

Appeals from Adverse Actions Procedures

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I. Purpose

The Mid-Atlantic Region Commission on Higher Education (MARCHE), doing business as the Middle States Commission on Higher Education (MSCHE or the Commission), seeks to ensure that institutional members are provided sufficient due process and have the right to appeal any adverse action prior to it becoming final. If a member institution requests an appeal from an adverse action, the Commission will establish an Appeal Panel to review the appeal prior to the adverse action becoming final. The purpose of these procedures is to implement the *Accreditation Actions Policy and Procedures* and establish procedures for the fair and expeditious processing of an appeal of an adverse action by the Commission. All adverse actions (deny or withdraw candidate for accreditation status or deny or withdraw accreditation) are subject to appeal.

II. Scope of the Appeal Process

An institution subject to any adverse action is entitled to a review of the Commission's decision by an Appeal Panel prior to the adverse action becoming final in accordance with these procedures. The Appeal Panel has the authority to make decisions to affirm, amend, or remand adverse actions taken by the Commission in accordance with Commission policy and procedures and federal regulation 34 CFR § 602.25(f)(1)(iii). Subsequent action will be taken by the Commission to implement the decision of the Appeal Panel.

- A. The institution is entitled to seek an appeal for any adverse action as defined in Commission policy and procedures (deny or withdraw candidate for accreditation status or deny or withdraw accreditation).
- B. If the institution chooses to exercise its right to an appeal, the institution must file an appeal in accordance with these procedures and within established deadlines. If the institution waives its right to an appeal and no appeal is filed, the adverse action is considered final.

- C. The institution may seek review of new intervening financial information before the Appeal Panel reaches a final decision, so long as all of the following conditions are met in accordance with federal regulation 34 CFR § 602.25(h)(1)(i-iii):
1. the only remaining area of non-compliance cited by the Commission in support of a final adverse action pertains to finances;
 2. the financial information was not available to the institution until after the adverse action was taken by the Commission. If the institution had that information but failed to present documentation or information available at the time the Commission took the adverse action, it may not make that information available for consideration by the Appeal Panel; and,
 3. the financial information is significant and bears materially on the financial non-compliance identified by the Commission in the adverse action. The criteria of significance and materiality will be determined by the Appeal Panel as part of its review.
- F. The institution may seek the review of new intervening financial information only once and the decision is final and binding on the institution in accordance with federal regulation 34 CFR § 602.25(h)(2).
- G. The appeal is to be decided by an Appeal Panel based solely on the designated Appeal Record on File and on the oral presentations at the appeal hearing, if one is held.
- H. The institution must be current in the payment of its annual membership dues and fees, including travel expenses and honoraria, to the Commission in order to exercise its right to appeal.
- I. An appeal may be dismissed as administratively defective within fifteen (15) calendar days of the submission of the *Notice of Intent to Appeal* pursuant to the procedures in Section IV. Procedures for Dismissal of Appeals.
- J. An appellant institution is responsible for the costs of the appeal pursuant to Section XI: Procedures for Costs of Appeal.
- K. An appellant institution has the right to be represented by legal counsel or other professional representative in such appeal at its own expense.
- L. The Appeal Panel will also be represented by legal counsel at the expense of the appellant institution.
- M. The Commission will also be represented by separate legal counsel at the Commission's own expense. The Commission's counsel will assist with the preparation of the Commission's written submission and may make an oral presentation at the hearing and answer questions of the Appeal Panel.
- N. In accordance with the *Communication in the Accreditation Process Policy and Procedures*, Commission representatives will safeguard the confidentiality of discussions, conversations,

accreditation materials, proposals for action, and the institutional record except as otherwise required by Commission policies or procedure, or applicable law or court or regulatory order.

- O. An adverse action under appeal will become final only when the Appeal Panel affirms the Commission's action, or the Commission takes further action in accordance with the dismissal of an appeal or an Appeal Panel's decision to amend the Commission's action.
- P. The institution remains a candidate or accredited institution until the completion of any appeal or the effective date of withdrawal or denial, whichever is first, so long as the following conditions are met:
 - 1. The institution does not enroll new students.
 - 2. The institution does not market or recruit new students.
 - 3. The institution maintains a clear and accurate statement about its accreditation phase and accreditation status for the public on its website in accordance with the Commission's *Public Disclosures Policy and Procedures*.
- Q. If the Commission determines that the institution has violated any of the three conditions listed above, the institution forfeits its appellate rights and the Commission reserves the right to revise the effective date that candidate for accreditation status or accreditation will cease.

III. Procedures for Requesting an Appeal

- A. The Commission will provide notification of an adverse action within 30 calendar days of taking the action in accordance with the Commission's *Communication in the Accreditation Process Policy and Procedures* and federal regulation 34 CFR § 602.26.
 - 1. In the case of an adverse action, the Commission will mail a hardcopy of the action notification with delivery confirmation. The date of the delivery confirmation is considered the date of receipt by the institution.
 - 2. The notification of adverse action will provide the action taken by the Commission, a statement that the institution is entitled to an appeal, procedural information about how to request an appeal, and the notice will refer the institution to these procedures.
- B. The institution must submit an *Acknowledgement of Adverse Action and Option to Exercise or Waive the Right to An Appeal* within five (5) calendar days of the date of receipt of the notice of adverse action. The form is provided as Appendix A to these procedures.
- C. The Commission will acknowledge receipt of the institution's option to exercise the right to an appeal or the Commission will acknowledge the institution's waiver of the right to appeal.
- D. A waiver of the right to an appeal is final. The adverse action is considered final upon a waiver and is no longer subject to appeal. The candidate for accreditation status or accreditation will cease on the effective date established by the Commission in the adverse action.
- E. If an institution has submitted its intention to exercise the right to an appeal, the institution will submit the *Notice of Intent to Appeal Form* within fifteen (15) calendar days of the date of receipt by the institution of the notice of the adverse action.
 - 1. The *Notice of Intent to Appeal Form* is provided as Appendix B to these procedures.

2. The *Notice of Intent to Appeal Form* must be submitted in order to perfect the filing of an appeal.
 3. The institution must submit a deposit for expenses as described in Section IX. Procedures for Costs of Appeal.
 4. The institution must be current in payment of annual dues and accreditation fees to the Commission. If the institution is not current, the institution must cure any arrearage in order to continue the appeal process.
- F. The *Notice of Intent to Appeal* must include all of the following content:
1. A clear statement of the factual basis and circumstances for appeal.
 2. A clear statement if the institution chooses to make an oral presentation before the Appeal Panel, or to waive the right to make an oral presentation and have the appeal decided on the basis of written submissions only.
 - a. A waiver of the right to make an oral presentation before the Appeal Panel is final.
 - b. An appellant institution is provided one more opportunity to waive the right to an oral presentation when it files its written statement in support of its appeal.
 3. A clear statement if the institution chooses to be represented by legal counsel or other professional in the appeal proceeding, or not to be represented. If the institution chooses to be represented, the names, titles, addresses, phone numbers and email addresses of those representatives should be provided.
 4. The signatures of the appellant institution's Chief Executive Officer (CEO)/President and the chair of its governing body. If either individual is not available, the institution will provide an explanation.
- G. Upon receipt of a timely *Notice of Intent to Appeal Form* and the required deposit for costs of appeal, the designated Administrator of the Appeal will confirm that they have no known conflicts of interest with the appellant institution.
1. The Commission will notify the institution of the name, title, and contact information of the designated Administrator of the Appeal.
 2. The institution will have five (5) calendar days to affirm that there is no conflict of interest with the designated Administrator. The Administrator is considered affirmed on the fifth day.
 3. The President of the Commission will designate a replacement Administrator of the Appeal if a conflict of interest as defined in Commission policy and procedures is identified, at the Commission's discretion.
 4. The replacement will be subject to the same challenge for conflicts of interest within deadlines established by the President of the Commission.
- H. The Administrator of the Appeal will review the *Notice of Intent to Appeal* to ensure that it was submitted on time, is materially complete (including the required deposit), and all requirements are met, including but not limited to verification that the institution is current in annual membership dues and accreditation fees.
- I. If the institution is not current in annual membership dues and fees, the Administrator of the Appeal will notify the institution immediately of the total amount that is outstanding and send

an invoice to the institution. The payment is made payable to the Middle States Commission on Higher Education and must be paid via Automated Clearing House (ACH) deposit within five (5) calendar days of the date of the invoice.

- J. The Administrator of the Appeal will acknowledge receipt of a timely, materially complete, and properly filed *Notice of Intent to Appeal* within fifteen (15) calendar days of the date of receipt.
- K. The Administrator of the Appeal will develop a preliminary schedule for the appeal indicating established deadlines provided by the Commission. The schedule template is provided in Appendix C: Overview of the Appeal Timetable of these procedures.

IV. Procedures for Dismissal of Appeals

- A. The Administrator of the Appeal may dismiss an appeal as administratively defective if any of the requirements listed in Section III.D and E are not met, including the following without limitation:
 - 1. The institution failed to provide the required information in the *Notice of Intent to Appeal*.
 - 2. The institution failed to submit the *Notice of Intent to Appeal* within fifteen (15) calendar days of the date of receipt of the Notification of Adverse Action from the Commission.
 - 3. The institution failed to remit the required deposit for the costs of the appeal.
 - 4. The institution failed to cure any payment arrearage within five (5) calendar days of the date of the invoice of any outstanding dues or fees.
- B. The appellant institution may request review of the dismissal of an administratively defective appeal, based on extraordinary circumstances only, within ten (10) calendar days of the date of dismissal.
 - 1. The institution must demonstrate in writing and include evidence that the institution's ability to properly file the *Notice of Intent to Appeal* was impacted by extraordinary circumstances which include but are not limited to situations beyond the institution's control (e.g., natural disaster or other catastrophic event, civil or political unrest in the institution's geographic location).
 - 2. The Administrator of the Appeal will render a written decision to uphold or overturn the dismissal within five (5) calendar days of the request for review.
- C. At their discretion, the Chair of the Appeal Panel may overturn a dismissal by the Administrator of the Appeal and allow an appeal to proceed on the merits.
- D. At any time during the appeal proceeding, the Chair of the Appeal Panel may dismiss an appeal if the institution fails to abide by these procedures, including without limitation:
 - 1. Failure to file a timely written statement in support of the appeal;
 - 2. Failure to submit materials by the established deadlines;
 - 3. Failure to respect the Commission's policies and procedures related to confidentiality.
- E. The Chair of the Appeal Panel will notify the Administrator of the Appeal of a decision to dismiss an appeal and the Administrator will in turn notify the appellant institution.

- F. In the event of a dismissal, the Commission, or the Executive Committee on its behalf, will take an action at a special meeting scheduled for this purpose. The Commission's adverse action is considered final upon such action by the Commission or the Executive Committee and is no longer subject to appeal.

V. Procedures for the Selection of the Appeal Panel

- A. The Commission will maintain a pool of experienced peer evaluators to serve as potential members of the Appeal Panel.
1. Individuals in the pool have appropriate qualifications, relevant experience or expertise, and/or training to be a member of an Appeal Panel.
 2. Individuals have agreed to be in the appeals panel pool for a term of three years.
 3. An individual is disqualified from serving on an Appeal Panel if he or she has a conflict of interest with the appellant institution as defined in the Commission's policy *Conflicts of Interest: Commission Representatives*, has had any prior employment or consultative relationship with the appellant institution, or has participated in any way in the accreditation decision-making process leading to the action under appeal in accordance with federal regulation 34 CFR 602.25(f)(1)(i-ii).
 4. No individual currently serving on the Commission may serve as a member of the Appeal Panel.
- B. The Administrator of the Appeal will select three individuals from the pool to form an Appeal Panel within fifteen (15) calendar days of the date of the acknowledgement of a complete and timely *Notice of Intent to Appeal* by the appellant institution.
1. The Appeal Panel is comprised of three individuals including a representative of the public, administrative personnel, and academic personnel.
 2. Each Appeal Panel member must complete or update an Evaluator Data Form (EDF), disclose all conflicts of interest, verify they have no conflict of interest with the appellant institution, agree to the Statement of Ethical Conduct, and complete the Antitrust Certification of Compliance in order to serve on an Appeal Panel.
 3. The individual designated as a public representative must certify that he/she meets the definition of a public representative by completing the *Certification of Eligibility to Serve as a Public Representative* form.
 4. The roster of the Appeal Panel will be available in the secure MSCHE portal for the institution to review.
 5. The institution will have ten (10) calendar days from the date the roster is posted to affirm that there is no conflict of interest with the proposed Appeal Panel members through the secure MSCHE portal. The roster is considered affirmed on the tenth day.
 6. The Commission will reassign an Appeal Panel member if a conflict of interest as defined in Commission policy and procedures is identified, at the discretion of the Commission.
 7. In the event an Appeal Panel member must recuse themselves at any time, the

Administrator of the Appeal will identify a replacement, and such replacement will be subject to the same challenge for conflicts of interest within deadlines established by the Administrator of the Appeal.

- C. The Administrator of the Appeal will assign a Chair of the Appeal Panel. Preference may be given to candidates with prior experience with the appeal process.
 - 1. The Chair of the Appeal Panel will control the appeal proceeding and any other procedural issues that arise during the course of the appeal.
 - 2. The Chair of the Appeal Panel will rule on all questions pertaining to the conduct of the proceeding, including the designation of the Appeal Record on File.
 - 3. The Chair of the Appeal Panel may extend any of the deadlines set forth in these procedures for good cause shown by a requesting party, at the Chair's discretion.
- D. The Administrator of the Appeal will select separate counsel to serve as Counsel to the Appeal Panel to provide guidance and advice on any procedural matters or other issues that arise during the course of the appeal.

VI. Procedures for the Designation of the Appeal Record on File

- A. Within ten (10) calendar days of the date the roster of the Appeal Panel is finalized, the Administrator of the Appeal will make the existing Appeal Record on File (from the preceding show cause review including the transcript of the show cause appearance, if any) available for review by the Commission, the appellant institution, and the Chair of the Appeal Panel.
- B. The Commission and the appellant institution will have five (5) calendar days from the date the proposed Appeal Record on File is made available to review and identify any material that is missing from what was already presented to the Commission when it took the adverse action or that is improperly included. This does not include any new intervening financial information specified by the appellant institution, which should be submitted in the subsequent written appeal statement described in D.
 - 1. Either the Commission or the appellant institution may submit a list of materials identified as missing or improperly included to the Chair of the Appeal Panel.
 - 2. No new information will be entered into the record unless it is determined by the Chair of the Appeal Panel to be missing from the existing Appeal Record on File.
 - 3. No information concerning the remedying of deficiencies since the time of the adverse action may be presented for any reason.
 - 4. If there is any dispute concerning the documents or materials missing from, or improperly included in, the Appeal Record on File, the Chair of the Appeal Panel will promptly make a final decision as to whether such documents or materials will be included in the materials to be designated as the Appeal Record on File.
- C. The Administrator of the Appeal will add any missing materials or remove any improperly included materials and record and advise the Commission and the appellant institution of the date that the review of the existing Appeal Record on File is complete. No information may be added to the record after this date except the written statements by

the parties or additional information specifically requested by the Appeal Panel.

- D. Within twenty-one (21) calendar days of the date the review of the existing Appeal Record on File is complete, the appellant institution will submit a written appeal statement in support of its appeal, referencing the Appeal Record on File as appropriate.
 - 1. The institution may not include or refer to information or materials that are not part of the Appeal Record on File in the written appeal statement.
 - 2. If the appellant institution specified that new intervening financial information was available, it may submit that information in or with its written appeal statement and address it during any oral presentation at the appeal.
 - 3. If it so chooses, the appellant institution may indicate in its written statement that it will waive the right to an oral presentation and the appeal will be decided on the basis of written submissions only. This is the last opportunity to waive this right.
 - 4. The institution's written appeal statement is added to the designated Appeal Record on File.
- E. Within twenty-one (21) calendar days of receipt of the appellant institution's written appeal statement, the Commission will submit a written response in support of its adverse action, referencing the Record on File as appropriate.
 - 1. The Commission may not include or refer to information or materials that are not part of the Appeal Record on File in the written response.
 - 2. The Commission's written response is added to the designated Appeal Record on File.
- F. The latest date that any new information that has been allowed by the Chair of the Appeal Panel, the institution's written appeal statement, and the Commission's written response are added to the record is the date of the official designation of the Appeal Record on File. The Administrator of the Appeal will record and advise the Commission and the appellant institution of the date that the Appeal Record on File is designated and final.

VII. Procedures for Scheduling of the Appeal Hearing

- A. The Administrator of the Appeal, in consultation with the Chair of the Appeal Panel the members of the Appeal Panel, Counsel to the Appeal Panel, the appellant institution and its representatives, and the Commission will schedule the hearing within forty-five (45) calendar days of the date of the designation of the Appeal Record on File.
 - 1. The Administrator of the Appeal will make every effort to honor preferences but cannot guarantee requested dates.
 - 2. The hearing will be held virtually unless the appellant institution requests an in-person appeal hearing. The appellant institution is responsible for the costs associated with an in-person hearing.
 - 3. If an in-person hearing is requested, the Commission will determine the location.
 - 4. The Administrator of the Appeal will notify the parties of the date of the hearing.
- B. The appellant institution or the Commission may petition the Chair of the Appeal Panel, for good cause, to set the hearing for a different date or location, at the discretion of the Chair.

The decision of the Chair on any scheduling matters will be final.

- C. In the event the appellant institution has waived its right to make an oral presentation before the Appeal Panel and the appeal is to be determined based on the designated Appeal Record on File, the Chair of the Appeal Panel will schedule a meeting of the Appeal Panel within forty-five (45) calendar days of the date of the designation of the Appeal Record on File. The date for the meeting will be determined by the availability of the members.
- D. In the case of a waiver of a hearing or the failure of the appellant institution's representatives to appear, the decision of the Appeal Panel will be made based on the designated Appeal Record on File (including the written appeal statement by the appellant institution and the Commission's written response).
- E. The Chair of the Appeal Panel will convene a pre-hearing telephone conference call for the purpose of discussing any procedural matters or other concerns of the parties in advance of the hearing.

VIII. Procedures for the Conduct of the Appeal Hearing

- A. The appellant institution and the Commission will provide a list of the names, titles, addresses, phone numbers, and email addresses of all representatives (including counsel or other professional representatives) who will attend the hearing to the Administrator of the Appeal at least fifteen (15) calendar days before the hearing date.
 - 1. An appeal proceeding is not a public proceeding and attendance at a hearing will be limited to the identified representatives only.
 - 2. The parties should avoid ex parte communications with the members of the Appeal Panel outside of the appeal proceeding.
- B. The hearing is not a judicial proceeding and no formal rules of evidence apply. The parties are not permitted to conduct discovery, present, or cross-examine witnesses, or exercise other evidentiary rights and privileges ordinarily provided to litigants.
- C. The Chair of the Appeal Panel will ensure that extraneous information not properly designated in the Appeal Record on File is excluded from consideration and any reference to such information is disregarded.
- D. The procedural determinations of the Chair of the Appeal Panel will be final.
 - 1. The Chair may establish equal time limits on presentations by the parties.
 - 2. The Chair will rule on all questions pertaining to the conduct of the hearing, including the Appeal Record on File, and may extend any of the deadlines set forth in these procedures for good cause shown by a requesting party.
- E. The appellant institution has the burden of proof in seeking to remand an adverse action and will make its oral presentation to the Appeal Panel first. The institution may not introduce new information during any oral presentation at the hearing.
- F. The Commission will have an opportunity to present its oral response to the appellant

institution's contentions. The Commission may not introduce new information during any oral presentation at the hearing.

- G. The members of the Appeal Panel may question either party at any point in the hearing.
- H. The Administrator of the Appeal will arrange for a stenographic transcript to be made of the hearing. The post-Hearing discussions, deliberations, and votes of the Appeal Panel will not be transcribed.
 - 1. The cost of transcription is an expense of the appeal and will be deducted from the institution's deposit.
 - 2. The Administrator of the Appeal will provide access to the transcript to the appellant institution and will add it to the designated Appeal Record on File.
- I. No post-hearing submissions will be permitted unless the Appeal Panel requests additional information on specific issues to clarify or verify information. Any requested additional information must be submitted within five (5) calendar days of the hearing and will be added to the designated Appeal Record on File.

IX. Procedures for the Decision of the Appeal Panel

- A. The Appeal Panel's decision will be based solely on the designated Appeal Record on File and on the hearing, if one is held, except as provided in Section VI: Procedures for the Designation of the Appeal Record on File (relating to information determined to be missing or improperly included during the review of the existing record).
- B. The Appeal Panel has limited authority to affirm, amend, or remand the adverse action in accordance with the Commission's *Accreditation Actions Policy and Procedures* and federal regulation 34 CFR § 602.25(f)(1)(iii). The Appeal Panel may make one of the following decisions:
 - 1. To affirm the Commission's action if the appellant institution is unable to prove, by clear and convincing evidence, that the adverse action should be appealed.
 - 2. To amend the adverse action, if the Appeal Panel finds some aspect of the adverse action should be altered.
 - 3. To remand the matter to the Commission if the appellant institution proves, by clear and convincing evidence, that the adverse action should be appealed.
- C. The Appeal Panel will render its decision to (1) affirm, (2) amend, or (3) remand the Commission's adverse action in writing and summarize its reasons in support thereof.
 - 1. The Appeal Panel must explain the basis for a decision to amend and provide instructions to the Commission.
 - 2. The Appeal Panel must explain the basis for a decision to remand, including the evidence that proves that the adverse action should be appealed.
 - 3. The Appeal Panel will render its decision in writing within thirty (30) calendar days of the conclusion of the hearing unless post-hearing submissions of additional information were requested by the Appeal Panel, in which case the decision will be rendered within thirty (30) calendar days of the date of receipt

of the post-hearing submissions.

- D. The Appeal Panel will provide notification of its decision to the Administrator of the Appeal, who will in turn provide the decision to the parties. The decision of the Appeal Panel may not be released to the general public, the press, or posted on any website, by any party (i.e. the appellant institution, the Commission, the members of the Appeal Panel, or any of their counsel or other representatives) until the final disposition of the appeal by the Commission.

X. Procedures for Subsequent Action by the Commission

- A. The Commission, or the Executive Committee on its behalf, will take an accreditation action in accordance with its *Accreditation Actions Policy and Procedures* to implement the Appeal Panel's decision at a special meeting to occur within thirty (30) calendar days of the Appeal Panel decision.
 - 1. The Commission will acknowledge receipt of a decision by the Appeal Panel to affirm the adverse action; the action is considered a final adverse action upon receipt of such a decision and is no longer subject to appeal.
 - 2. The Commission will acknowledge receipt of a decision by the Appeal Panel to amend the adverse action. The Commission will amend the adverse action consistent with the instructions provided by the Appeal Panel.
 - 3. The Commission will acknowledge receipt of a decision by the Appeal Panel to remand the adverse action back to the Commission. The Commission will take an action consistent with the Appeal Panel decision.
- B. The Commission will take an action on any dismissal of the appeal in accordance with these procedures.
- C. The Commission reserves the right, at its sole discretion, to continue ongoing monitoring activities throughout the appeal proceeding and any time the institution remains a candidate for accreditation status or accredited.
 - 1. The Commission may request follow-up reports or visits, request updated teach-out plans or agreements or request additional information.
 - 2. The Commission may amend the adverse action to revise the effective date of withdrawal or date that accreditation will cease.
 - 3. The Commission may, at any time for good cause shown and solely in the exercise of its discretion, rescind an adverse action previously taken.
- D. The Commission will provide notification of accreditation actions in accordance with *Communication in the Accreditation Process Policy and Procedures* and federal regulation 34 CFR § 602.26.
- E. An institution that has been subject to a final adverse action may not be considered for membership for two years in accordance with federal regulation 34 CFR § 600.11(c).
- F. All adverse actions are subject to the Commission's arbitration procedures consistent with the Commission's *Arbitration of Disputes Concerning Adverse Actions*

Procedures and federal regulation 34 CFR § 602.20(e).

XI. Procedures for Costs of Appeal

- A. The appellant institution is responsible for the costs of the Appeal including the costs incurred by the Commission in connection with the Appeal Panel's reviewing, hearing, and deciding the appeal.
 - 1. The costs of appeal include the cost of reproducing the Record on File for the parties and the Appeal Panel members, copying or coding, travel, accommodation, transcription, facilities, as well as the Appeal Panel's legal fees associated with its review of an appeal.
 - 2. The costs of appeal do not include the costs or legal fees incurred by an institution seeking the appeal, or by the Commission in responding to an appeal, which will be borne by each party.
- B. As described in Section III, in order to perfect the filing of the appeal, the institution must remit payment in the amount of \$20,000 as a deposit toward costs with the *Notice of Intent to Appeal*.
 - 1. The deposit is payable to the Middle States Commission on Higher Education and must be paid via Automated Clearing House (ACH) deposit.
 - 2. Failure to make a timely deposit is grounds for dismissal of the appeal as administratively defective.
- C. After issuance of the Appeal Panel's decision, the Administrator of the Appeal will review and approve all expense reports, pay all costs, and provide the appellant institution with an accounting of the costs of appeal.
 - 1. If the costs are less than the deposit, the Administrator of the Appeal will enclose a refund of the excess deposit with the accounting of the costs of the Appeal.
 - 2. If the expenses exceed the amount of the deposit, the Administrator of the Appeal will enclose a bill with the accounting of the costs of the appeal.

XII. Definitions

The following definitions are used in the policy and/or procedures:

- A. Accreditation materials.** All documentation related to accreditation activities including but not limited to the institution's written reports to the Commission, submitted evidence, team reports, institutional responses, confidential briefs, complaints or third-party comments, action notifications, substantive change requests, transcripts of proceedings, team rosters, and any correspondence of record. Accreditation materials are considered confidential information and are retained as part of the institutional record in accordance with the Commission's Maintenance and Retention of Commission Records Policy and Procedures.
- B. Accreditation phase.** The stage of the institution in the accreditation lifecycle (applicant, candidate, accredited). The phase will also indicate if an institution is a former applicant, candidate, or accredited institution. Accreditation phase is posted on the institution's directory listing on the MSCHE website, with the exception of applicant institutions which are not displayed publicly in the institution directory.

- C. Accreditation status.** The member institution's standing with the Commission based on the most recent grant of candidate for accreditation status, grant of accreditation, reaffirmation, non-compliance, or adverse action taken by the Commission. Accreditation status is posted on the institution's directory listing on the MSCHE website.
- D. Academic personnel.** An individual who is currently or recently engaged in a significant manner in postsecondary teaching and/or research, or other appropriate professionals with sufficient responsibility to the institution to assure the continuity and coherence of the institution's educational programs (*definition in MARCHE Bylaws*)
- E. Administrative personnel.** An individual who is currently or recently directly engaged in a significant manner in postsecondary program or institutional administration (*definition in MARCHE Bylaws*).
- F. Administrator of the Appeal.** An individual from the Commission staff designated by the President of the Commission to serve as an administrator to carry out designated functions under these procedures.
- G. Adverse Action.** An accreditation action taken by the Commission to:
1. deny the Candidate for Accreditation status of an institution;
 2. withdraw Candidate for Accreditation status of an institution;
 3. deny accreditation; or
 4. withdraw accreditation.
- H. Appeal.** A timely request by an institution filed in accordance with these procedures for a review by an Appeal Panel of an adverse action of the Commission.
- G. Arbitration.** A post-appeal proceeding in which certain defined disputes are resolved by an Arbitrator out of court, without a judge or jury, pursuant to the rules established by the Arbitration Administrator and the Commission's procedures for arbitration.
- H. Appellant institution.** A member institution that is the subject of an adverse action and has filed an appeal in accordance with these procedures.
- I. Commission representative.** Any individual who represents or serves the Commission, including peer evaluators, Commission staff, and Commissioners.
- J. Counsel to Appeal Panel.** An attorney engaged to provide counsel to the Appeal Panel throughout the appeal process.
- K. Date of Receipt.** The date a document is actually received by a party, as evidenced by a postal service, courier or private carrier receipt, the date of upload into the Commission's secure MSCHE portal, or an email receipt when email delivery is permitted under these procedures.
- L. Day.** Any reference to the word "day" or "days" will mean calendar day or calendar days,

respectively, including weekends. To the extent a deadline falls on a weekend or United States Federal Holiday or when MSCHE offices are closed, the next applicable business day will be the deadline as expressly provided by the Commission.

- M. Final adverse action.** A final determination by the Commission regarding an adverse action taken against an accredited or candidate institution at the conclusion of any appeals process available to the institution under the Commission's policies and procedures (*based on the federal definition in 34 CFR § 602.3*).
- N. Institutional record.** The compilation of all materials and data the Commission has on file related to the applicant, candidate, or accredited institution, including but not limited to the accreditation materials related to any accreditation activity, the record on file and transcripts for any proceeding, complaints, and any information or documents related to the institution collected by the Commission or received from external sources such as the government or other quality assurance agencies as part of ongoing monitoring activities.
- O. Peer evaluator.** An individual who is selected and assigned to an accreditation activity by the Commission staff. This individual is part of the multi-level accreditation decision-making process and will participate in the proposal of an accreditation action. Peer evaluator is not intended to include a Commissioner serving in an official Commissioner capacity on a committee or the Commission. Peer evaluator is not intended to include an assistant or any other observer of an accreditation activity.
- P. Public Representative.** An individual who is not an employee, governing board member, owner, shareholder, or consultant of an institution accredited by the Commission or a candidate for accreditation by the Commission; who is not a member of any trade association or membership organization related to, affiliated with, or associated with the Commission; and who is not a spouse, parent, child, or sibling of any of the above (*federal definition in 34 CFR § 602.3 and MARCHE Bylaws*).
- Q. Record on File.** A segment of the institutional record (defined in this section) used in a Commission proceeding such as show cause appearance or appeals. It includes but is not limited to the accreditation materials for accreditation activities for the period of non-compliance (since the first non-compliance action), transcripts from other proceedings, action notifications, and correspondence of record.

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Revisions: March 19, 2008, 2013; November 18, 2014; November 20, 2014; June 25, 2015; July 27, 2015; April 21, 2017 (technical amendment); July 1, 2021 (substantive revision); November 8, 2021 (editorial); October 1, 2022 (technical amendment-USDE)

Related Documents: *Accreditation Actions Policy; Accreditation Actions Procedures; Arbitration of Disputes Concerning Final Adverse Actions Procedures; Conflict of Interest: Commission Representatives; Communication in the Accreditation Process Policy; Communication in the Accreditation Process Procedures, MARCHE Bylaws*

Federal regulations: 34 CFR § 600.11, 602.3, 602.20(e), 602.25, 602.26

Appendix A

Acknowledgement of Adverse Action and Option to Exercise or Waive the Right to An Appeal

☐ **Acknowledge Adverse Action and Exercise the Right to An Appeal**

I, _____, the undersigned, on behalf of _____, hereby acknowledge the adverse action taken by the Middle States Commission on Higher Education and exercise the right to an appeal. I understand that a Notice of Intent to Appeal must be filed within fifteen (15) calendar days of the date of receipt of the notice of the adverse action and the Commission's *Appeals from Adverse Actions Procedures* must be followed.

☐ **Acknowledge Adverse Action and Waive the Right to An Appeal**

I, _____, the undersigned, on behalf of _____, hereby acknowledge the adverse action taken by the Middle States Commission on Higher Education and waive the right to an appeal. I understand that a waiver of the right to an appeal is final. The adverse action is considered final upon a waiver and is no longer subject to appeal. The candidate for accreditation status or accreditation of the institution will cease on the effective date established by the Commission in the adverse action.

By providing my signature, I affirm that I have the authority to make this decision on behalf of _____:

Signature Date

Printed Name

Title

Return to:
Administrator of the Appeal
Middle States Commission on Higher Education
By Email: policy@msche.org

Appendix B

Notice of Intent to Appeal Form

If an institution has submitted its intention to exercise the right to an appeal (Appendix B), the institution must submit the *Notice of Intent to Appeal Form* within fifteen (15) calendar days of the date of receipt by the institution of the notice of the adverse action.

1. The *Notice of Intent to Appeal* must include a clear statement of the factual basis and circumstances for the appeal:
2. The *Notice of Intent to Appeal* must include a clear statement if the institution chooses to make an oral presentation before the Appeal Panel, or to waive the right to make an oral presentation and have the appeal decided on the basis of written submissions only. A waiver of the right to make an oral presentation before the Appeal Panel is final. An appellant institution is provided one more opportunity to waive the right to an oral presentation when it files its written statement in support of its appeal.
3. The Notice of Intent to Appeal must include a clear statement if the institution chooses to be represented by legal counsel or other professional in the appeal proceeding, or not to be represented. If the institution chooses to be represented, the names, titles, addresses, phone numbers and email addresses of those representatives should be provided:

Required Signatures:

The institution must provide the signatures of the appellant institution's Chief Executive Officer (CEO)/President and the chair of its governing body. If either individual is not available, the institution must provide an explanation.

Signature of CEO

Date

Printed Name

Title

Signature of Chair of Governing Body

Date



Printed Name

Title

Return to:
Administrator of the Appeal
Middle States Commission on Higher Education
By Email: policy@msche.org

Appendix C

Overview of the Timetable

This timetable is provided for planning purposes only and is subject to change. In the event of any conflict, Commission policy and procedures shall prevail.

Event	Party Responsible	Detail
Notification of adverse action (<i>mail hard copy with delivery confirmation</i>)	Commission	Section III.A. Within thirty (30) calendar days of the date of the Commission's action
<i>Notification to Secretary, State, and other Accreditors at the same time as notification to the institution</i>	<i>Commission</i>	<i>Communications Policy/Procedures</i>
Acknowledge Adverse Action and Exercise the right to Appeal <u>or</u> Waive the right to appeal	Appellant Institution	Section III.B. Within five (5) calendar days of the date of receipt of the Notification of Adverse Action to the institution.
File Notice of Intent to Appeal:	Appellant Institution	Section III.D. and Section III.E. Within fifteen (15) calendar days of date of receipt of Notification of Adverse Action to the institution
Administrator of Appeal confirms no conflict of interest with Appellant institution	Administrator of Appeal	Section III.F. Upon receipt of timely Notice of Intent to Appeal and required deposit for costs the designated Administrator of the Appeal will confirm that they have no known conflicts of interest with the appellant institution.
Notify institution of name, title, contact information of Administrator of Appeal	Commission	Section III.F. 1 <i>Upon confirmation of Administrator of Appeal</i>
Institution affirms no conflict of interest with designated Administrator of Appeal or identifies conflict	Appellant Institution	Section III.F.2. Five (5) calendar days. Administrator is considered affirmed on the fifth day.
<i>If Conflict identified by Appellant, President designates replacement, at the Commission's discretion, subject to same challenge for conflicts</i>	President	Section III.F.3. Five (5) calendar days for Appellant to identify conflict. Administrator is considered affirmed on the fifth day.

<p>Acknowledge receipt of a timely, materially complete, and properly filed Notice of Intent to Appeal</p> <p>Or</p> <p>Dismiss the appeal as administratively defective if it is not timely or materially complete</p>	<p>Administrator of the Appeal</p>	<p>Section III.I. and Section IV.A</p> <p>Within fifteen (15) calendar days of the date of the receipt of the Notice of Intent to Appeal.</p>
<p>Review <i>Notice of Intent</i> to ensure on time, materially complete including required deposit, and all requirements met</p> <p>Notify institution immediately of any outstanding annual membership dues/fees and send invoice to institution</p> <p>Administrator develops a preliminary schedule for the appeal indicating established deadlines</p>	<p>Administrator of the Appeal</p>	<p>Section III.G. H. J.</p> <p>Within fifteen (15) calendar days of the date of receipt.</p>
<p>Cure any payment arrearage owed to the Commission via ACH deposit</p>	<p>Appellant Institution</p>	<p>Section III.H.</p> <p>Within five (5) calendar days of the date of the invoice</p>
<p>May request review of an administratively defective appeal with written justification demonstrating extraordinary circumstances</p>	<p>Appellant Institution</p>	<p>Section IV.B</p> <p>Within ten (10) calendar days of the date of dismissal</p>
<p>Select three members for the Appeals Hearing Panel and post the roster</p>	<p>Administrator of the Appeal</p>	<p>Section V.B.</p> <p>Within fifteen (15) calendar days of the date of acknowledgement of a timely, materially complete, and proper filing</p>
<p>Affirm no conflicts of interest with the proposed roster</p>	<p>Appellant Institution</p>	<p>Section V.B.5.</p> <p>Within ten (10) calendar days of the date the Appeal Hearing Panel is posted.</p>
<p>Conduct a review to uphold or overturn a dismissal of an appeal by the Administrator of the Appeal as administratively defective</p>	<p>Appeal Hearing Panel</p>	<p>Section IV.B.3.</p> <p>Within five (5) calendar days of the date the Appeal Hearing Panel is empaneled.</p>
<p>Make existing Record on File available for review by the parties</p>	<p>Administrator of the Appeal</p>	<p>Section VI.A.</p> <p>Within ten (10) calendar days of the date the Appeal Hearing Panel is finalized.</p>

Review of Record on File is complete and any missing materials added to the record	Administrator of the Appeal	Section VI.C.4. Within five (5) calendar days of the date -----
Submit written Appeal Statement	Appellant Institution	Section VI.D. Within twenty-one (21) calendar days of date of the date the review of the Record on File is complete.
Submit a written response in support of its adverse action	Commission	Section VI.H. Within twenty-one (21) calendar days of receipt of appellant institution's written Appeal Statement
Designation of the Appeal Record on File	Administrator of the Appeal	Section VI.F. The date all approved written materials are added to the record.
Schedule Hearing	Administrator of the Appeal	Section VII. Within forty-five (45) calendar days of the designation of the Appeal Record on File
Submission of post-hearing submissions	Appellant institution or Administrator of the Appeal	Section VII.J. Within five (5) calendar days of the Hearing
Render its decision and written statement explaining the decision to the appellant institution and the Administrator of the Appeal.	Appeals Hearing Panel	Section IX.F. Within fifteen (15) calendar days of the conclusion of the hearing or submission of post- hearing submissions, whichever is later
Take an accreditation action – at a specially scheduled meeting	Commission	Section X.A Within fifteen (15) calendar days of the Appeal Hearing Panel decision