

Rule __. Appeal of an Adverse Decision of the Council

- (a) A law school may appeal the following adverse decisions of the Council:
1. Denial of provisional approval;
 2. Denial of full approval; or
 3. Removal from list of approved law schools
- (b) A law school may appeal the adverse decisions specified in Section (a) of this Rule, by filing with the Consultant a written appeal within 30 days after the date of the letter reporting the adverse decision of the Council to the law school.
- (c) A written appeal must include:
1. Grounds for appeal; and
 2. Documentation to support the appeal. The written appeal may not contain, nor may it refer to, any evidence that is not in the record before the Council.
- (d) The grounds for an appeal must be based upon at least one of the following:
1. The decision was arbitrary and capricious; or
 2. The Council failed to follow the applicable Rules of Procedure and the procedural error prejudiced its decision.
- (e) On appeal, the law school has the burden of demonstrating that the Council's decision was arbitrary and capricious and not supported by the evidence on record, or inconsistent with the Rules of Procedure and that inconsistency prejudiced its decision.
- (f) Within 30 days of receipt of a written appeal, the Consultant will refer the appeal to the Appeals Panel.
- (g) The Appeals Panel shall consist of three people appointed by the Chair of the Council to serve a one year term beginning at the end of the Annual Meeting of the Section and continuing to the end of the next Annual Meeting of the Section. The Chair of the Council shall also appoint, at the same time and for the same term, three alternates to the Appeals Panel. All members of the Appeals Panel and alternates shall be (1) former members of the Council or Accreditation Committee or (2) experienced site team evaluators. The Appeals Panel and the panel of alternates will each include one legal educator, one judge or practitioner, and one public member. The Chair of the Council shall designate one member of the

Appeals Panel to serve as its chair. Members of the Appeals Panel and alternates shall be:

1. Experienced and knowledgeable in the Standards, Interpretations and Rules of Procedure;
2. Trained in the current Standards, Interpretations and Rules of Procedure at a retreat or workshop or by other appropriate methods within the last 3 years;
3. Subject to the Section's Conflicts of Interest Policy, as provided in IOP 19; and
4. Appointed for a one-year term and eligible to serve consecutive terms.

In the event that any member of the Appeals Panel is disqualified under IOP 19 or is otherwise unable to serve on a particular Appeal, that member of the Appeals Panel shall be replaced for that Appeal by the alternate from the same occupational category.

- (h) The Consultant shall inform the law school of the time, date, and place of the hearing at least thirty days in advance. The law school shall have a right to have representatives of the school, including legal counsel, appear and present written and/or oral statements to the Appeals Panel, subject to Sections (c) and (i) of this Rule. The hearing shall be transcribed by a court reporter and a transcript of the hearing shall be provided to the Council and the law school. The hearing will be held in closed session and not open to the public. The Council may establish additional rules of procedure for the hearing of appeals.
- (i) The Appeals Panel shall consider the appeal at a hearing within forty-five days of having received its charge from the Consultant. The appeal shall be decided based on the record before the Accreditation Committee and the Council, the decision letters of those bodies and the documents cited therein, and transcripts from appearances by the law school. No new evidence shall be considered by the Appeals Panel. The Appeals Panel can take one of the following actions:
 1. Affirm the adverse decision of the Council;
 2. Reverse the adverse decision of the Council;
 3. Amend the adverse decision of the Council; or
 4. Remand the adverse decision of the Council for further consideration.

Within 30 days after the conclusion of the hearing, the Appeals Panel shall provide the Council and the law school with a written statement of the Appeals Panel's decision and the basis for that decision.

The decision of the Appeals Panel shall be effective upon issuance. If the Appeals Panel remands the adverse decision of the Council for further consideration by the Council, the Appeals Panel shall identify specific issues that

the Council must address. The Council shall act in a manner consistent with the Appeal's panel decisions or instructions.

In implementing the decision of the Appeals Panel, the Council may impose any monitoring, reporting or other requirements on the law school consistent with the Appeals Panel decision and the Rules of Procedure.

- (j) The Consultant shall give written notice to the president and dean of the law school of the Council's adoption and implementation of the Appeal Panel's decision.
 - (k) When the only remaining deficiency cited by the Council in support of an adverse decision is a law school's failure to meet the standards dealing with financial resources for a law school, the law school may request a review of new financial information that was not part of the record before the Council at the time of the adverse decision if all of the following conditions are met:
 - 1. A written request for review is filed with the Consultant within 30 days after the date of the letter reporting the adverse decision of the Council to the law school;
 - 2. The financial information was unavailable to the law school until after the adverse decision subject to the appeal was made; and
 - 3. The financial information is significant and bears materially on the financial deficiencies that were the basis of the adverse decision by the Council.
 - (l) The request to review new financial information will be considered by the Council at its next meeting occurring at least 30 days after receipt of the request.
 - (m) The Consultant shall inform the president and dean of the law school of the Council's decision in writing.
 - (n) A law school may request review of new financial information only once and a decision made by the Council with respect to that review does not provide a basis for appeal.
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DUE PROCESS – APPEALS PANEL

§602.25 Due process.

The agency must demonstrate that the procedures it uses throughout the accrediting process satisfy due process. The agency meets this requirement if the agency does the following:

- (a) Provides adequate written specification of its requirements, including clear standards, for an institution or program to be accredited or preaccredited.**
- (b) Uses procedures that afford an institution or program a reasonable period of time to comply with the agency's requests for information and documents.**
- (c) Provides written specification of any deficiencies identified at the institution or program examined.**
- (d) Provides sufficient opportunity for a written response by an institution or program regarding any deficiencies identified by the agency, to be considered by the agency within a timeframe determined by the agency, and before any adverse action is taken.**
- (e) Notifies the institution or program in writing of any adverse accrediting action or an action to place the institution or program on probation or show cause. The notice describes the basis for the action.**
- (f) Provides an opportunity, upon written request of an institution or program, for the institution or program to appeal any adverse action prior to the action becoming final.**

(1) The appeal must take place at a hearing before an appeals panel that--

- (i) May not include current members of the agency's decision-making body that took the initial adverse action;**
- (ii) Is subject to a conflict of interest policy;**
- (iii) Does 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; and**
- (iv) Affirms, amends, reverses, or remands the adverse action. A decision to affirm, amend, or reverse the adverse action is implemented by the appeals panel or by the original decision-making body, at the agency's option. In a decision to remand the adverse action to the original decision-making body for further consideration, the appeals panel must identify specific issues that the original decision-making body must address. In a decision that is implemented by or remanded to the original decision-making body, that body must act in a manner consistent with the appeals panel's decisions or instructions.**

(2) The agency must recognize the right of the institution or program to employ counsel to represent the institution or program during its appeal, including to make any presentation that the agency permits the institution or program to make on its own during the appeal.

(g) The agency notifies the institution or program in writing of the result of its appeal and the basis for that result.

(h) (1) The agency must provide for a process, in accordance with written procedures, through which an institution or program may, before the agency reaches a final adverse action decision, seek review of new financial information if all of the following conditions are met:

- (i) The financial information was unavailable to the institution or program until after the decision subject to appeal was made.**

(ii) The financial information is significant and bears materially on the financial deficiencies identified by the agency. The criteria of significance and materiality are determined by the agency.

(iii) The only remaining deficiency cited by the agency in support of a final adverse action decision is the institution's or program's failure to meet an agency standard pertaining to finances.

(2) An institution or program may seek the review of new financial information described in paragraph (h)(1) of this section only once and any determination by the agency made with respect to that review does not provide a basis for an appeal.

DOE Suggested Compliance Factors :

- The agency has written policies governing due process that give an institution or program a clear and detailed explanation and notification of the rights, obligations, and duties of all parties in the proceedings.
- The agency's written procedures give an institution or program a reasonable period of time to comply with the agency's requests for information and documentation.
- The agency's written procedures include providing an institution or program written specification of any deficiencies identified at the institution or program.
- The agency provides sufficient time for a written response by an institution or program regarding any deficiencies identified before an adverse action is taken.
- The agency demonstrates that it notifies its accredited or preaccredited institutions or programs in writing of any adverse accrediting action or an action to place the institution or program on probation or show cause.
- The agency's written notice of adverse action describes the basis for the action and informs the institution/program of its right to appeal.
- The agency permits the institution/program the opportunity to appeal an adverse action decision and the right to be represented by counsel during an appeal of that decision, including making any presentation which the institution could make on its own behalf.
- The appeal must take place before an appeals panel that may not include current members of the decision-making body that took the initial adverse action.
- Members of the appeals panel must be subject to a conflict of interest policy.
- The agency's procedures must provide for an appeals panel affirming, amending, reversing or remanding the adverse action.
- The agency's procedures must stipulate which body is responsible for implementing a decision to affirm, amend or reverse an adverse action, and if it is not the appeals panel, must provide that the body implementing the decision act in a manner consistent with the decision made by the appeals panel.
- The agency's procedures must require the appeals panel to identify specific issues that the original decision-making body must address when a decision is remanded back to that body for further consideration.

- The appeals panel must meet the requirements for recognition, such as having a public member and having academic and administrative personnel if it accredits institutions, and educators and practitioners, if it accredits programs or single-purpose institutions, and be expressly recognized by the Department.
- The agency notifies the institution/program in writing of the result of its appeal and the basis for that result.

REVIEW OF NEW FINANCIAL INFORMATION

§602.25 (h) (1) The agency must provide for a process, in accordance with written procedures, through which an institution or program may, before the agency reaches a final adverse action decision, seek review of new financial information if all of the following conditions are met:

(i) The financial information was unavailable to the institution or program until after the decision subject to appeal was made.

(ii) The financial information is significant and bears materially on the financial deficiencies identified by the agency. The criteria of significance and materiality are determined by the agency.

(iii) The only remaining deficiency cited by the agency in support of a final adverse action decision is the institution's or program's failure to meet an agency standard pertaining to finances.

(2) An institution or program may seek the review of new financial information described in paragraph (h)(1) of this section only once and any determination by the agency made with respect to that review does not provide a basis for an appeal.

DOE RECOMMENDED COMPLIANCE FACTORS:

- The agency must have written procedures describing its process to allow an institution or program to seek review of new financial information prior to the agency reaching a final adverse action decision.
- The procedures must allow an institution that was initially cited for multiple issues, and that has resolved all of the non-financial issues, to seek review of new financial information.
- The agency's procedures may provide for a review within or outside of the appeals process