POLICY #10
APPEAL PROCESS AND SUBMISSION AND REVIEW OF NEW FINANCIAL INFORMATION SUBSEQUENT TO ADVERSE ACTION

The purpose of this policy is to provide the opportunity for review of an adverse action. The appeal process allows a program to appeal an adverse action taken by the ACEN Board of Commissioners.

DECISIONS ELIGIBLE FOR APPEAL
A program may only appeal an adverse action taken by the ACEN Board of Commissioners. An adverse action is defined as a denial of initial accreditation or a denial of continuing accreditation.

GROUNDS FOR APPEAL
There are two grounds for appeal:
1. The ACEN Board of Commissioners’ decision was arbitrary; that is, it was unreasonable and not based on, or consistent with, the published Standards and Criteria or the ACEN published policies and/or procedures; or
2. The ACEN Board of Commissioners failed to follow its published policies and/or procedures, and this failure was significant in leading to the Board of Commissioners’ decision.

SUBMISSION AND REVIEW OF NEW FINANCIAL INFORMATION SUBSEQUENT TO ADVERSE ACTION
If an adverse action is taken by the ACEN Board of Commissioners based solely on financial grounds, including Commissioners action to deny initial accreditation or to deny continuing accreditation, a nursing program may submit and seek review of new financial information prior to the action becoming final if the following conditions are met:
1. The financial information was unavailable to the program until after the adverse action was taken; and
2. The financial information is significant and bears materially on the financial deficiencies identified in support of the adverse action.

A nursing program shall seek the review of new financial information only once. A nursing program may seek review of new financial information prior to appealing the adverse action. In such case, any determination by the ACEN Board of Commissioners made with respect to the review of new financial information shall not provide a basis for an appeal. Alternatively, a nursing program may submit and seek review of new financial information as part of the appeal of the adverse action consistent with this policy and the procedures set forth below.

NOTICE OF APPEAL
An adverse action taken regarding the accreditation status of a nursing program may be appealed within 30 calendar days of the program’s receipt of notice of such adverse action. A program shall initiate an appeal by filing a written notice of intent to appeal via hand delivery, certified/registered mail, or another means that provides written evidence of the delivery. The notice of appeal shall be sent by the Chief Executive Officer of the appellant program’s governing organization to the ACEN Chief Executive Officer. Upon receipt of the notice, the ACEN shall maintain the prior accreditation status of the nursing program until the disposition of the appeal.

The request of a program for an appeal process must identify the specific alleged procedural failures or the specific manner in which the decision was arbitrary: that is, it was unreasonable and not based on, or consistent with, the published ACEN Standards and Criteria or ACEN published policies and/or procedures.

The appeal process will be completed within a reasonable amount of time following the date of receipt of the notice of intent to appeal. The date for the Appeal Hearing will be determined by the availability of Appeal Committee members to hear the case and by the establishment of a quorum.

The final determination of the date will be made by the Chief Executive Officer after consultation with the Appeal Committee members and the appellant program. The ACEN will make every effort to honor the preference of the appellant program but cannot guarantee the date.

The notice of intent to appeal fee must be submitted with the written notice of intent to appeal. The appeal process fee is due within 45 calendar days of the submission of the notice of intent to appeal. The appeal will be considered withdrawn if the program fails to submit the appeal process fee within 45 calendar days of the submission of the notice of intent to appeal.

The Appeal Hearing will not be scheduled until the appeal process fee has been paid in full. Additionally, the appellant program will be charged a non-refundable administrative appeal fee, which must be submitted with the written notice of intent to appeal. Credit cards are not an acceptable form of payment for the notice of intent to appeal fee, the appeal process fee, or the non-refundable administrative appeal fee.

If the travel, lodging, meal, legal, and other expenses directly related to the appeal process incurred by the ACEN exceed the cumulative total of the notice of intent to appeal fee and appeal process fee, the program will be responsible for the difference and will receive a subsequent invoice for the additional expenses not covered by the fees. Credit cards are not an acceptable form of payment for invoices for appeal-related expenses. If the travel, lodging, meal, legal, and other expenses directly related to the appeal process incurred by the ACEN are less than the cumulative total of the notice of intent to appeal fee and appeal process fee, the program will be refunded the difference. The appellant program is responsible for all of the travel, lodging, meal, legal, and other expenses directly related to the appeal process incurred by the ACEN regardless of the outcome, disposition, and/or cancellation of the Appeal Hearing.
APPPOINTMENT OF AN APPEAL COMMITTEE

Seven members from the Appeal Committee membership shall be appointed to an Appeal Committee to examine a specific appeal. Five members of the Appeal Committee shall represent nursing education of the same program type as the appellant program; one member of the Appeal Committee shall represent nursing practice; one member of the Appeal Committee shall represent the public. Current members of the ACEN Board of Commissioners may not serve on the Appeal Committee.

Seven members from the Appeal Committee membership shall be appointed to an Appeal Committee to examine a specific appeal.

1. For governing organizations/nursing programs that the ACEN serves only as the programmatic accreditor, five members of the Appeal Committee shall represent nursing education of the same program type as the appellant program; one member of the Appeal Committee shall represent nursing practice; and one member of the Appeal Committee shall represent the public as described in ACEN Policy #2 Representation on Site Visit Teams, Evaluation Review Panels, and the Board of Commissioners.

2. For governing organizations/nursing programs that the ACEN serves as the institutional accreditor (Title IV gatekeeper), four members of the Appeal Committee shall represent nursing education of the same program type as the appellant program; one member of the Appeal Committee shall represent administrators; one member of the Appeal Committee shall represent nursing practice; and one member of the Appeal Committee shall represent the public as described in ACEN Policy #2 Representation on Site Visit Teams, Evaluation Review Panels, and the Board of Commissioners.

The ACEN Chief Executive Officer shall appoint the Appeal Committee. A member of the Appeal Committee shall recuse him/herself from the Appeal Committee if there is a conflict of interest or an appearance of a conflict of interest. Appeal Committee members are subject to the requirements of ACEN Policy #1 Code of Conduct and Conflict of Interest.

The ACEN Chief Executive Officer shall provide notice of the Appeal Committee membership to the appellant program. The appellant program will have the opportunity to review the proposed Appeal Committee members for any conflicts of interest. Within three business days of appellant program’s receipt of the names of the proposed Appeal Committee membership, the appellant program shall provide written notice of any assertions that a proposed Appeal Committee member has a conflict of interest to the ACEN Chief Executive Officer. If the ACEN Chief Executive Officer determines a conflict of interest exists, another Appeal Committee member shall be appointed within three business days with notification to appellant program. The appellant program shall have an opportunity to review the appointed Appeal Committee member for any conflict of interest. Within three business days of the appellant program’s receipt of the name of the appointed panel member, the appellant program shall provide written notice of any assertion that the substituted Appeal Committee member has a conflict of interest to the ACEN Chief Executive Officer. If the ACEN Chief Executive Officer determines that the panel member has a conflict of interest, the procedures of this paragraph shall be repeated until an Appeal Committee member is secured and the Appeal Committee is determined. The ACEN Chief Executive Officer’s determination of a conflict of interest shall be final.
Where necessary to avoid a conflict of interest or in other exceptional circumstances, the ACEN Chief Executive Officer may, in consultation with the appellant program, select individuals outside of the approved list maintained by the ACEN of persons qualified to serve as Appeal Committee members as long as such panel member otherwise meets the qualifications to be a panel member.

PROCEDURES FOR GOVERNING THE APPEAL PROCESS AND APPEAL HEARING
The Appeal Process and Appeal Hearing is a collegial one, and it shall not be bound by technical or formal rules of evidence or pleading. The Appeal Hearing is an administrative process, not judicial hearing, with each party to the appeal advocating its position. Therefore, legal Rules of Evidence and legal procedures, such as the examination of the competency of members of the Appeal Committee, the use of sidebars, or cross-examining those present, are prohibited. Throughout the Appeal Process and Appeal Hearing, the appellant program will bear the burden of proof.

The ACEN is responsible for sending all material concerning the appeal to members of the Appeal Committee; for providing support services, including lodging, transportation and meeting space for the Appeal Committee members; for confirming the date of the Appeal Hearing; and for securing the services of a court reporter.

The following procedures must be adhered to in an appeal.

DOCUMENTS FOR THE HEARING
1. At least 30 calendar days before the date of the Appeal Hearing, the ACEN must submit to the appellant program and the Appeal Committee documents (administrative record) used by the ACEN Board of Commissioners leading to and arriving at the decision regarding the program. The administrative record includes the following:
   a. materials pertaining exclusively to the appellant program case that were used by the Board of Commissioners as the basis for its decision;
   b. minutes of the ACEN Board of Commissioners pertaining exclusively to the appellant program case;
   c. a historical summary of the actions taken by the ACEN involving the appellant program;
   d. the official ACEN correspondence leading to the adverse action and also related to the appeal;
   e. materials pertaining exclusively to the appellant program case that were used by the Evaluation Review Panel as the basis for its recommendation; and
   f. other documents bearing on the substance of the appeal.
2. At least 14 calendar days before the date of the Appeal Hearing, the appellant program must submit to the ACEN Chief Executive Officer the brief it intends to present at the Appeal Hearing. The brief must specifically direct Appeal Committee members to citations in the administrative record which justify the appellant program’s grounds for appeal. The appellant program must cite page numbers of the text supporting its position. The appellant program is required to submit 10 copies of its brief. Failure of
the appellant program to provide a brief within the specified period time shall be cause
for case dismissal by the Appeal Committee.

3. At least 10 calendar days before the date of the Appeal Hearing, the ACEN must submit
the appellant program’s brief to the Appeal Committee.

4. At least seven calendar days before the date of the Appeal Hearing, the ACEN must
submit to the appellant program and Appeal Committee, its response to the appellant
program’s brief.

5. Neither the appellant program nor the ACEN may submit additional briefs or any other
materials during or following the Appeal Hearing.

THE HEARING

1. The appeal hearing shall be held in the Atlanta, Georgia, Metropolitan Area or some/all
of the proceedings may take place remotely, by telephonic or other electronic means,
so long as both parties and all Appeal Committee members can participate equally. The
ACEN Chief Executive Officer shall decide the specific location or format of the appeal
hearing; hearing location or format shall not be disputable by the governing
organization/nursing program.

2. The Appeal Committee will select a Chair who will be responsible for ensuring effective
implementation of the appeal process and for filing the Appeal Committee’s decision
with the ACEN Chief Executive Officer.

3. The Chair of the Appeal Committee may have a preliminary conference, in person or by
telephone, either at the Chair’s request or at the request of a party, to discuss the
procedures for the appeal. The conference will be conducted by the Chair with
representatives from both parties in attendance.

4. At least 14 calendar days before the date of the Appeal Hearing, the appellant program
and the ACEN must submit to each other the names and titles of those individuals
selected to appear as witnesses, representatives, and counsel, one of whom must be the
Nurse Administrator. Once the names are submitted to each other there may be no
substitutions, except as may be approved by the Chair.

5. The ACEN Board of Commissioners bases its adverse action on reports, institutional
responses, documentation, and evidence presented by the institution at the time of its
review. The Appeal Committee bases its decision on the published Standards and
Criteria or the ACEN published policies and/or procedures in effect at the time of the
ACEN Board of Commissioners’ review.

6. If the appellant program failed to present documentation and evidence available at the
time the ACEN Board of Commissioners took adverse action, it cannot make that
information available for consideration by the Appeal Committee under any
circumstances. In addition, neither the ACEN nor the appellant program may include
new information/materials as part of their briefs presented to the Appeal Committee
nor may they introduce new evidence during the Appeal Hearing unless, in the case of
an institution removed from accreditation based solely on finances, it may make available
new and verifiable financial information that became available since adverse action was
taken and that is material to the reason for the ACEN Board of Commissioners’
adverse action. It is incumbent upon all parties to ensure that all evidence to be
presented at the Appeal Hearing is submitted as required by ACEN Policy #10 Appeal
Process and Submission of New Financial Information Subsequent to Adverse Action.
7. The Appeal Hearing is closed to the public and shall include only those persons who can speak to the grounds for appeal.

8. Both parties are present during the Appeal Hearing. If the governing organization/nursing program or the ACEN does not attend the Appeal Hearing after receiving proper notice of the date, time, and location, the Appeal Committee shall proceed with the Appeal Hearing in the absence of all/some representatives of the party. The Appeal Committee will consider an emergency or other unforeseen relevant circumstance (e.g., natural disaster) that prevents a representative(s) from a party from attending the Appeal Hearing face-to-face as scheduled; only in these cases, technology may be used to allow a party to present its case. If a party fails to present its case, the Appeal Committee shall make a decision without the party’s presentation of its case.

9. No more than five persons and one counsel shall appear for each of the parties. The nurse administrator of the appellant program shall appear before the Appeal Committee.

10. Attendees will be seated with counsel and may testify from where they sit. There will be no sequestration of witnesses.

11. The Appeal Committee may ask questions of the attendees, and their questions shall not count against the time allowed either side.

12. Counsel may not cross-examine witnesses for the other party and may not voice objections.

13. The presentation of the parties, including any questions of the Appeal Committee, shall be transcribed by a court reporter provided by the ACEN.

14. Since the appellant program bears the burden of proof, the appellant program will be the first party to present its case during the Appeal Hearing.

15. The Chair of the Appeal Committee will limit the presentation of the appellant program and the ACEN to one hour each and shall notify both before the Appeal Hearing of such time limit. The one hour does not include a time period for questioning from the members of the Appeal Committee. At the request of the appellant program or the ACEN, the Chair may allow time for final response by either party, not to exceed one-half hour. These time limits can be extended only by the Chair. Since the institution bears the burden of proof, the institution will be the first party to present a final response and may reserve some time to conclude.

16. Within seven calendar days of the conclusion of the Appeal Hearing, the Chair of the Appeal Committee shall inform the ACEN Chief Executive Officer and Chair of the ACEN Board of Commissioners in writing of the Appeal Committee’s decision. This notification must include specific reasons for the decision, must address each of the grounds for appeal identified by the appellant program, and must address the findings with regard to standards on which the ACEN Board of Commissioner’s decision was based. A PDF version of the letter of notification will be emailed and will be deemed acceptable by transmission. The original letter will be next-day express mailed to the chief executive officer of the appellant program’s governing organization and to the ACEN Chief Executive Officer.

17. Within 30 calendar days of receiving the decision from the chair of the Appeal Committee, the ACEN will notify the U.S. Department of Education of the final decision.
18. Within 30 business days of receiving the decision from the chair of the Appeal Committee, the ACEN will notify the governing organization/nursing program of the final decision.

CONDITIONS
1. The appellant program bears the burden of proof.
   a. To gain an AMENDMENT of the ACEN Board of Commissioners’ decision, the appellant program must present evidence which, in the judgment of the Appeal Committee, demonstrates that the ACEN Board of Commissioners’ decision was arbitrary, that is, was unreasonable and not based on, or consistent with, the published Standards and Criteria or ACEN published policies and/or procedures.
   b. In order to gain a REMAND, the appellant program must present evidence which, in the judgment of the Appeal Committee, demonstrates that the ACEN Board of Commissioners failed to follow its published policies and/or procedures and that this failure was significant in leading to its decision. An appellant program removed from accreditation based solely on finances may also gain a remand if it presents new and verifiable financial information that has become available since the adverse action was taken and that is material to the reason for the ACEN Board of Commissioners’ decision.
   c. If the appellant program fails to provide evidence adequate to gain an AMENDMENT or a REMAND, the initial decision of the ACEN Board of Commissioners must be AFFIRMED.

The accreditation status of an appellant program for which an appealable action has been taken shall remain as it was before such action until the 30-calendar-day period for filing an appeal has expired. Receipt of a notification of an appeal from an appellant program by the ACEN Chief Executive Officer during this 30-calendar-day period will cause that previous status to be continued until a final decision is made on the appeal. Final Accreditation Decision section in Policy #4 Types of Commission Actions for Initial and Continuing Accreditation.

RIGHTS AND LIMITATIONS
1. The appellant program and the ACEN have the following rights in an appeal:
   a. To have available counsel or a representative of their choice to advise them at the Appeal Hearing. Counsel representing each of the parties will be permitted to present or assist in the presentation of the case during the Appeal Hearing. Counsel will not be permitted to conduct a cross-examination of representatives from the opposing party.
   b. If the Chair of the Appeal Committee, the appellant program, or the ACEN requests a pre-hearing conference, the conference will be conducted by the Chair with representatives from both parties in attendance.
   c. To present written or oral testimony and/or evidence pertinent to the grounds for the appeal consistent with this ACEN Policy #10 Appeal Process and Submission of New Financial Information Subsequent to Adverse Action. Only the Appeal Committee has the right to question individuals present at the Appeal Hearing. All individuals who testify will testify under oath as administered by the court reporter.
d. To receive a transcript and any other related records of the Appeal Process and Appeal Hearing, upon payment of the costs of reproduction.

e. The Appeal Committee’s discussions and deliberations, all votes taken, and the discussion on the final decision itself are not conducted on the record.

f. Presentations by the appellant program and the ACEN, questions asked of these representatives by the Appeal Committee, and responses to such questions are to be recorded and transcribed. Transcripts are a matter of record of the proceedings.

2. The decision of the ACEN Board of Commissioners shall be reviewed based exclusively upon the conditions existing at the time of that decision, except in the case of an appellant program removed from accreditation based solely on finances that has available new and verifiable financial information that is material to the ACEN Board of Commissioners’ adverse action, and shall be subject to the following limitations:

   a. No evidence concerning the remedying of deficiencies since the time of the ACEN Board of Commissioners’ adverse action shall be presented at or before the Appeal Hearing under any circumstances. The Appeal Committee is prohibited from considering such evidence in reaching its decision. No new evidence made available since the time of the ACEN Board of Commissioners’ adverse action shall be presented at or before the Appeal Hearing. The Appeal Committee is prohibited from considering such evidence in reaching its decision. The only exception is that of the case of an appellant program removed from accreditation based solely on finances that has available new and verifiable financial information that is material to the ACEN Board of Commissioners’ adverse action, in which case the matter shall be remanded for further review.

   b. The Appeal Committee shall not, in its decision or otherwise, instruct the ACEN staff, the Evaluation Review Committee, or the ACEN Board of Commissioners to consider evidence concerning the remedying of deficiencies since the date of the ACEN Board of Commissioners’ original decision, except in the case of an appellant program removed from accreditation based solely on finances for which the matter is remanded.

3. The Chair of the Appeal Committee must disallow evidence presented by the appellant program or the ACEN:

   a. Which is not pertinent to the grounds for appeal;

   b. Which concerns the remedying of deficiencies since the time of the ACEN Board of Commissioners’ decision;

   c. Which was not available to the Board of Commissioners at the time of its decision, except in the case of an appellant program removed from accreditation based solely on finances that has available new and verifiable financial information that is material to the ACEN Board of Commissioners’ decision.

4. The Appeal Committee members may not disclose the content of confidential discussions or deliberations leading to its decision.

5. The Appeal Committee members may not disclose its decision prior to the Chair’s notification to the ACEN Chief Executive Officer and the Chair of the ACEN Board of Commissioners.

ACTIONS
1. The Appeal Committee, after the presentation of oral and/or written testimony, must determine whether the appellant program has demonstrated either of the following:
   a. That the ACEN Board of Commissioners failed to follow its published policies and/or procedures and that this failure was significant in leading to the Board of Commissioners’ decision; or
   b. That the ACEN Board of Commissioners’ decision was arbitrary, that is, was unreasonable and not based on, or consistent with, the published Standards and Criteria or ACEN published policies and/or procedures.

2. The Appeal Committee shall act within the following limitations:
   a. **AFFIRM** the ACEN Board of Commissioners’ decision
      i. The Appeal Committee shall AFFIRM the Commission’s decision, unless it finds that the appellant program:
         1. Demonstrated that the ACEN Board of Commissioners failed to follow its published policies and/or procedures and that this failure was significant in leading to the Board of Commissioners’ decision;
         2. Demonstrated that the ACEN Board of Commissioners’ decision was arbitrary, that is, was unreasonable and not based on, or consistent with, the published Standards and Criteria or ACEN published policies and/or procedures;
         3. Removed from accreditation based solely on finances, produced evidence that it has available new and verifiable financial information and that the financial information is material to the ACEN Board of Commissioners’ decision.
      ii. The decision by the Appeal Committee to AFFIRM the ACEN Board of Commissioners’ decision is final and is not subject to further appeal.
   b. **AMEND** the ACEN Board of Commissioners’ decision
      i. The Appeal Committee shall AMEND the decision of the ACEN Board of Commissioners if it finds that the appellant program has demonstrated that:
         1. The ACEN Board of Commissioners’ decision was arbitrary, that is, was unreasonable and not based on, or consistent with, the published Standards and Criteria or ACEN published policies and/or procedures.
      ii. The decision by the Appeal Committee to AMEND the ACEN Board of Commissioners’ decision is final and is not subject to further appeal.
   c. **REMAND** the ACEN Board of Commissioners’ decision
      If the appellant program demonstrated that the ACEN failed to follow its published policies and/or procedures, the Appeal Committee shall remand to the specific group where the failure occurred.
      i. The Appeal Committee shall REMAND the decision of the ACEN Board of Commissioners if it finds that the appellant program has demonstrated that the ACEN failed to follow its published policies and/or procedures, that the failure was significant in leading to the ACEN Board of Commissioners’ decision, and that the failure was significant in leading to the adverse action.
ii. The Appeal Committee shall REMAND the case to the specific group (i.e., peer evaluators on site visit team, Evaluation Review Panel, or Board of Commissioners) where the failure occurred. The Appeal Committee will explain its basis for a ruling that differs from that specific group. The peer evaluators on the site visit team and/or Evaluation Review Panel will reconsider the case and forward its recommendation to the next level of review.

iii. The Appeal Committee must act in a manner consistent with the Committee’s decision(s) or instruction(s).

iv. When remanded to the site visit team, to the extent reasonably possible, all the original peer evaluators on the site visit team will reconsider the case. The peer evaluators will reconsider the case and make a second accreditation recommendation, which may or may not be the same as the first recommendation.

v. When remanded to the Evaluation Review Panel, there is no guarantee that the Evaluation Review Panel will be any of the original peer evaluators that made the previous recommendation. The Evaluation Review Panel assigned the case will reconsider the case and make a second accreditation recommendation, which may or may not be the same as the first recommendation.

vi. When remanded to the Board of Commissioners, there is no guarantee that the Board of Commissioners will be the exact same peer evaluators that made the original decision. The current Board of Commissioners will reconsider the case and make a second accreditation decision, which may or may not be the same as the first decision.

vii. If the Appeal Committee REMANDS the case, the reconsideration shall occur at the next realistic accreditation review cycle following the decision of the Appeal Committee.

If the ACEN Board of Commissioners affirms its original decision, the appellant program may again appeal based on the Grounds for Appeal. The case will be heard again by an Appeal Committee composed of different members, which will then make a final decision to AFFIRM or AMEND. The Appeal Committee cannot REMAND again.

1. The Appeal Committee shall REMAND the decision of the ACEN Board of Commissioners if it finds that the appellant program demonstrated that the ACEN failed to follow its published policies and/or procedures, that the failure was significant in leading to the ACEN Board of Commissioners’ decision, and that the failure was significant in leading to the adverse action.

2. The Appeal Committee must explain the basis for its decision or instructions to REMAND the Board of Commissioners.

3. If the Appeal Committee REMANDS the case, the reconsideration shall occur at the next regularly scheduled Board of Commissioners meeting following the decision of the Appeal Committee.

4. Acting in a manner consistent with the Appeal Committee’s decision to REMAND or instructions, the Board of Commissioners will reconsider the case and make a second accreditation decision, which may or may not be the same as the first accreditation decision.
5. The second accreditation decision cannot be appealed.