arbitration will not have exhausted its administrative remedies.
5. An accredited school remains accredited during the pendency of the arbitration proceeding and until the arbitrator renders a final decision. Pursuant to the Commission's *Rules of Process and Procedure*, the school will operate under a Probation Order during this period.
6. The arbitration proceedings shall be conducted in accordance with these *Instructions* and the parties and the arbitrator shall maintain the confidentiality of these proceedings except in the case of a judicial challenge or court order concerning the proceedings, or as otherwise required by law.
7. The school and the Commission may be represented by legal counsel during the arbitration proceeding.

B. Standard of Review in Arbitration and Available Remedies

1. The arbitration proceeding is not a *de novo* review. It is a review on the record and is limited to the question of whether the Appeals Panel's decision is supported by the evidence that was in the record when the Panel rendered its decision.
2. The arbiter may not consider evidence that was not in the record before the Appeals Panel.
3. The school has the burden of proof in the arbitration proceeding.
4. The arbitrator shall only have the authority to affirm or reverse the decision of the Appeals Panel, subject to the limitations below in *Section I (J)(3)* of these *Instructions*.

C. 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").

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2. The process for selecting the arbitrator is set out below in *Section I (E)* of these *Instructions*.

D. Initiation of Arbitration Proceeding

1. Within 10 days of receipt of a final adverse Appeal Panel decision, the school may initiate an arbitration proceeding by providing a written Notice of Intent to Arbitrate to the Commission accompanied by the required fees as provided for below in *Section I (K)* of these *Instructions*. The notice shall contain a concise statement of the arguments that the school intends to assert during the arbitration and the remedy which it intends to seek.
2. Within 20 days of the receipt of the Notice of Intent to Arbitrate, the Commission shall file with the AAA:
 - a. A copy of the school's Notice of Intent to Arbitrate and the statement of the arguments that the school intends to assert during the arbitration and the remedy which it intends to seek;
 - b. A statement of the arguments 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 provided for in *Section I (K)* below.

E. Appointment of Arbitrator from AAA National Roster

1. The arbitration shall be heard and determined by one arbitrator who shall be impartial and independent.
2. As soon as practicable after receipt of the materials from the Commission described in *Section I (D)(2)* above, the AAA shall simultaneously submit to the school and the Commission an identical list of five proposed arbitrators drawn from its National Roster from which one arbitrator shall be appointed. The list of proposed arbitrators shall be accompanied by biographical descriptions of each arbitrator on the list.
3. The school and the Commission may each strike two names from the list and return it to the AAA within 7 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 school or Commission.
4. The AAA shall promptly provide written notice to the school 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 of his/her appointment, the AAA may, on proof satisfactory to it, declare the office vacant and fill the vacancy with another arbitrator. Such action by the AAA shall be final.
6. Neither the school nor the Commission nor anyone acting on their behalf shall communicate *ex parte* with the arbitrator or anyone a candidate to be the arbitrator.

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F. Creation of the Record for the Arbitration Proceeding

1. Within 20 days from the date of the appointment of the arbitrator, the Commission shall submit to the arbitrator and the school the Arbitration Exhibits which shall include the record before the Appeals Panel, the school's Grounds for Appeal, and the transcript of the hearing before the Appeals Panel if a hearing was held. The documents shall be true, legible, and complete copies.
2. Within 10 days of receipt of the Arbitration Exhibits, the school 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 school shall not submit for inclusion in the Arbitration Exhibits any material that was not submitted to the Commission prior to the decision of the Appeals Panel. Within 10 days of receipt of any documents proffered by the school 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 specific 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 in accordance with the Commission's Instructions for Electronic Submission.
3. The materials in the Arbitration Exhibits shall constitute the evidentiary record upon which the arbitrator shall render his/her decision. The arbitrator, at any time during the pendency of the proceeding, may require the Commission or the school to submit other documents or materials as additional exhibits, but only as necessary to determine whether substantial evidence supported the decision of the Appeals Panel.

G. School's Arbitration Brief, Commission's Response

1. Within 20 days from the date the arbitrator deems the Arbitration Exhibits to be complete, the school shall submit to the arbitrator and the Commission its written Arbitration Brief which sets out the reasons why the decision of the Appeals Panel was not supported by substantial evidence in the record on which the Appeals Panel took action. The brief shall be no longer than 20 double-spaced pages.
2. Within 20 days of receipt of the school's Arbitration Brief, the Commission shall submit to the arbitrator and the school 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 filed in electronic format in accordance with the Commission's Instructions for Electronic Submission.

H. Discovery Not Available

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

I. Arbitration Hearing

1. The school and the Commission may agree to waive an oral hearing before the arbitrator and proceed to a decision on the documentary record only.

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2. The school and the Commission may also agree to a telephonic or video hearing before the arbitrator.
3. Upon the request of either the school or the Commission, an in-person hearing shall be held. As set out in *Section I (K)* 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 30 days after receipt of all of the briefs. The school 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. Within 10 days of the scheduling of an in-person hearing, the school 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 case. Because the school carries the burden of proof in the arbitration, the school would generally make the first presentation to the arbitrator.
8. The hearing shall be private and not open to the public.
9. A stenographic transcript of the hearing shall be made.
10. The arbitrator will be requested to render a decision promptly within 21 days from the date of closing of the telephonic, video, or in-person 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.

J. Effect of Decision

1. The arbitrator shall have the authority to affirm or reverse the decision of the Appeals Panel but shall have no authority to remand or amend the Appeals Panel'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 Appeals Panel, the Commission's action becomes final immediately. When a decision to withdraw accreditation is final, the school is removed from the Commission's list of accredited schools.
3. If the arbitrator reverses the decision of the Appeals Panel, 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 institution. Pursuant to the regulations of the U.S. Department of Education, that power is reserved exclusively to the accreditation agency.

K. Fees and Expenses

1. The AAA charges a fee to compensate it for the cost of providing administrative services in connection with the arbitration. The fee is specified in the current schedule of fees published by the AAA. The school requesting arbitration is fully responsible for payment of this fee.

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2. In addition to fees required by *Section I (K)(1)* 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 school and the Commission shall be responsible for sharing the costs and expenses associated with the arbitration. If, however, the Commission prevails in the arbitration, the school shall be responsible for all costs associated with the claim made against the Commission in accordance with *Section 2.09* of the *AACSC Bylaws*.
4. The school's Notice of Intent to Arbitrate shall be accompanied by a non-refundable fee of \$5,000 to cover the administrative costs borne by the Commission in preparation of the 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 administrative fee, and the school'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 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 any 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 school and the Commission and return any unexpended balance at the conclusion of the proceeding.

II. ARBITRATION OF OTHER CLAIMS AGAINST THE COMMISSION

A. Arbitration Process

1. Other than a claim for review of an Appeals Panel decision under these Instructions, any claim or controversy:
 - i. Arising out of or related to the Commission's accreditation processes, including challenges to a Commission decision to deny or withdraw accreditation, provided the school has exhausted that challenge under *Section VIII, Rules of Process and Procedure, Standards of Accreditation* and under *Section I* of these *Instructions* above, or
 - ii. Arising out of the relationship between the Commission and any Member accredited school 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 under this section shall be governed by *Section I (K)* of these *Instructions*. Schools accredited by the Commission, or seeking accreditation by the Commission, understand and agree that such arbitration is the sole and exclusive remedy available to a school to resolve such claims or controversies.
2. If the Commission prevails in the arbitration, the school shall be responsible for all costs associated with the claim made against the Commission in accordance with *Section 2.09* of the *AACSC Bylaws*.