

12. Selection and Training of Appeals Panel Members

Procedure for Selecting and Training DETC Appeals Panel Members

DETC's D.2. Appealing Commission's Adverse Decision states that an institution may appeal a decision by the Accrediting Commission to deny or withdraw accreditation. This policy details the process of selecting the members of the Appeals Panel, their responsibilities, and training.

Appeals Process

An institution's appeal is heard by an independent appeals panel that is separate from the Commission and serves as an additional level of due process for the institution. The Appeals Panel has no authority concerning the reasonableness or appropriateness of eligibility criteria, policies, procedures, or accreditation standards. The Panel is not empowered to overrule the Commission by imposing its own determinations on what the Panel believes should constitute adequate procedures, institution response times or other administrative policies promulgated by the Commission. It can only affirm, amend, remand or reverse a prior **decision** of the Commission as set forth below. Its role is to determine whether the Commission's adverse action was not supported by the record or was clearly erroneous. The institution, both initial applicants and accredited institutions, always have the burden of proof in demonstrating that an adverse action of the Commission was not supported by the record or was otherwise erroneous.

Process for Selection of an Appeals Panel Member

The process of selecting and vetting a person to serve on the Appeals Panel begins with the Commission selecting from a pool of candidates meeting the criteria below.

The Appeals Panel will consist of three people appointed by the Accrediting Commission. One will represent the public interest, one will represent academic/education interests, and one will be a distance education institution administrator/executive. Potential members of Appeals Panels will be selected from the ranks of former members of the Accrediting Commission, the corps of Commission evaluators, and active staff of DETC accredited institutions who have completed the DETC evaluator training program. All panelists are subject to the provisions in D.8. Conflict of Interest Policy and are vetted to ensure that they are free from any subject matter bias before being selected for a particular appeal.

The Commission selects three people to serve on the appeals panel: a public member, an academic and an administrator. Once the Commission appoints the three people and they accept, the Executive Director submits the names and qualifications of the Appeals Panel members to the institution in advance. An institution has 10 days from the receipt of the panel members' names to object on the basis of possible conflict of interest as described in DETC's D.8. Conflict of Interest Policy. If the Commission determines that a conflict exists, the panelist is replaced. No panel member may serve if he/she participated, in any respect, in the underlying decision by the Accrediting Commission to deny or withdraw the accreditation of the institution.

Training of Appeals Panel Members

Once the Appeals Panel members are chosen, DETC works with the institution and the panel members to set a date for the Appeal Hearing. In preparation for the hearing the institution's appeal, the panel members are sent the documentation needed to perform their tasks. The panel members are briefed by DETC's Executive Director and Legal Counsel on their responsibilities and duties. An outside mediator may or may not be brought in to conduct the

Appeals Hearing. The consideration of the appeal is based upon the Commission’s written findings and reasons related to the action, the institution’s written response detailing grounds for appeal, and relevant supportive documents.

The Appeals Panel members are told the date, time and place of the Appeals Hearing. They are also provided an Agenda of the meeting, which contains of the names and titles of the people attending the hearing. DETC staff works with panel members to arrange for transportation and hotel accommodations, which DETC pays for.

The institution must set forth the specific grounds for its appeal and state the reasons the institution believes the adverse decision should be set aside or revised. In making its appeal, the institution has the burden to show that the Commission’s decision resulted from errors or omissions in the execution of Commission policies and procedures, or that the decision was arbitrary or capricious and was not based on substantial evidence on the record. No new materials may be presented for the Appeals Panel’s consideration on appeal.

Decisions Available to the Appeals Panel

As part of the training for the Appeals Panel members, they are briefed on what possible decisions they may make. As stated in D.2. *Appealing Commission’s Adverse Decision*, the Appeals Panel may elect to affirm, remand, amend or reverse the Commission’s decision:

1. Affirm

If the Appeals Panel determines that the institution has failed to meet its burden of proof in showing that the Commission’s action was not supported by the record or was clearly erroneous, it must affirm the decision of the Commission. In certain instances, the Commission’s decision may be based on multiple violations of DETC policies or procedures. A showing by the institution that there is no support in the record only as to some of the violations is not by itself sufficient to meet the institution’s burden of proof. The institution must show that, in light of the entire record, the decision is not supported by the record or is clearly erroneous.

2. Remand

The Appeals Panel may remand a decision to the Commission when it finds that the Commission failed to consider a material fact before it in reaching its decision. A remand is a directive to the Commission that it must reconsider its action in light of all relevant facts that were before the Commission at the time of its decision, including the specific material fact or facts that are the basis for the remand. The Appeals Panel must identify those material facts that it finds the Commission failed to consider.

3. Amend

If the Appeals Panel determines that although there is evidence to support it, the Commission’s decision is nevertheless clearly in error, the Appeals Panel may amend the decision. A decision to amend an adverse action will set forth the specific grounds for the decision and will direct the Commission to modify its decision in accordance with the specific direction of the Appeals Panel. The Appeals Panel may in its discretion amend a decision to deny accreditation by directing the Commission to grant accreditation while directing the Commission to consider the proper length of the grant consistent with the direction of the panel, the practices of the Commission, or in accordance with other guidance from the Appeals Panel.

4. Reverse

The Appeals Panel may reverse a decision of the Commission if it finds that the Commission's decision, in light of the entire record, was not supported by the record or was clearly erroneous. A decision to reverse an action of the Commission will state the specific bases for the decision to reverse. A decision to reverse a withdrawal of accreditation will direct the Commission to set aside its decision to withdraw and to reinstate the accreditation of the institution as it was before the withdrawal decision. A decision to reverse an action to deny accreditation directs the Commission to award a specific grant of accreditation for a term determined by the Appeals Panel.

Responsibility and Duties of the Appeals Panel Members

The Appeals Panel members shall have the following responsibilities, consistent with DETC policies and procedures:

- when appointed to the appeals panel, s/he must read, sign and abide by DETC's Conflict of Interest Policy and sign the Conflict of Interest Disclosure Form. These forms must be submitted to DETC within 10 days after agreeing to serve on an appeals panel;
- exercise due diligence in becoming familiar with, and authority on, DETC standards, policies, and procedures and participate in all training sessions conducted by DETC's staff;
- agree to review all documentation pertinent to the institution's appeal;
- treat all information obtained through the institution's participation in the appeal process as confidential, and not disclose such information to parties other than the DETC staff and legal counsel;
- direct any inquiries s/he may have, or request for additional information after the appeal hearing to the DETC Executive Director;
- not state any opinion or make a predication concerning possible actions the Commission may take as a result of the appeal hearing; and
- exercise such powers and duties as are necessary to carry out the functions of a DETC Appeals Panel.

Hearing Procedure

The Commission shall have at least one representative present at the hearing. The Commission representative and representatives of the institution will have the opportunity to make opening and closing statements to the appeals panel. Such oral statements may not exceed 30 minutes in length. The institution must provide information relevant to the specific grounds for the appeal. The names and affiliations of those appearing to make the oral presentation will be listed on the Agenda for the meeting. The institution is entitled to be represented by counsel during the appeal hearing. The DETC does not consider the Appeals hearing to be adversarial in nature. Accordingly, the institution will not have the right to examine the Commission Representative.

The appeal hearing may be recorded by stenographic or electronic means if requested by the institution. Recording and transcripts thereof shall be at the institution's expense, and a copy will be timely provided to the institution following the appeal hearing. The Commission's indemnification provisions extend to the appeals panel.

Commission Receipt and Implementation of Appeals Panel Decisions

The written decision of the Appeals Panel will be provided to the Commission within 30 days. The Commission will implement the decision of the Appeals Panel to affirm, amend, or reverse the prior Commission decision within 30 days of receipt of the written decision by the Appeal Panel. The Commission will notify the institution of the decision within 30 days of implementation. The Commission will notify Federal, State, accrediting agencies and the public of its decision according to D.3. Notification and Information Sharing.

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