Middle States Association

APPEALS FROM ADVERSE ACCREDITING ACTIONS

Post Secondary Career & Technical Institutions should refer to the Accreditation Actions for Post Secondary Career & Technical Policy

According to the By-Laws of the Middle States Association of Colleges and Schools, the Commissions on Elementary and Secondary Schools grant to their member institutions the right to request reconsideration of, and/or to appeal an Adverse Accrediting Action in accordance with the due process procedures outlined in this policy.

Section 1: Definitions.

a. Association. The Middle States Association of Colleges and Schools.
b. Board. The governing body of the Association.
c. Commission. The Commission on Elementary Schools; the Commission on Secondary Schools. [Note: Because accreditation actions for some institutions require action by only one Commission and other actions by both Commissions, throughout this policy the term Commission(s) shall be taken to mean one of the two Commissions or both Commissions.]
d. President of the Commissions. The President of the Commissions on Elementary and Secondary Schools. [Note: Although there are two separate Commissions, there is one president of both Commissions.].
e. Adverse Accrediting Action. A decision of the Commission(s) to:
    1. Deny Candidate status to an institution;
    2. Deny initial accreditation; or
    3. Remove Accreditation or Remove Candidate for Accreditation status of an institution.
f. Request for Reconsideration. A request made in writing to the Commission(s) to re-evaluate and reconsider an Adverse Accrediting action taken by the Commission(s).
g. Appeal. A request made in writing that an Adverse Accrediting Action be reconsidered by a hearing panel in the event the decision is upheld by the Executive Committee(s) and the Commission(s) as a result of a Request for Reconsideration..
h. Appellant. An institution that is the subject of an Adverse Accrediting Action.
i. Day. Unless otherwise stated, a calendar day.
j. Date of Filing. A document is deemed to be filed when it is actually received by the Commission(s).
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.
l. Chair. The chair of a Hearing Panel.
m. Common Costs. As used in these policies, the costs incurred by the Commission(s) in responding to a Request for Reconsideration, empanelling a Hearing Panel, and conducting a Hearing; travel and accommodation costs for panel members and members of the Commissions' staff involved in the conduct of the hearing; costs of facilities for the conduct of the hearing, if held at other than the offices of the Commission(s); transcript fees; and legal fees incurred by the Hearing Panel or the Commission(s) in the conduct of the appeal, except that Common Costs do not include the costs incurred by either Appellant or the Commission(s) in preparing for or participating in the

appeal process, nor does it include the costs of legal counsel for either party or any costs incurred by Appellant or the Commission(s) to participate in the proceedings.

n. Appeal Panel. A group of individuals from which hearing panels are chosen. The Appeal Panel shall consist of the members of the Domestic Schools Advisory Committee as approved by the Commission(s). The term of members of the Appeal Panel shall coincide with their term on the advisory committee. Appeal panel members may serve on more than one Hearing Panel during the term of their appointment.
o. Hearing Panel. A panel selected to hear an institution's appeal.
p. Record. All evidence considered by the Commission(s) in reaching an Adverse Accrediting Action together with any evidence of substantial change in circumstances accepted by the Commission(s) under these policies.

Section 2: General Provisions.

Notice of Adverse Accrediting Action. Notice of an Adverse Accrediting Action shall be given to the institution in writing and shall specify the action taken. The Notice shall be accompanied by a copy of this policy and a statement respecting the obligation of Appellant to share the Common Costs incurred in affording the appeal, and to assume further the costs if the appeal is deemed frivolous.

Failure to Meet Deadlines. If, after receiving a Notice of Adverse Accrediting Action, an institution fails to file its request for reconsideration, notice of intent to appeal, the required filing fee, and/or its appeal document in accordance with the deadlines specified in this policy, the institution shall have waived any further appeal rights.

Accreditation Status during Appeal Process. The accreditation status of an Appellant prior to the Commission(s)' taking an Adverse Accrediting Action shall remain in effect until the expiration of the period within which Appellant may file a Request for Reconsideration, or the completion of the Commission(s)' appeals process, whichever shall later occur.

Litigation or Other Outside Process. Rights for reconsideration or appeal pursuant to this policy are not available if the Appellant has initiated judicial, regulatory, or other proceedings.

Section 3: Request for Reconsideration.

Written Request. The first step in the appeal process is the Request for Reconsideration. An Appellant must file a Request for Reconsideration in writing with the President of the Commissions within thirty (30) calendar days of receipt of the Adverse Accrediting Action. The request shall contain a concise statement specifying the particular asserted error or errors in the Adverse Accreditation Action and must be accompanied by supporting documentation.

Grounds for Granting the Request. A Request for Reconsideration will be granted only if the Appellant demonstrates by clear and convincing evidence in the record that the Commission(s) erred in issuing the Adverse Accrediting Action.

Evidentiary Basis of Request for Reconsideration. A Request for Reconsideration shall be based solely upon the evidence before the Commission(s) at the time the Adverse Accrediting Action was made.

Action on Request for Reconsideration. The Executive Committee(s) of the Commission(s) shall review a Request for Reconsideration together with all admissible submissions and shall issue a written decision whether to grant the Request within thirty (30) calendar days of receipt of the Request. In the event a Request for Reconsideration is granted, the decision shall provide the Commission(s) with such guidance and rationale as the Executive Committee(s) deems necessary to ensure that the issues raised in the Request for Reconsideration are properly addressed.

a. If the Executive Committee(s) grants the Request for Reconsideration, the Adverse Accrediting Action shall be remanded to the Commission(s) for further proceedings consistent with the direction of the Executive Committee(s).
b. If the Executive Committee(s) denies the Request for Reconsideration, the Adverse Accrediting Action shall take effect on the eleventh day after receipt by Appellant of notice of denial, unless Appellant appeals said denial in accordance with these procedures.
c. An Adverse Accrediting Action that has been remanded to the Commission(s) for further proceedings shall not be subject to further Requests for Reconsideration but shall be appealable to the Commission(s) in accordance with this policy.

Notice of Action on Request for Reconsideration. Notice of the Action taken by the Executive Committee(s) on the Request for Reconsideration will be provided in writing to the Appellant. The notice will describe the action taken and, in the case of action, the Appellant's right to appeal that action.

Section 4: Appeals.

Nature of Appeals. Except as otherwise specifically set forth herein, appeals from an Adverse Accrediting Action shall be based solely on the evidence and record before the Commission(s), inclusive of any evidence of substantially changed circumstances submitted as part of a Request for Reconsideration. The burden shall be upon the Appellant to demonstrate by clear and convincing evidence in the record that:

a. There were errors or omissions in carrying out prescribed procedures on the part of the visiting team or the Commission(s) which materially affected the Commission(s)' action; or
b. There was demonstrable bias or prejudice on the part of one or more members of the visiting team or the Commissions' staff or the Commission(s) which materially affected the Commission(s)' action; or
c. The evidence cited by the Commission(s) in reaching the decision that is being appealed was in error on the date when it made the decision and the error materially affected the Commission(s)' action; or
d. The action of the Commission(s) was not supported by substantial evidence or was arbitrary and capricious.

Cost of Appeals. The parties shall divide equally the Common Costs of an appeal under this policy, except that a party shall pay the full costs of an appeal, inclusive of reasonable attorneys' fees of the prevailing party, where the Hearings Panel specifically finds:

a. that an appeal is frivolous, in which case the Appellant shall bear the entire cost of the proceeding, or
b. that the Commission(s) were arbitrary and capricious in taking the Adverse Accrediting Action, in which case the Commission(s) shall bear the entire cost of the appeal.

Surety for an Appeal. Appellant shall, at the time of filing a Notice of Intent to Appeal as set forth herein,
deposit with the Commission(s) cash or acceptable surety equal to the estimated cost to the Commission(s) of providing for the Appeal, as such costs shall be established by the Commission(s), and such sum if in the form of cash, shall be maintained in an interest bearing account until the termination of the appeal. At the conclusion of the appeal process, Appellant will be provided with a final accounting along with a refund of any balance or an invoice for sums due.

Timing and Form of Notice of Intent to Appeal. Notice of intent to appeal a denial of a Request for Reconsideration, or of an Adverse Accrediting Action remanded to the Commission(s) on the basis of a prior Request for Reconsideration, must be filed in writing with the Secretary or other Designated Official of the Association, with a copy to the President of the Commissions, within ten (10) calendar days of receipt by Appellant of notice of the action. The Notice of Intent to Appeal shall specify the particular asserted error or errors in the Adverse Accrediting Action, and shall be signed by Appellant's chief executive officer.

Appellant shall in its Notice of Intent to Appeal specify whether an appearance before the Hearing Panel is requested, or whether the appeal is to be decided on the basis of written submissions. A waiver of the right to appear before a Hearing Panel shall be final.

Selection of Hearing Panel. Upon receipt of a Notice of Intent to Appeal the Secretary or other Designated Official shall draw the names of three members of the Appeal Panel to serve as the Hearing Panel, and shall within three (3) business days of such receipt provide the Appellant and the President of the Commissions with the names and biographical data of each such person.

a. An Appeal Panel member so selected who has a conflict of interest, as such term is defined in MSA-CESS Policy: Conflict of Interest, shall immediately notify the Secretary, who shall thereupon draw a replacement in the same manner.
b. An Appeal Panel member is also disqualified from serving on a Hearing Panel if she or he has participated in any way in the process leading to the action being appealed, comes from the same state as the institution appealing, or has had any prior relationship with the Appellant.
c. Appellant and the Commission(s) may challenge the selection of any Hearing Panel member on the basis that the member has a conflict of interest or should otherwise not participate in the proceeding, for cause as described in this paragraph, by giving written notice of the basis of such challenge within ten calendar days of receipt of the list of Hearing Panel members. The President of the Commissions shall rule on such challenges, the benefit of doubt to be afforded to the challenging party. In the event an Appeal Panel member is recused, the Secretary of the

Association or Other Designated Official shall draw a replacement from the existing pool, and such replacement shall be subject to the same challenge.

d. The Hearing Panel members shall elect from among their number a chair, and all actions of the Hearing Panel shall be by majority vote of the full panel.
e. The Chair of the Hearing Panel shall control the hearing and presentation of witnesses. The Chair may limit the duration of the hearing and shall endeavor to divide the time equitably among the parties. The Chair shall rule on all questions pertaining to the conduct of the hearing, including the admissibility of evidence, and may extend any of the deadlines set forth in this policy for good cause shown by the requesting party.

Form of Appeal. Within thirty (30) calendar days of receipt of notice of the action from which the appeal is taken, the Appellant shall submit to the Secretary of the Association or other Designated Official of the Association five (5) copies of written argument in support of its appeal, referencing the record as appropriate, and shall simultaneously provide the President of the Commissions with three copies of its submission.

Response by Commission(s). Within thirty (30) calendar days of receipt of Appellant's written argument, the Commission(s) shall submit to the Secretary or other Designated Official of the Association five (5) copies of written argument in support of its action, referencing the record as appropriate, and shall simultaneously provide the Appellant with three (3) copies of its submission.

Scheduling of Hearing. If an appearance before the Hearing Panel has been requested by Appellant, the chair of the Hearing Panel shall, not less than fifteen (15) and not more than thirty (30) calendar days after receipt of the response by the Commission(s), or the expiration of the allotted thirty (30) day period, whichever shall be sooner, notify Appellant and the Commission(s) of the date, time and place of the hearing.

a. The Chair may, but shall not be required to, convene, in such form as shall be convenient to the parties, a pre-hearing conference for the purpose of discussing procedural matters.
b. Hearings shall be held at the offices of the Commission(s) or such other location as the Chair shall deem convenient to the parties, provided the Appellant or the Commission(s) may petition the Chair, for good cause, to set the hearing for a different date or location. The decision of the Chair shall be final.

Procedures for Oral Hearings. Proceedings before a Hearing Panel are before an appellate tribunal. As the Hearing Panel is limited to consideration of evidence contained in the record, the Chair of the Hearing Panel shall ensure that extraneous evidence not properly in the record is excluded from consideration. The Chair shall be advised by counsel to the Association respecting the course of proceedings, and the procedural determinations of the Chair shall be final. Appellant and the Commission(s) may be represented by counsel, and their respective cases may be represented by counsel or any other designee or designees of their choice.

a. Appellant shall have the burden of going forward and the burden of proof in seeking to reverse or modify an Adverse Accrediting Action. The Commission(s) shall have an opportunity to present an argument in rebuttal, and each party shall have an opportunity to make a closing statement. The members of the Hearing Panel may question either party at any point in the proceedings.

b. As the proceeding before the Hearing Panel is appellate in nature and limited to the record, no discovery shall be permitted for either side, and no evidence not already properly in the record on appeal shall be accepted, provided that the parties may offer witnesses for the limited purpose of elucidating the meaning of evidence properly before the Hearing Panel. The Chair shall rule on the admissibility of offered testimony.
    1. The Hearing Panel may hear argument that evidence substantially material to the ability of Appellant to present its case before the Commission(s) was improperly excluded by the Commission(s), and if so persuaded, the Hearing Panel shall remand the case to the Commission(s) for further proceedings allowing for the consideration of such evidence.
    2. Notwithstanding the foregoing, Appellant may submit evidence demonstrating that a substantial change of circumstances has occurred which, had it occurred prior to the Commission(s)' action, would likely have resulted in a different accrediting action. If the Hearing Panel is so persuaded, it shall remand the case to the Commission(s) for further proceedings allowing for the consideration of such evidence.
c. The Chair may request post hearing briefs of both parties to clarify issues before the Hearing Panel. Such submissions shall be due within ten (10) calendar days of notification by the Chair of the Hearing Panel.
d. An audio shall be made of the proceedings before the Hearing Panel. A party requesting production of a transcript shall pay the entire incremental cost of such transcription.

Decision of the Hearing Panel. The Hearing Panel shall render its decision in writing within fifteen (15) calendar days of the conclusion of the hearing or the submission of post hearing briefs, whichever is later, or, if no oral argument has been requested, within forty-five (45) calendar days of the parties' submissions.

a. The Hearing Panel may recommend that an Adverse Accrediting action be affirmed, reversed, or modified, in which case the decision will be remanded to the Commission(s) for further proceedings consistent with the recommendation of the Hearing Panel. All evidence considered by the Hearing Panel, including any evidence of substantial change in circumstances submitted by the institution, shall be forwarded to the Commission(s) along with the written findings and recommendations for review by the Commission(s) prior to entry of the final decision.
b. The Commission(s) will take action on the Hearing Panel's findings and recommendations at its next regularly scheduled meeting.
c. The decision of the Commission(s) affirming, reversing or modifying an Adverse Accrediting Action so remanded shall be deemed the final Accrediting Action of the Association, shall not be subject to any further review or appeal within the Association, shall be conveyed to the appropriate public authorities in accordance with law, and shall be effective upon its issuance.

Notice of Final Decision. Appellant will be provided with written notice of the Commission(s)' final decision and the basis for it.

Section 5: Rescission of Prior Actions. The Commission(s) may, at any time for good cause shown and solely in the exercise of its discretion, rescind an Adverse Accrediting Action previously taken.

Section 6: Appeals from Adverse Accrediting Actions for Postsecondary Institutions

Right to Appeal Adverse Accrediting Actions.

a. The Commission on Secondary Schools grants to its member institutions the right to request reconsideration of, and/or to appeal an Adverse Accrediting Action in accordance with the due process procedures outlined in this policy.
b. The Commission shall notify an institution in writing and delivered by certified mail of the institution's right to request reconsideration of, and/or to appeal an Adverse Accrediting Action in accordance with the due process procedures outlined in this policy.

Definitions.

a. Association. The Middle States Association of Colleges and Schools.
b. Board of Trustees. The governing body of the Association.
c. Commission. The Commission on Secondary Schools.
d. President of the Association or Other MSA Designated Official. The President of the Association or other MSA official designated by the Association to serve as an administrator independent of the Commission that took an accrediting action that is the subject of an appeal to carry out certain functions under this policy.
e. President of the Commission. The President of the Commission on Secondary Schools.
f. Adverse Accrediting Action. A decision of the Commission to:
    1) Deny Candidacy for Accreditation;
    2) Deny initial Accreditation;
    3) Remove Candidate for Accreditation status; and
    4) Remove Accreditation.
g. Request for Reconsideration. A request made in writing to the Commission to re-evaluate and reconsider an Adverse Accrediting action taken by the Commission.
h. Appeal. A request made in writing that an Adverse Accrediting Action be reconsidered by an Appeal Panel.
i. Appellant. An institution that is the subject of an Adverse Accrediting Action.
j. Day. Unless otherwise stated, a calendar day.
k. Date of Filing. A document is deemed to be filed when it is actually received by the Commission.
l. Date of Receipt. The date a document is actually received by a party, as evidenced by a postal service, courier or private carrier receipt.
m. Chair. The chair of an Appeal Panel.
n. Common Costs. As used in these policies, the costs incurred by the Commission in responding to a Request for Reconsideration, empanelling an Appeal Panel, and conducting a Hearing; travel and accommodation costs for panel members and members of the Commission's staff involved in the conduct of the hearing; costs of facilities for the conduct of the hearing, if held at other than the offices of the Commission; transcript fees; and legal fees incurred by the Appeal Panel or the Commission in the conduct of the appeal, except that Common Costs do not include the costs incurred by either Appellant or the Commission in preparing for or participating in the appeal process, nor does it include the costs of legal counsel for either party or any costs incurred by Appellant or the Commission to participate in the proceedings.

o. Pool of Members for Appeal Panels. A group of nominated and selected individuals from which Appeal Panels are chosen. The pool shall consist of members that meet one of the criteria in paragraph below.
p. Appeal Panel. A panel selected to hear an institution's appeal.
q. Public Member: A public member shall meet the following criteria:
    1) not currently employed in the field of education;
    2) not an employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either is accredited by the agency or has applied for accreditation;
    3) not a member of any trade association or membership organization related to, affiliated with, or associated with the accrediting agency; and
    4) not a spouse, parent, child, or sibling of an individual identified directly above.
r. Record. All evidence considered by the Commission in reaching an Adverse Accrediting Action together with any evidence of substantial change in circumstances accepted by the Commission under these policies.

General Provisions.

a. Notice of Adverse Accrediting Action. Notice of an Adverse Accrediting Action shall be given to the institution in writing and shall specify the action taken. The Notice shall be accompanied by a copy of this policy and a statement respecting the obligation of Appellant to share the Common Costs incurred in affording the appeal, and to assume further the costs if the appeal is deemed frivolous.
b. Failure to Meet Deadlines. If, after receiving a Notice of Adverse Accrediting Action, an institution fails to file its request for reconsideration, notice of intent to appeal, the required filing fee, and/or its appeal document in accordance with the deadlines specified in this policy, the institution shall have waived any further appeal rights.
c. Accreditation Status during Appeal Process. The accreditation status of an Appellant prior to the Commission's taking an Adverse Accrediting Action shall remain in effect until the expiration of the period within which Appellant may file a Request for Reconsideration, or the completion of the Commission's appeals process, whichever shall later occur.
d. Litigation or Other Outside Process. Rights for reconsideration or appeal pursuant to this policy are not available if the Appellant has initiated judicial, regulatory, or other proceedings. Institutions must agree to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action, as outlined in initial arbitration rule of 20 U.S.C. 1099b(e).

Request for Reconsideration.

a. Written Request. The first step in the appeal process is the Request for Reconsideration. An Appellant must file a Request for Reconsideration in writing with the President of the Commission within thirty (30) calendar days of receipt of the Adverse Accrediting Action. The request shall contain a concise statement specifying the particular asserted error or errors in the Adverse Accreditation Action and must be accompanied by supporting documentation.
b. Grounds for Granting the Request. A Request for Reconsideration will be granted only if the Appellant demonstrates by clear and convincing evidence in the record that the Commission erred in issuing the Adverse Accrediting Action.

c. Evidentiary Basis of Request for Reconsideration. A Request for Reconsideration shall be based solely upon the evidence before the Commission at the time the Adverse Accrediting Action was made.
d. Action on Request for Reconsideration. The Executive Committee of the Commission shall review a Request for Reconsideration together with all admissible submissions and shall issue a written decision whether to grant the Request within thirty (30) calendar days of receipt of the Request. In the event a Request for Reconsideration is granted, the decision shall provide the Commission with such guidance and rationale as the Executive Committee deems necessary to ensure that the issues raised in the Request for Reconsideration are properly addressed.
    1) If the Executive Committee grants the Request for Reconsideration, the Adverse Accrediting Action shall be remanded to the Commission for further proceedings consistent with the direction of the Executive Committee.
    2) If the Executive Committee denies the Request for Reconsideration, the Adverse Accrediting Action shall take effect on the eleventh day after receipt by Appellant of notice of denial, unless Appellant appeals said denial in accordance with these procedures.
    3) An Adverse Accrediting Action that has been remanded to the Commission for further proceedings shall not be subject to further Requests for Reconsideration but shall be appealable to the Commission in accordance with this policy.

e. Notice of Action on Request for Reconsideration. Notice of the Action taken by the Executive Committee on the Request for Reconsideration will be provided in writing to the Appellant. The notice will describe the action taken and, in the case of action under, the Appellant's right to appeal that action.

Appeals.

a. Nature of Appeals. Except as otherwise specifically set forth herein, appeals from an Adverse Accrediting Action shall be based solely on the evidence and record before the Commission, inclusive of any evidence of substantially changed circumstances submitted as part of a Request for Reconsideration. The burden shall be upon the Appellant to demonstrate by clear and convincing evidence in the record that:
    1) There were errors or omissions in carrying out prescribed procedures on the part of the visiting team or the Commission which materially affected the Commission's action; or
    2) There was demonstrable bias or prejudice on the part of one or more members of the visiting team or the Commission's staff or the Commission which materially affected the Commission's action; or
    3) The evidence cited by the Commission in reaching the decision that is being appealed was in error on the date when it made the decision and the error materially affected the Commission's action; or
    4) The action of the Commission was not supported by substantial evidence or was arbitrary and capricious.
b. Cost of Appeals. The parties shall divide equally the Common Costs of an appeal under this policy, except that a party shall pay the full costs of an appeal, inclusive of reasonable attorneys' fees of the prevailing party, where the Appeal Panel specifically finds:
    1) That an appeal is frivolous, in which case the Appellant shall bear the entire cost of the proceeding, or

2) That the Commission was arbitrary and capricious in taking the Adverse Accrediting Action, in which case the Commission shall bear the entire cost of the appeal.

c. Surety for an Appeal. Appellant shall, at the time of filing a Notice of Intent to Appeal as set forth herein, deposit with the Commission cash or acceptable surety equal to the estimated cost to the Commission of providing for the Appeal, as such costs shall be established by the Commission, and such sum if in the form of cash, shall be maintained in an interest bearing account until the termination of the appeal. At the conclusion of the appeal process, Appellant will be provided with a final accounting along with a refund of any balance or an invoice for sums due.

d. Timing and Form of Notice of Intent to Appeal. Notice of intent to appeal a denial of a Request for Reconsideration, or of an Adverse Accrediting Action remanded to the Commission on the basis of a prior Request for Reconsideration, must be filed in writing with the President or other MSA Designated Official of the Association, with a copy to the President of the Commission, within ten (10) calendar days of receipt by Appellant of notice of the action. The Notice of Intent to Appeal shall specify the particular asserted error or errors in the Adverse Accrediting Action, and shall be signed by Appellant's chief executive officer.

e. Appellant shall in its Notice of Intent to Appeal specify whether an appearance before the Appeal Panel is requested, or whether the appeal is to be decided on the basis of written submissions. A waiver of the right to appear before an Appeal Panel shall be final.

Appeals Panels.

a. Criteria for Membership in the Pool for Appeals Panels. An appeals panels:
    1) May not include current members of the Commission's decision-making body that took the initial adverse action;
    2) Is subject to the Commission's conflict of interest policy;
    3) May not serve only an advisory or procedural role, and has and uses the authority to make the following decisions: to affirm, amend, or reverse adverse actions of the original decision-making body;
    4) Consists of professional educators currently employed by an institution accredited by the Middle States Commission on Secondary Schools that has served on at least one MSA-CSS accreditation visiting team but that does not serve in any other advisory or decision-making body of the Commission; or
    5) Has at least one member of the public that meets the U.S. Secretary of Education public representative;
        a. Does not currently hold professional positions in education and who are broadly representative of the public interest. Representatives of the public shall meet the following criteria:
        b. Not currently employed in the field of education
        c. Not an employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either is accredited by the agency or has applied for accreditation
        d. Not a member of any trade association or membership organization related to, affiliated with, or associated with the accrediting agency
        e. Not a spouse, parent, child, or sibling of an individual identified directly above.
    6) Shall consist of not less than five members.

7) Shall include both administrative and academic educators from MSA-CSS accredited institutions.

b. Forming Appeals Panels.
   1) The President of the Commission shall seek from the accredited and candidate institutions nominations for educators meeting the criteria in paragraph a, above, to serve in the pool of members for Appeals Panels as needed.
   2) The President shall select from among those nominated at least 20 individuals that meet one of the criteria in a., above, to serve in a pool of members for Appeal Panels.
   3) Nominees for membership in the pool for Appeal Panels shall be solicited from the institutions accredited by the Commission as needed.
   4) Members of the pool for Appeal Panels shall serve a term of three years and may be nominated for one additional three-year term.
   5) The President of the Association or a designated MSA official will select from among those nominated the members of the pool for Appeal Panels from among the nominees from accredited institutions.

c. Selection of Appeal Panel. Upon receipt of a Notice of Intent to Appeal, the President of the Middle States Association or other designated MSA official shall draw from the pool of members for Appeal Panels the names of five members to serve as the Appeal Panel and shall within three (3) business days of such receipt provide the Appellant and the President of the Commissions with the names and biographical data of each member selected for the Appeal Panel.
   1) An Appeal Panel member so selected who has a conflict of interest, as such term is defined in MSA-CESS: Conflict of Interest, shall immediately notify the President of the Association, who shall thereupon draw a replacement in the same manner.
   2) An Appeal Panel member is also disqualified from serving on an Appeal Panel if she or he has participated in any way in the process leading to the action being appealed, comes from the same state as the institution appealing, or has had any prior relationship with the Appellant.
   3) The Appellant and the Commission(s) may challenge the selection of any Appeal Panel member on the basis that the member has a conflict of interest or should otherwise not participate in the proceeding, for cause as described in this paragraph, by giving written notice of the basis of such challenge within ten (10) calendar days of receipt of the list of Appeal Panel members. The President or other designated MSA official shall rule on such challenges, the benefit of doubt to be afforded to the challenging party. In the event an Appeal Panel member is recused, the President of the Association or other designated MSA official shall draw a replacement from the existing pool, and such replacement shall be subject to the same challenge.

d. Training for Members of an Appeal Panel.
   When an Appeal Panel has been established and prior to commencing its work, members of the Panel will be trained on the operation of the Panel by a member of the staff of the Middle States Commissions on Elementary and Secondary Schools.

e. Organization and Operation of the Appeal Panel.
   1) The Appeal Panel members shall elect from among their number a chair, and all actions of the Appeal Panel shall be by majority vote of the full panel.
   2) The Chair of the Appeal Panel shall control the hearing and presentation of witnesses. The Chair may limit the duration of the hearing and shall endeavor to divide the time equitably

among the parties. The Chair shall rule on all questions pertaining to the conduct of the hearing, including the admissibility of evidence, and may extend any of the deadlines set forth in this policy for good cause shown by the requesting party.

Form of Appeal. Within thirty (30) calendar days of receipt of notice of the action from which the appeal is taken, the Appellant shall submit to the President of the Middle States Association or other Designated Official of the Association five (5) copies of written argument in support of its appeal, referencing the record as appropriate, and shall simultaneously provide the President of the Commission with three copies of its submission.

Response by Commission. Within thirty (30) calendar days of receipt of Appellant's written argument, the Commission shall submit to the President of the Association or other Designated Official of the Association five (5) copies of written argument in support of its action, referencing the record as appropriate, and shall simultaneously provide the Appellant with three (3) copies of its submission.

Scheduling of Hearing. If an appearance before the Appeal Panel has been requested by Appellant, the chair of the Appeal Panel shall, not less than fifteen (15) and not more than thirty (30) calendar days after receipt of the response by the Commission(s), or the expiration of the allotted thirty (30) day period, whichever shall be sooner, notify Appellant and the Commission(s) of the date, time and place of the hearing.

a. The Chair of the Panel may, but shall not be required to, convene, in such form as shall be convenient to the parties, a pre-hearing conference for the purpose of discussing procedural matters.
b. Hearings shall be held at the offices of the Commission(s) or such other location as the Chair shall deem convenient to the parties, provided the Appellant or the Commission(s) may petition the Chair, for good cause, to set the hearing for a different date or location. The decision of the Chair shall be final.

Procedures When No Appearance is Requested. In the event Appellant has not requested the opportunity to appear before the Appeal Panel, the Chair shall, not less than fifteen (15) and not more than thirty (30) calendar days after receipt of the response by the Commission(s), or the expiration of the allotted thirty (30) day period, whichever shall be sooner, schedule a meeting of the Appeal Panel to consider the appeal. Such meeting may be held in person or by telephone, at such location or locations as may be convenient to the panel members.

Procedures for Oral Hearings. Proceedings before an Appeal Panel are before an appellate tribunal. As the Appeal Panel is limited to consideration of evidence contained in the record, the Chair of the Appeal Panel shall ensure that extraneous evidence not properly in the record is excluded from consideration.

a. The Chair shall be advised by counsel to the Association respecting the course of proceedings, and the procedural determinations of the Chair shall be final.
b. Appellant and the Commission may be represented by counsel, and their respective cases may be represented by counsel or any other designee or designees of their choice.
c. Appellant shall have the burden of going forward and the burden of proof in seeking to reverse or modify an Adverse Accrediting Action. The Commission(s) shall have an opportunity to present

argument in rebuttal, and each party shall have an opportunity to make a closing statement. The members of the Appeal Panel may question either party at any point in the proceedings.

d. As the proceeding before the Appeal Panel is appellate in nature and limited to the record, no discovery shall be permitted for either side, and no evidence not already properly in the record on appeal shall be accepted, provided that the parties may offer witnesses for the limited purpose of elucidating the meaning of evidence properly before the Appeal Panel. The Chair shall rule on the admissibility of offered testimony.
    1. The Appeal Panel may hear argument that evidence substantially material to the ability of Appellant to present its case before the Commission(s) was improperly excluded by the Commission(s), and if so persuaded, the Appeal Panel shall remand the case to the Commission(s) for further proceedings allowing for the consideration of such evidence.
    2. Notwithstanding the foregoing, Appellant may submit evidence demonstrating that a substantial change of circumstances has occurred which, had it occurred prior to the Commission(s)' action, would likely have resulted in a different accrediting action. If the Appeal Panel is so persuaded, it shall remand the case to the Commission(s) for further proceedings allowing for the consideration of such evidence.
e. The Chair may request post-hearing briefs of both parties to clarify issues before the Appeal Panel. Such submissions shall be due within ten (10) calendar days of notification by the Chair of the Appeal Panel.
f. An audio recording shall be made of the proceedings before the Appeal Panel. A party requesting production of a transcript shall pay the entire incremental cost of such transcription.

Decision of the Appeals Panels. Appeals panels may affirm, amend, or remand the adverse action.

a. A decision to affirm, amend, or remand the adverse action is implemented by the appeals panel or by the Commission, at the Commission's option.
b. In a decision to remand the adverse action to the Commission for further consideration, the appeals panel must identify specific issues that the Commission must address.
c. In a decision that is implemented by or remanded to the Commission, the Commission must act in a manner consistent with the appeals panel's decisions or instructions.
d. The Appeal Panel shall render its decision in writing within fifteen (15) calendar days of the conclusion of the hearing or the submission of post hearing briefs, whichever is later, or, if no oral argument has been requested, within forty-five (45) calendar days of the parties' submissions.
e. Except as provided in paragraph c, above, the decision of the Appeals Panel shall be deemed as the final accrediting action of the Commission and shall not be subject to any further review or appeal within the Middle States Association.
f. The decision of the Appeals Panel shall be effective upon its issuance.

New Financial Information.

a. The institution may, prior to a final adverse accrediting action's being taken by the Appeal Panel or the Commission, seek review of new financial information if all of the following conditions are met:
    1. The financial information was unavailable to the institution until after the decision subject to appeal was made;
    2. The financial information is significant and bears materially on the financial deficiencies identified by the Commission. The criteria of significance and materiality are determined by the Commission;

3. The only remaining deficiency cited by the Appeal Panel of Commission in support of a final adverse action decision is the institution's failure to meet the Commission's Finances Standard for Accreditation.

b. The institution may seek the review of new financial information described in paragraph a, above, only once and any determination by the Commission made with respect to that review does not provide a basis for an appeal.

Notice of an Appeals Panel Decision.

a. The Chair of the Appeal Panel shall provide the Appellant with written notice of the Panel's decision and the basis on which the decision was based.
b. In addition, the Chair of the Appeal Panel shall notify the Chair(s) of the appropriate Commission(s), the President of the Commissions of its decision.
c. The President of the Commissions shall notify the public of the Appeal Panel's decision on the Commissions' website and other agencies as required by MSA-CESS Policy: Relationships with Other Entities.

Rescission of Prior Actions. The Commission may, at any time for good cause shown and solely in the exercise of its discretion, rescind an Adverse Accrediting Action previously taken.