

DESCRIPTION OF THE PROCESS

IV. D. APPEALS PROCESS

A. OPPORTUNITY TO APPEAL ADVERSE ACCREDITATION DECISIONS

The procedure specified in these rules of practice and procedure is the exclusive remedy for an institution that seeks to appeal an adverse accreditation decision by the Accreditation Council for Occupational Therapy Education (ACOTE®).

1. Only the following adverse accreditation decisions made by ACOTE are subject to appeal:
 - a. Denial of Candidacy Status
 - b. Denial of a request for reactivation
 - c. Decision to withdraw accreditation
 - d. Decision to deny accreditation
2. Decisions to place an institution on Probationary Accreditation are final and not subject to appeal.
3. ACOTE will not entertain petitions for reinstatement or petitions for reconsideration.
4. An appeal properly and timely filed pursuant to these rules automatically stays the decision to deny Candidacy Status, deny a request for reactivation, deny accreditation, or withdraw accreditation until the final disposition of the appeal.

B. GROUNDS FOR APPEAL, STANDARD OF REVIEW, AND RECORD ON APPEAL

1. An institution subject to an adverse accreditation decision taken by ACOTE may appeal that decision if it has reason to believe that the decision was arbitrary, capricious, in substantial disregard of the criteria or procedures of ACOTE, or that the decision was not supported by substantial evidence in the record upon which ACOTE relied in making the decision.
2. The institution has the burden of proof on appeal.
3. During an appeal, and with the exception of certain financial information (see section C.4), the Appeal Panel will only consider the record (evidence, documents, and other information) that was before ACOTE when it took the adverse accreditation action.
4. The record on appeal shall include, as applicable, the institution's appeal document and supporting materials, reports of on-site evaluation teams, decision letters and other correspondence between ACOTE and the institution, and the institution's responses to ACOTE inquiries and actions. Accordingly, the appealing institution may not present to the Appeal Panel any data, information, documents, or other evidence that was not part of the record when ACOTE made the decision from which an appeal was taken. The Appeal Panel shall disregard any such material and not utilize it in deciding the appeal.
5. The Director of AOTA's Accreditation Department shall transmit a complete copy of the record on appeal to the Chairman of the Appeal Hearing Panel as soon as the possible after the panel is selected.

C. APPEAL PROCEDURES

1. Notice of Intent to Appeal. An institution shall commence an appeal by submitting to ACOTE a Notice of Intent to Appeal within 10 days after receiving written notice from ACOTE of the adverse accreditation decision.
2. Grounds for Appeal. Within 30 days after receipt of notice of ACOTE's adverse accreditation decision, the institution must submit a written statement to ACOTE electronically (preferred), which specifies the institution's arguments in support of its contention that the decision was arbitrary, capricious, in disregard of ACOTE's accreditation criteria or procedures, or is not supported by substantial evidence in the record on which ACOTE predicated its decision. If submitted by mail, six copies of a written statement of the Grounds for Appeal must be provided.
3. Materials Submitted with Grounds for Appeal. An institution may not submit any documents, data, evidence, or other materials with its Grounds for Appeal unless such materials were in the record before ACOTE at the time it rendered its adverse accreditation decision.
4. Exception for Financial Information. In the event that the adverse accreditation decision included a finding(s) that the institution failed to comply with ACOTE standards concerning financial soundness, an institution may submit new financial information with its Grounds for Appeal under the following conditions: (a) the financial information is relevant and significant; (b) the information was unavailable to the institution and/or ACOTE prior to the adverse decision; (c) the financial data would materially impact the findings of ACOTE with respect to the financial viability of the institution; (d) the institution may provide new financial information only once; and (e) any subsequent final decision by ACOTE taking into account the new financial information does not present the institution with the basis for another appeal.
5. Personal Appearance and Representation by Legal Counsel. The institution has the right to a hearing before the Appeal Panel and may select a qualified individual(s) to represent the institution at the hearing. The institution also has the right to be represented by legal counsel at the hearing if it so chooses. Within 10 days of the scheduled hearing date, the institution shall provide ACOTE with the names, titles, and contact information for all representatives who will be participating in the appeal hearing on the institution's behalf. The institution shall also furnish the names and contact information for any legal counsel who will be representing the institution during the appeal proceedings and hearing.
6. Transcript of Hearing. The institution has the right to a written transcript of the appeal hearing and may exercise this right by notice to ACOTE at the time of filing of the Grounds for Appeal. ACOTE will provide the transcription services, but the institution will be responsible for the cost services. An institution may not videotape the appeal hearing.
7. Timing of Appeal Hearing. The appeal hearing will be conducted within 60 days of receipt of the institution's Notice of Intent to Appeal. ACOTE may extend this time for good cause. After consultation with the chief executive officer of the appealing institution, the date, time, and place for the appeal hearing shall be set by Chairperson of ACOTE. ACOTE shall give written notification to the institution of the date, time, and location of the appeal hearing no later than 10 business days prior to the hearing date. In ACOTE's sole discretion, an appeal hearing may be held using a web-based platform.
8. Hearing Format. The following process shall be observed during the appeal hearing:
 - a. The Chairperson of the Appeal Panel shall make an opening statement identifying the participants in the hearing, briefly describing the issues on appeal, the standard of review to be used by the Appeal Panel in deciding the appeal and summarizing the procedures to be followed during the hearing.
 - b. Following the Chairperson's opening statement, a representative of the AOTA Accreditation Department will make a brief statement describing ACOTE's accreditation decision and the grounds for that decision.

- c. The appealing institution will be afforded 30-40 minutes to present arguments as to why its appeal of ACOTE's adverse accreditation decision should be granted. The presentation may be made by one or more representatives of the institution and/or by the institution's legal counsel. The institution's presentation shall be limited to issues relevant to the adverse decision of ACOTE.
- d. After the institution has concluded its presentation, members of the Appeal Panel may question the representatives of the institution about its appeal or any of the issues raised by the institution during the hearing.
- e. Following the question-and-answer period, the Chairperson of the Appeal Panel shall permit the institution to make a brief concluding statement.
- f. The appeal hearing shall be concluded, and the record closed after the institution makes its concluding statement.

D. APPEAL HEARING PANEL

1. Appeal Hearing Panel. In the event of a timely and duly filed appeal from an institution, the Chairperson of ACOTE shall nominate three individuals who are currently serving on the Roster of Accreditation Evaluators (RAE) or have previously served on ACOTE and are familiar with the administration and functional components of the specific type of institution sponsoring the education program under appeal (e.g., community college, university). The Appeal Hearing Panel will consist of one public member (from industry, government, education, or individuals with accreditation experience from other accreditation agencies), one OT or OTA educator, and one OT or OTA practitioner. The Chairperson of ACOTE shall designate one of the members of the Appeal Hearing Panel to serve as the chairperson. No current member or staff member of ACOTE or the Board of Directors of the American Occupational Therapy Association (AOTA) may serve on the Appeals Board Panel. Members of the Appeals Board Panel shall be subject to applicable ACOTE policies, procedures, and ethics and conflicts requirements.
2. No Prior Involvement with Institution or Decision. No individual may be selected to serve on an Appeal Hearing Panel if he or she has had any prior involvement with the appealing institution or had any involvement with ACOTE's accreditation review which gave rise to the decision which the institution is appealing.
3. Notice to Institution of Appeal Hearing Panel Members. No later than 15 days prior to the scheduled appeal hearing date, ACOTE shall advise the appealing institution of the names and affiliations of the three individuals selected to serve on the Appeal Hearing Panel.
4. Objections to Appeal Hearing Panel Members. If the institution has good cause to believe that any member(s) of the Appeal Hearing Panel should not hear the institution's appeal, it must promptly notify the Chairperson of ACOTE in writing that it objects to the panelist(s) and state with specificity the grounds for the objection. The Chairperson of ACOTE will consider the objections and decide whether to replace the member(s) of the Appeal Hearing Panel with another individual(s) currently serving on the Roster of Accreditation Evaluators (RAE) or have previously served on ACOTE. The decision of the ACOTE Chairperson with respect to the members of the Appeal Hearing Panel is not an appealable decision.

E. SCOPE OF AUTHORITY OF THE APPEAL HEARING PANEL

Authority of the Appeal Hearing Panel. The Appeal Hearing Panel may affirm, remand, or amend the adverse accreditation decision made by ACOTE. A decision to affirm or amend the adverse action is implemented by the appeals panel or by the original decision-making body, at the agency's option. The action must be approved by a majority of the members of the Appeal Hearing Panel.

1. Affirm. If the decision of the Appeal Hearing Panel is to affirm (uphold) ACOTE’s accreditation decision, ACOTE’s decision becomes final as of the date of the Appeal Hearing Panel’s decision without further action by ACOTE.
2. Remand. If the decision of the Appeal Hearing Panel is to remand ACOTE’s accreditation decision back to ACOTE for further consideration, the Appeal Hearing Panel must identify the specific issues which the Panel has determined that ACOTE must address. ACOTE’s subsequent accreditation decision must be consistent with the Appeal Hearing Panel’s findings and decision. If upon remand, ACOTE renders an adverse accreditation decision which is predicated on grounds that were not considered by the Appeal Hearing Panel, the institution may appeal that action based only on the new grounds identified by ACOTE in its decision,
3. Amend. If the Appeal Hearing Panel amends ACOTE’s accreditation decision, ACOTE shall implement the decision in a manner that is consistent with the Appeal Hearing Panel’s ruling.
4. No Further Appeal. Except as otherwise specified, the decision of the Appeal Hearing Panel to affirm, remand, or amend ACOTE’s accreditation decision is not appealable.

F. APPEAL HEARING PANEL DECISION

1. Standard of Review. In considering what action to take on the institution’s appeal, the Appeal Hearing Panel shall utilize the standard of review set out in section B.1 of these rules. The Appeal Hearing Panel will determine whether each area of noncompliance or area of concern cited in ACOTE’s accreditation decision and challenged by the appealing institution is supported by substantial evidence in the record. If raised on appeal by the institution, the Appeal Hearing Panel shall also consider whether ACOTE’s accreditation decision contravened any applicable procedures, policies, practices, or standards.
2. Written Decision. After the hearing, the Appeal Hearing Panel shall prepare a written decision which details its decision in detail, specifies the reasons for its decision, and describes with particularity the action which it is taking—viz. to affirm, remand, or amend, ACOTE’s accreditation decision.
3. Transmittal of Decision. Within 30 days of the conclusion of the appeal hearing, the Chairperson of the Appeal Hearing Panel shall transmit the written decision of the panel to the Chairperson of ACOTE.
4. ACOTE Action. As promptly as possible after receipt of the Appeal Hearing Panel’s written decision, ACOTE shall take action consistent with the appeal decision. Pursuant to section E.2 of these rules, if the decision is to affirm the accreditation decision, no further action by ACOTE is required to make the decision effective.
5. Notice of Decision. Upon the decision of the Appeal Hearing Panel to affirm ACOTE’s accreditation decision, or upon further action by ACOTE to carry out the Appeal Hearing panel’s decision to remand or amend the accreditation decision, the Director of the AOTA Accreditation Department shall notify the appealing institution in writing of the final ACOTE decision. At the same time that the appealing institution is notified, the U.S. Department of Education, applicable state regulatory authorities, and the appropriate institutional accrediting agency will be notified of final ACOTE decisions to deny Candidacy Status, deny a request for reactivation, deny accreditation, or withdraw accreditation. The public will be notified of final ACOTE decisions through AOTA’s website within 24 hours of confirmation that the institution has received notification of ACOTE’s final decision.

G. APPEAL EXPENSES

1. Expenses of Appealing Institution. An appealing institution is fully responsible for all of its expenses in prosecuting its appeal.

2. Expenses of the Appeal Hearing Panel. The appealing institution shall also be exclusively responsible for all of the reasonable costs associated with the appeal hearing including the hearing room, transcription services, legal training services, travel, meals, and lodging for members of the panel.

H. NOTICES, CALCULATION OF DAYS, EXTENSIONS OF TIME

1. Notices. All notices and other correspondence referred to in these rules shall be send by certified mail, return receipt requested.
2. Days. All days referred to in these rules mean business days unless the period of time is 30 days or more in which case days refers to calendar days.
3. Extensions of Time. For good cause shown, the Chairperson of ACOTE may extend any time period provided for in these rules.

I. ARBITRATION

An adverse decision is a ruling by the Ad Hoc Appeal Hearing Panel (“the Appeal Committee”), which results in denial of candidate status, withdrawal of candidate status, withdrawal of preaccreditation, withdrawal of accreditation, or withholding of accreditation. Binding arbitration pursuant to these guidelines is the exclusive remedy for an institution which has received an adverse decision, and such arbitration shall govern any and all claims arising out of the appeal decision including the predicate actions of the Council and its Accreditation Committee. An accredited institution shall remain in accredited status during the pendency of the arbitration proceedings and until the arbitrator issues a final decision in the matter. The arbitration proceeding shall be considered confidential, and the parties and the arbitrator shall preserve the confidentiality unless required by law or disclosure is ordered by a court of competent jurisdiction.

J. STANDARD OF REVIEW IN ARBITRATION

The arbitrator’s review of the adverse decision by the Appeal Committee is limited to the question whether the decision of the Appeal Committee was supported by substantial evidence in the evidentiary record before the Appeal Committee at the time that it made its decision. It is not a de novo review, and the arbitrator may not consider evidence, documents, testimony, or other materials that were not in the record before the Appeal Committee. Accordingly, depositions, interrogatories, requests for admission, and other forms of fact discovery cannot be utilized by any party during the arbitration proceeding. The burden of proving that the decision of the Appeal Committee was not supported by substantial evidence on the record rests exclusively with the institution.

K. AUTHORITY OF THE ARBITRATOR

1. In the arbitration proceeding, the arbitrator shall only have the authority to affirm or reverse the decision of the Appeal Committee. The arbitrator shall have no power to amend or remand the Appeal Committee’s decision nor shall the arbitrator have the authority to order any actions reserved to the Council such as mandating an on-site visit, requiring the filing of reports, or submission of information or data to the Council.
2. If the arbitrator reverses the decision of the Appeal Committee, the Council shall execute the decision in a manner consistent with the decision. The arbitrator has no power to grant accreditation to the appealing institution because by federal regulation that power is the exclusive province of the Council. Further, the arbitrator shall have no authority to issue a monetary award, or any other relief not specified herein.
3. If the arbitrator affirms the decision of the Appeal Committee, the Council’s action shall become final immediately.

L. INITATION OF ARBITRATION PROCEEDING

1. The arbitration permitted by these guidelines shall be conducted and decided by a single independent and impartial arbitrator chosen from the National Roster of Commercial Arbitrators maintained by the American Arbitration Association (“AAA”).
2. To initiate arbitration of an adverse decision by the Appeal Committee, an institution must submit a written Notice of Intent to Arbitrate to the Council along with all applicable fees as specified by the Council. The Notice of Intent to Arbitrate and requisite fees must be submitted within 10 business days of receipt of the final adverse decision. The notice must include a concise statement of the contentions that the institution intends to advance during the arbitration proceeding as well as the relief or remedy which it will request.
3. Within 20 days of receipt of the institution’s Notice of Intent to Arbitrate, the Council shall request arbitration services from the American Arbitration Association and furnish the AAA with a copy of the Notice of Intent to Arbitrate; the names, addresses, and contact information for all of the parties; a statement of the arguments that the Council will advance during the arbitration; a copy of these Guidelines; and the applicable AAA fees.
4. After receiving the requisite information from the Council, the AAA shall provide a list of five proposed arbitrators (along with biographies for each) from the National Roster to the institution and to the Council. The institution and the Council may each object to two of the arbitrators on the list; any such objection must be lodged with the AAA within 7 business days of receipt of the list from the AAA. The AAA shall select the arbitrator for the proceeding from the list of arbitrators to whom no objection was lodged. The appointment of the arbitrator by the AAA shall be in writing to both parties and is final and not subject to review.
5. *Ex parte* communications by either party or by anyone acting on behalf of either party with the arbitrator or any candidate to be an arbitrator are expressly prohibited.

M. THE ARBITRATION RECORD

1. The arbitration record constitutes the complete evidentiary record upon which the arbitrator shall make her/his decision.
2. Within 30 calendar days of receipt of the notice of appointment of the arbitrator by the AAA, the Council shall transmit to the arbitrator and institution a true and complete copy of the record which was before the Appeal Committee when it made the decision for which review by the arbitrator has been sought. The record shall include the prior relevant decisions and actions of the Council, all documents, correspondence, spreadsheets, and other materials, as well as the institution’s pleadings before the Appeal Committee including its grounds for appeal and any exhibits, the transcript of the hearing before the Appeal Committee (if a hearing was held), and the final appeal decision.
3. Within 10 business days of receipt of the arbitration record, the institution may request the arbitrator to include in the record any material which the Council did not include in the arbitration record. Such additional materials may not be included in the record unless it is shown that they were included in the record before the Appeal Committee at the time it made its decision.
4. All materials in the arbitration record shall be prepared and distributed in electronic format.
5. When the arbitrator is satisfied that the record is complete and accurate, the Council and the institution shall be notified in writing that the record for the arbitration is finalized.

N. ARBITRATION BRIEFS

1. The institution shall submit its arbitration brief to the arbitrator and the Council within 20 calendar days of receipt of the notice from the arbitrator that the arbitration record is finalized. The brief shall set forth the institution's arguments why the decision of the Appeal Committee was not supported by substantial evidence on the record.
2. The Council may submit a response to the institution's arbitration brief within 20 calendar days of receipt of the institution's brief.
3. All briefs and accompanying documents shall be filed and distributed in electronic format.

O. HEARING

At the request of either the institution or the Council, a hearing shall be held before the arbitrator (which will entail additional fees to the AAA and compensation for the arbitrator). The hearing may be in-person, video, or telephone as agreed to by the parties and approved by the arbitrator. Conversely, the institution and the Council may agree to waive a hearing before the arbitrator and submit the matter for decision based exclusively on the arbitration record and the parties' briefs. In the case of an in-person hearing, the hearing shall be held at a location selected by the Council.

1. The arbitrator, after consultation with the parties, shall set the date, time, and length of the hearing whether it be in-person, by video, or telephone. The hearing shall be held within 45 calendar days of the arbitrator's receipt of all the briefs in the matter.
2. Within 15 calendar days of the scheduled date of the hearing, the parties shall notify (in writing) the arbitrator and the opposing party of the names and titles of all the individuals who will attend the hearing on their behalf. The parties may be represented by legal counsel and if so represented, the parties shall also identify in writing their legal counsel within 15 calendar days.
3. The arbitrator shall conduct the hearing, set the procedures for the hearing, establish the order of proof, and question the parties as appropriate.
4. An arbitration hearing, regardless of the platform, is confidential and not open to the public. A stenographic transcript of the hearing shall be made and will be available to the parties upon request and payment of related costs.

P. ARBITRATOR'S DECISION

1. The arbitrator shall render her/his decision within 60 days of the conclusion of the hearing or, if there is no hearing, within 60 days of receipt of all the briefs of the parties. The decision shall be in writing, include a detailed statement of the reasons for the decision, and be signed by the arbitrator.
2. As described more fully in Section K above, the authority of the arbitrator is limited to affirming or reversing the decision of the Appeal Committee; the arbitrator can neither remand the matter to the Council nor amend the decision of the Appeal Committee.

Q. ARBITRATION FEES

1. The institution's Notice of Intent to Arbitrate must be accompanied by payment of a nonrefundable fee of \$2,000 to cover the administrative expense of the Council in connection with the proceedings.

2. The AAA charges a fee for providing administrative services for an arbitration proceeding for which the institution requesting arbitration is entirely responsible. The amount of the fee is specified in the current schedule of fees maintained by AAA.
3. The AAA may require a deposit prior to any hearing to account for the expense of the arbitration as well as the arbitrator's fee. Such a deposit shall be paid by the institution. However, the AAA shall provide an accounting to the institution and the Council and return to the institution any amount remaining in the deposit after the conclusion of the arbitration proceeding.
4. The failure to pay any of the required fees or make the required deposit will suspend the arbitration proceedings until the fees are paid. Upon request of the Council or upon her/his own volition, the arbitrator may terminate the proceeding for non-payment of fees.
5. Expenses of the arbitration proceedings, including the recording and transcription of proceedings and the meeting room or the video/audio platform for a virtual proceeding, are shared equally by the institution and the Council.

R. VENUE OF CLAIM OR PROCEEDING

By applying for accreditation from the Council, the institution agrees to exhaust all appeal opportunities and to submit fully and faithfully to final, binding arbitration proceedings as set forth in ACOTE Policy IV. D. APPEALS PROCESS before filing any suit, claim or proceeding relating to accreditation or accredited status, whether a claim for damages or injunctive or declaratory relief, and brought against the Accreditation Council for Occupational Therapy (ACOTE), the Council or a member of the Council, the Accreditation Committee or a member of the Accreditation Committee, a member of an appeal panel, member of a visiting team, or other agent or employee of the Association, Council, or Accreditation Committee (collectively "Council Related Party") because he or she acted on their behalf and in the discharge of his or her duties. Jurisdiction and venue of any suit, claim, or proceeding shall only be in the U.S. District Court for the District of Columbia, and if the Council or any Council Related Party is the prevailing party in such action, it shall be entitled to an award from the Court of its reasonable attorney's fees and costs.