February 9, 2024 Commission Meeting

Rationale for the proposed revisions to the following policies:

Revisions for Initial Approval – Additions are noted in green and deletions are noted in red and are crossed out.

- **BP219 - Appeals** - The proposed revisions are to include the option for Arbitration after Appeal Committee action. An Arbitration option is required by the U.S. Department of Education.

- **BP221 - Institutional Financial Obligations Related to Litigation** - The proposed revisions concern the development of an Arbitration policy and process as required by the U.S. Department of Education.
An appeal is defined as a request for an independent reconsideration of an Adverse Action (as defined in TRACS Policy BP211) of the Accreditation Commission. An institution may make only one appeal to such Adverse Actions. Sanctions (as defined in TRACS Policy BP211) are not appealable. When the Accreditation Commission takes an Adverse Action against an institution, the President of TRACS shall include a copy of this policy with the written notification of the Accreditation Commission’s action. Throughout the appeal process, the institution filing the appeal bears the burden of proof.

A. Grounds for an Appeal

1. An institution may base its appeal on grounds that the action of the Accreditation Commission was:
   a. Based on misinformation;
   b. Based on factual error;
   c. Based on bias;
   d. Arbitrary;
   e. The result of the Accreditation Commission’s failure to follow its published procedures; or
   f. Based solely on financial information and the institution is able to produce verified information that the financial problems which led to the adverse action have been corrected
2. An appeal based on a ground not identified under item 1 above will not be considered.

B. Filing an Appeal

1. An institution’s appeal must be authorized by its governing board as demonstrated in board minutes.
2. The request must be received by the President of TRACS within fourteen days of the date the institution received official notification of the adverse action.
3. The request for an appeal must include payment in full for all outstanding fees and reimbursements due to TRACS and a non-refundable fee in the amount of $15,000.
   a. A request for an appeal without payment in full for all outstanding fees and reimbursements due to TRACS and a check for $15,000 will be considered insufficient and will not be processed unless such payment is received within the fourteen-day deadline.
b. If payment in full for all outstanding fees and reimbursements due to TRACS and a check for $15,000 is not received within the fourteen-day deadline, the institution will be deemed to have waived its right to an appeal and the Adverse Action taken by the Accreditation Commission will become final.

4. The request for an appeal must state specifically the action which is being appealed and the specific grounds (A., 1. a. - f.) for the appeal. The request for an appeal may not be amended after the deadline for its receipt by TRACS.

5. The institution must identify any dates when its Chief Executive Officer or his/her designee would not be available to appear before an Appeal Committee.

The appeal process will follow the steps outlined below (C. through M.).

C. Composition of the Appeal Committee

Upon the receipt of an appropriately filed appeal, the President of TRACS shall assemble an Appeal Committee (process described in section D of this policy) to hear and render a decision regarding the appeal. An Appeal Committee shall consist of five members, with at least one member of the Committee from each of the following categories: (1) a representative of the public, (2) a faculty member from either a member or non-member institution, and (3) an administrator from either a member or non-member institution.

TRACS defines a representative of the public as an individual who is not (1) an employee, member of the governing board, owner, or shareholder of, or consultant to, an institution or program that either is accredited or pre-accredited by TRACS or has applied for accreditation or pre-accreditation with TRACS, (2) a member of any trade association or membership organization related to, affiliated with, or associated with TRACS; or (3) a spouse, parent, child, or sibling of an individual identified in section (1) or (2) of this definition. Current members of the Accreditation Commission may not serve on an Appeal Committee.

D. Process for the Selection of Appeal Committee Members

1. Within fourteen days of the date TRACS receives a notice of appeal, the President of TRACS shall provide to the institution the names and affiliations of nine potential Appeal Committee members, including two specified as public representatives, two specified as faculty members, and two specified as administrators. In order to confirm that potential Appeal Committee Members are qualified to serve in their assigned roles, potential member shall be vetted using the Review Worksheet for the Selection of Potential Appeal Committee Members.

2. If the institution has reason to believe that any of the proposed members of the Appeal Committee would be unable to render an unbiased decision on the appeal, the institution will have seven days from the date it receives the names of the potential Appeal Committee members to request that any of the potential members be excluded from the Appeal Committee. The request for exclusion must state the specific reason(s) for the belief that the identified individual(s) would be unable to render an unbiased decision and must cite the criteria detailed in the TRACS Conflict of Interest Policy (BP113) which would disqualify the individual from serving on the Appeal Committee.
3. The President of TRACS shall review any request to exclude a proposed member of the Appeal Committee and evaluate that request against the TRACS conflict of interest policy, BP113 - Conflicts of Interest.
   a. If the President of TRACS accepts the institution’s request to exclude a potential member, that person will not serve on the Appeal Committee.
   b. If at least five potential qualified members remain, the President of TRACS shall select the five who will serve on the Appeal Committee and appoint a Chair from among those members.
   c. If fewer than five potential qualified members remain, the President of TRACS shall identify additional potential members of the Appeal Committee and present those potential members to the institution for consideration.
   d. The procedures detailed above will be used with additional potential members of the Appeal Committee.
   e. The President of TRACS shall follow the procedures in this section until there are five members of the Appeal Committee, including at least one member who represents the public, one member who is a faculty member, and one who is an administrator.
   f. If the President of TRACS does not honor an institution’s request to exclude a potential member of the Appeal Committee, the President of TRACS shall provide a written explanation for that decision to the institution. Such a decision is not appealable.

4. Once the Appeal Committee roster has been finalized, the members shall receive detailed training specific to the appeal before the appeal process begins. This training includes information regarding TRACS appeals policies, procedures, TRACS Accreditation Standards, conflicts of interest, confidentiality, and the role of a member of an Appeal Committee. All members of an Appeal Committee will sign and submit an Appeal Committee Member Verification Form after the training is complete and before hearing the appeal. This form is used to verify that the Appeal Committee has participated in the training, that he / she agrees to serve on the Appeal Committee, that he / she is doing so without a conflict of interest, and that he / she will abide by confidentiality expectations.

E. Institutional Documentation

1. All supporting documentation which the institution wishes to have considered by the Appeal Committee must be submitted within sixty days of the date the institution received notice from the President of TRACS of the Adverse Action. The documentation must clearly show its relevance to the specific grounds for the appeal.
2. Only documentation of actions completed by this deadline will be presented for consideration in the appeal. Actions which are proposed to occur or will be completed after this deadline will not be considered in the appeal.
3. The documentation for each action completed must clearly state whether the institution’s actions occurred before or after the Adverse Action was imposed.

F. Time and Location of Meeting with the Appeal Committee

1. The President of TRACS will select a date for the meeting that is at least thirty days, but no more than sixty days from the last day the institution has to submit its documentation.
2. The date selected for the meeting shall not be a date identified in the notice of appeal as one when the Chief Executive Officer of the institution or his/her designee cannot be present unless there is no alternative available within the required timeframe.
3. The meeting will be scheduled for one day, with the members scheduled to arrive the day before the meeting and leave the day after the meeting.
4. The President of TRACS shall select a venue for the meeting which minimizes the institution’s expenses.
5. At the discretion of TRACS, the institution involved in the appeal, and the members of the Appeal Committee, appeals may be conducted via teleconference or other similar technology.

G. Procedures of Appeal Committees

1. The Chair of the Appeal Committee shall preside at the meeting of the Appeal Committee and make rulings regarding time limits, admissibility of evidence, and procedural matters.
2. Appeal Committee meetings are closed to the public.
3. The institution may have no more than six individuals present, one of whom is the Chief Executive Officer or his/her designee, and all who are present must be able to speak to the grounds for the appeal. No consultants may be present.
4. The institution may be represented by counsel and counsel may participate in the institution’s presentation.
5. TRACS may have no more than six individuals present, other than the members of the Appeal Committee, and all who are present must be able to speak to the grounds for the adverse action.
6. TRACS may be represented by counsel and counsel may participate in TRACS presentation.
7. Presentations:
   a. The institution will make a presentation of no more than one hour and will be heard first followed by questions from the Appeal Committee.
   b. TRACS will make a presentation of no more than one hour followed by questions from the Appeal Committee.
   c. Counsel for the institution or TRACS may present or assist in the presentations.
   d. Only the representatives of the institution are to be present in the hearing during the institution’s presentation and only TRACS representatives are to be present in the hearing during the presentation by TRACS.
8. Appeals are administrative hearings and thus not subject to the rules of evidence and procedure.
9. The institution may not challenge the competency of members of the Appeal Committee.
10. Only members of the Appeal Committee may ask questions.
11. The Appeal Committee will record the proceedings when the institution is present, but not during its proceedings with TRACS or during its consideration and discussions regarding evidence and not when voting. The institution may request a copy of the recorded proceedings, with any cost associated with the request included in its costs for filing the appeal.
H. Decision of the Appeal Committee

1. The Appeal Committee shall consider the evidence presented after the representatives of the institution and TRACS have been excused.
2. The Appeal Committee shall review the evidence of the institution’s compliance with TRACS Standards as of the time the Accreditation Commission imposed the Adverse Action and any evidence that the institution has come into compliance TRACS Standards up to the deadline for submission of institutional documentation.
3. The Appeal Committee shall give no weight to evidence which demonstrates partial compliance with TRACS Standards, or which indicates that compliance may occur after the deadline for submission of institutional documentation.
4. All decisions made by the Appeal Committee shall be reached by majority vote of its members and shall be reflected on the Appeal Committee Decision Form.
5. The Appeal Committee shall affirm the decision of the Accreditation Commission if it finds the institution has not demonstrated, as appropriate to the appeal that the action of the Accreditation Commission was not based on the reason(s) cited in the appeal.
6. If the Appeal Committee finds the institution has demonstrated, as appropriate to the appeal, that the action of the Accreditation Commission was based on the reason(s) sited in the appeal, the Appeal Committee shall amend or reverse the decision of the Accreditation Commission. In such cases, an applicant institution which was denied Candida status by the Accreditation Commission must be found to be in compliance with all Institutional Eligibility Requirements (IERs) if the Appeals Committee chooses to amend or reverse the decision of the Accreditation Commission.
7. If the Appeal Committee, based on the information available, determines that it is unable to affirm, amend, or reverse the decision of the Accreditation Commission or that an Applicant institution is not in compliance with all IERs, it shall remand the decision to the Accreditation Commission for further consideration. In doing so, the Appeal Committee shall identify specific issues that the Accreditation Commission must consider.
8. The Appeal Committee shall forward its decision regarding the appeal to the President of TRACS, the institution’s Chief Executive Officer, and the Chair of the institution’s governing board within fourteen days of the date of the hearing. This notice shall be sent by electronic means, express mail or its equivalent.

I. Effect of the Appeal Committee’s Decision and Arbitration Option

1. If the Appeal Committee affirms the adverse action decision of the Accreditation Commission, an arbitration process is available to institutions that seek to contest such a decision by the Appeal Committee. TRACS Policy BP221 – Arbitration describes the arbitration process. Institutions desiring to contest a decision made by an Appeal Committee (by arbitration) must notify TRACS within thirty days of the Appeal Committee’s decision, otherwise, the decision of the Appeal Committee shall become final at the end of the thirty day period.
2. If the Appeal Committee reverses the adverse action decision of the Accreditation Commission, the institution shall maintain the accreditation status held by the institution before the Adverse Action was imposed by the Accreditation Commission.
3. If the Appeal Committee amends the adverse action decision of the Accreditation Commission, the Accreditation Commission shall act on the decision at its first meeting
following the notice of amendment and apply the amended adverse action as of the date of that meeting.

4. If the Appeal Committee remands the adverse action decision of the Accreditation Commission back to the Accreditation Commission for further consideration, the Accreditation Commission shall consider the specific issues identified by the Appeal Committee at its first meeting following the notice of remand. The Accreditation Commission shall then appropriately notify the institution of its final decision regarding the institution’s status.

5. Once the Appeal and any possible Arbitration processes are concluded, the decision of the Appeal Committee or Arbitration panel (if applicable) is final and not subject to further appeal or arbitration.

6. The Accreditation Commission shall act in a manner which is consistent with the decision of the Appeal Committee or Arbitration panel (if applicable).

J. Costs of an Appeal

1. If TRACS costs of the appeal exceed the $15,000 fee paid by the institution, TRACS shall provide the institution with a statement of the amount of the additional costs. The institution is to pay these costs within thirty days of receiving the statement.

2. The institution shall be responsible for its own costs associated with the appeal.

K. Withdrawal of Appeal.

1. An institution may withdraw its request for an appeal at any time up to the start of the appeal hearing.

2. The institution’s governing board must authorize such a request.

3. If the institution withdraws its request after the fourteen-day limit for filing an appeal has passed, the institution will not be able to refile the appeal and the Adverse Action being appealed will continue in force as a final decision with the effective date being the date of the written notice withdrawing the appeal.

4. If the institution withdraws its appeal it will be liable for any expenses already incurred by TRACS for the process to that point.

L. Computation of Time

1. The counting of days begins on the day after the triggering event.

2. If the last day allowed for a response is a Saturday, Sunday, or legal holiday, the next business day will be deemed to be the last day.

M. Notifications

1. Any notice that the TRACS President sends to an institution regarding an appeal shall be sent either electronically with response requested or by any delivery method that requires a signature upon delivery.

2. The date any representative of the institution signs accepting delivery of the notice is deemed to be the date of notification.

3. Institutional replies should be sent either electronically with response requested or by any delivery method that requires a signature upon delivery.
4. The date a representative of TRACS signs the return receipt shall be deemed the date of notification.

N. Institutional Status During Appeal and Public Notice

1. During the appeal, the appealing institution shall maintain the status it held with TRACS prior to the Adverse Action.
2. Inquiries regarding the accreditation status of an institution which has filed an appeal shall be answered by explaining the Adverse Action the Accreditation Commission took against the institution and that the institution is appealing that action.
3. Public notice of an Adverse Action, in accordance with TRACS policy, shall be made once an appeal is withdrawn or the Appeal Committee has issued its decision or arbitration is finalized.
BP221
Arbitration / Institutional Financial Obligations Related to Litigation

Reference: 20 U.S.C. §1099b(e), 34 C.F.R. §602.20(e), and Federal Arbitration Act, 9 U.S.C. §§1-16

Adoption Date: April 2010
Last Revision Date: April 2011 June 2024

The Arbitration Policy of the Transnational Association of Christian Colleges and Schools (TRACS or the Commission) shall apply only to final decisions rendered by an Appeal Committee pursuant to TRACS policy BP219 Appeals. TRACS desires to ensure fair and expeditious procedures for an institution to submit disputes regarding adverse actions prior to the taking of any legal action.

As a condition of applying for initial accreditation (Candidate status) and for continued membership with TRACS, all Candidate or member institutions consent to resolving disputes regarding unfavorable decisions rendered by an Appeal Committee in accordance with the arbitration process set forth in this policy as required by 20 U.S.C. §1099b(e) and 34 C.F.R. §602.20(e).

TRACS will inform all institutions subject to this policy of its requirements and their consent as a condition of accreditation.

A. Arbitration and Governing Law

1. Governing Law: The arbitration process in this policy is governed by the Federal Arbitration Act, 9 U.S.C. §§1-16 (Act). This will be deemed to preempt any State arbitration provisions that may otherwise be applicable.

2. Jurisdiction: The arbitrators shall have jurisdiction to determine whether the decision of an Appeal Committee was rightly decided. The arbitrators will have no authority to award monetary damages.

3. Decisions: All decisions of the arbitrators shall be by majority vote.

B. Arbitration Process

1. Institutions desiring to contest a decision made by an Appeal Committee (by arbitration) must notify TRACS within thirty days of the Appeal Committee’s decision, otherwise, the decision of the Appeal Committee shall become final at the end of the thirty day period.

2. As a member of the Council for Higher Education Accreditation (CHEA), when arbitration is required, TRACS shall utilize the CHEA Arbitration Program that is available to all CHEA member agencies.

3. The CHEA Arbitration Program is an impartial process with trained arbitrators to facilitate non-binding arbitration between institutions of higher education and recognized postsecondary accrediting organizations, consistent with federal law and regulation. The arbitration is designed to address and resolve disputes regarding adverse final accreditation decisions.

4. The CHEA Arbitration Program, including the arbitration process and requirements for all parties involved, is described on the CHEA website. - https://www.chea.org/chea-arbitration-program
C. Financial Obligations Related to Litigation

An institution that chooses legal action regarding an accreditation decision and subsequently either withdraws from or loses its case is responsible for all costs incurred by TRACS in defending its position, including reasonable attorney fees.

An institution which does not pay TRACS required fees or reimburse TRACS for site visits or other services is responsible for all costs incurred by TRACS in collecting those debts, including reasonable attorney fees.