

Council for Higher Education Accreditation

CHEA
Arbitration
Program

Non-Binding Arbitration Between Institutions and Accrediting Organizations

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I. Background

A. Council for Higher Education Accreditation (CHEA) and Facilitation of Accreditation Arbitration.

The Council for Higher Education Accreditation (CHEA) is a Washington DC-based institutional membership organization established in 1996 by a referendum of college and university presidents. CHEA is an association of degree-granting colleges and universities and recognizes institutional and programmatic accrediting organizations. CHEA is the only organization devoted exclusively to accreditation, serving as a powerful advocate for the responsible independence of colleges and universities in matters of academic quality.

CHEA has developed an impartial process with trained arbitrators to facilitate arbitration between institutions of higher education ("institutions") and post-secondary accrediting organizations consistent with federal law and current U.S. Department of Education regulations. This arbitration process is available to CHEA members, all post-secondary accrediting organizations, and institutions to resolve disputes regarding adverse accreditation decisions. Participation in the CHEA Arbitration Program is not a condition required for recognition or continued recognition of an accrediting organization by CHEA

B. What is Non-Binding Arbitration?

Non-binding arbitration is a private form of dispute resolution, conducted before an impartial arbitrator, which emanates from the agreement of the parties. The arbitrator will make a determination of the rights of the parties to the dispute. The Arbitrator's determination is not binding upon them, and no enforceable arbitration award is issued. The "award" is in effect an advisory opinion of the arbitrator's view of the respective merits of the parties' cases. Non-binding arbitration is used in connection with attempts to reach a negotiated settlement. If either party is dissatisfied with the outcome, further action may be pursued through the federal courts.

C. When Do Accreditation Disputes Between Institutions and Accrediting Organizations Go Through Arbitration?

The federal statutes and U.S. Department of Education regulations require accredited institutions to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action. See 20 U.S.C. § 1099b(e) and 34 CFR § 602.20. Accredited institutions may submit any dispute to arbitration following the final decision of its appeal of a decision to deny, withdraw or terminate its accreditation. After the institution has exhausted its appeal options (excluding arbitration), pursuant to the policies and procedures of its accrediting organization it may seek to initiate CHEA arbitration. The specific federal statute and regulation requiring initial arbitration are below.

D. Why the Requirement?

20 U.S. Code § 1099b - *Recognition of accrediting agency or association* and 34 CFR § 602.20 - *Notice and application procedures for establishing, reestablishing, maintaining, or expanding institutional eligibility and certification* require institutions that are accredited by U.S. Department of Education-recognized accreditors to agree to an “initial arbitration rule” in order to ensure their accreditation will be recognized by the Secretary.

20 U.S. Code § 1099b - Recognition of accrediting agency or association

(a)CRITERIA REQUIRED No accrediting agency or association may be determined by the Secretary to be a reliable authority as to the quality of education or training offered for the purposes of this chapter or for other Federal purposes, unless the agency or association meets criteria established by the Secretary pursuant to this section. The Secretary shall, after notice and opportunity for a hearing, establish criteria for such determinations. Such criteria shall include an appropriate measure or measures of student achievement. Such criteria shall require that....

(e)INITIAL ARBITRATION RULE The Secretary may not recognize the accreditation of any institution of higher education unless the institution of higher education agrees to submit any dispute involving the final denial, withdrawal, or termination of accreditation to initial arbitration prior to any other legal action.

§ 602.20 Enforcement of standards

(a) If the agency's review of an institution or program under any standard indicates that the institution or program is not in compliance with that standard, the agency must

(e) All adverse actions taken under this subpart are subject to the arbitration requirements in 20 U.S.C. 1099b(e).

II. Processes and Procedures

A. Scope of Arbitration

If an institution elects to dispute an adverse action of an accrediting organizations' Commission decision (e.g., the final denial, withdrawal, or termination of accreditation) beyond the appeals process administered by the accrediting organization, its dispute shall be resolved through arbitration prior to any other legal action 20 U.S.C. 1099b(e).

B. Eligibility to Participate in CHEA Arbitration Program

The CHEA arbitration program is open to all CHEA-recognized and/or U.S. Department of Education-recognized accrediting organizations and to all higher education institutions accredited by a recognized U.S. accrediting organization.

C. Filing Deadline

An institution must file for arbitration within twenty (20) business days following the decision on the final appeal.

D. Grounds for Arbitration

The question(s) to be resolved by the arbitrator are limited to whether the accrediting organization's process or decision was (a) not reasonably supported by the facts and evidence in the Record on Appeal, i.e., the record at the time the adverse action was appealed; (b) inconsistent with or attributable to a misapplication of the applicable accreditation standards or accrediting organization's published policies and procedures; (c) not informed by new relevant evidence which was not reasonably available at the time the accrediting organization decision was made; and/or (d) the result of bias, a conflict of interest, or unethical behavior. The fact that the Record on Appeal considered by the accrediting organization could have also supported a different decision is not sufficient grounds for an arbitrator to remand the decision if the accrediting organization's decision is supported by the Record on Appeal.

E. Initiation of Arbitration

This process is initiated by an institutional representative authorized to act on behalf of the institution. Upon completing all appeal options that exist with the accrediting organization (excluding arbitration) and receipt of a written notice of a final decision from the decision-making body, the institution must within twenty (20) business days:

- Submit a letter requesting a review by an independent arbitrator to both CHEA at arbitration@chea.org and the accrediting organization; and
- Submit the written notice of a final decision from the governing body of the accrediting organization, as well as a brief letter describing the grounds for appeal and the exact issues to be resolved as referenced in section *Grounds for Arbitration*.

CHEA will then notify the accrediting organization that it has ten business days to opt into the CHEA arbitration process if it so chooses. If the accrediting organization chooses to participate in the arbitration process, the institution has ten business days from the date the accrediting organization opts in to submit the applicable non-refundable arbitration fee(s) and estimated costs listed in the Fee Schedule.

F. Assignment of Arbitrator

Arbitration will be conducted by a single arbitrator who has familiarity and experience in higher education or related areas and has competency in the federal rules governing accrediting organizations.

CHEA will provide a list of qualified arbitrator candidates. The institution and accrediting organization will use good faith efforts to agree to an arbitrator from CHEA's list.

If parties are unable to agree on an arbitrator, CHEA will select the arbitrator. Note that arbitrators are required to disclose any circumstances which may impact their ability to be impartial (including any conflict of interest or direct or indirect relationship with one or both of the parties).

G. Conflict of Interest and Recusal

The selected arbitrators shall be governed by CHEA's Conflict of Interest Policy, which requires recusal of an arbitrator with a conflict of interest. In the event any party becomes aware of a potential conflict of interest with a selected arbitrator, the party must raise that concern immediately to the arbitrator, and no later than two (2) days upon learning of the potential conflict of interest.

H. Ex Parte

Neither the institution, the accrediting organization, nor anyone acting on their behalf shall communicate *ex parte* with the arbitrator or anyone from the CHEA arbitrators list.

I. Pre-Arbitration

The arbitrator will schedule a pre-arbitration meeting, which may be held virtually, to discuss the proceedings, clarification of the issues and claims, scheduling of the arbitration hearing, and any other preliminary matters.

Following the pre-arbitration meeting, the arbitrator will issue any relevant written pre-arbitration hearing instructions to all parties.

1. Exchange of Information Between Parties

Arbitration should be a time-and cost-efficient process. Each party will provide a pre-arbitration brief outlining any disputed facts and respective positions. The arbitrator may, at their discretion, require:

- A list of the documents and materials that will be used in the arbitration hearing to support or defend each party's' positions
- Documentation requested by the arbitrator, in addition to documents and materials provided by the parties
- A list of the identity and title of any person that will attend and/or testify at the arbitration hearing
- The exchange of all documents and materials, pre-arbitration briefs, witness lists and other information between parties
- Page limits for the parties' briefs
- Alternative deadlines and extensions for exchanges of documentation and submission of pre-arbitration briefs
- Allowances and limitations for using documents in the arbitration hearing that were not reasonably available at the time of the final decision of the governing body of the accrediting organization

All documents and materials to be used by any party in the arbitration, irrespective of format, must be made available to the arbitrator and other party at least thirty (30) business days prior to the arbitration hearing (unless the arbitrator sets a different date). The arbitrator has full authority and discretion to resolve any disputes between the parties related to the exchange of documents, materials, and other information.

2. Representation of a Party

Parties are not required to retain representation by counsel or other authorized representatives. A party who intends to be represented is required to provide the name, address, and contact information for their representative at least ten (10) business days before the representative will participate in the proceedings in any manner, including the pre-arbitration conference.

3. Venue: Date, Time, and Place

The venue for the arbitration shall be agreed upon by the parties. If both parties are unable to agree, CHEA will identify the venue for the arbitration. The determination will be made after considering the positions of the parties and the dispute, and a reasonably convenient location, considering parties' ability to travel and other pertinent circumstances.

The arbitration hearing may occur by video conference (Zoom, Teams, or other electronic means) or in-person, and parties commit to:

- Respond promptly to scheduling communications
- Cooperate to identify the earliest possible date for the arbitration hearing
- Follow the arbitration hearing schedule as set

Notice of the arbitration hearing date, time, and location will be sent at least thirty (30) business days prior to the hearing date unless parties agree to an alternative notice period.

J. Briefs

All pre-arbitration briefs presented on behalf of the institution must be filed at least twenty (20) business days prior to the arbitration hearing, and the accrediting organization may respond to the institution's brief with a brief at least ten (10) business days before the arbitration hearing.

K. Arbitration Hearing

The institution bears the burden of proof that the decision of the Commission as ratified by Appeal Board is erroneous based on a clear and convincing standard. The arbitrator has full authority and discretion to resolve any administrative matters that arise prior to and during the arbitration hearing.

L. Arbitrator's Decision

- The arbitrator will render a decision based on the Record for Appeal, the briefs of the parties, and information and testimony presented during the arbitration hearing.
- The arbitrator may affirm, affirm in an amended form, or remand the Commission decision with recommendations.
- The decision of the arbitrator will include a summary of the reasoning supporting the decision and shall be delivered to the institution and accrediting organization within thirty (30) business days following the arbitration hearing; the arbitrator may extend this deadline for good cause and upon notice to both parties.
- The decision of the arbitrator may be considered by state and federal courts in any subsequent proceeding.

M. Written Record of Hearing and Record-Keeping

A transcript of the arbitration hearing will be made and will be provided in electronic form to the arbitrator and each of the parties.

If any portion of the transcript is disputed, the arbitrator has full discretion to determine the text of the final transcript. The transcript will serve as the official record of the arbitration hearing.

CHEA will maintain, in electronic form, complete and accurate records of all materials associated with any arbitration that may be initiated by an institution.

N. Confidentiality

Information and materials related to or created in connection with the arbitration should be treated as confidential and may not be disclosed to any third party, directly or indirectly, without the prior written authorization of the other party, except:

- As required in connection with any federal or state regulatory proceedings or pursuant to judicial process;
- In the context of any subsequent legal proceeding pursued by the parties, provided that such disclosures shall be made under provisions of confidentiality; and
- To the extent reasonably required by parties' governing body and professional advisors, provided that any such persons or entities to whom information is disclosed are bound by written agreement or professional code of ethics or duties not to disclose the information.

The foregoing restrictions on disclosure do not apply to information generally made available to the public on a website or through other public disclosures. Furthermore, information designated by an institution or accrediting organization as confidential or proprietary will be kept confidential and not disclosed to any third party unless disclosure is compelled by legal process.

O. Accreditation Status During Proceedings

The accreditation of the institution remains effective until the arbitration decision is rendered.

P. Waiver of Rules

If either party knows that any outlined rules have not been followed, it must object in writing, preferably prior to the arbitration hearing or it will lose the right to object that the rule has not been followed.

Q. Timebound Considerations

The arbitration shall be held within one hundred and twenty (120) business days following the submission of the Record of Appeal to the Appeals Panel (unless parties agree on an alternative timeline).

III. Arbitrators

Arbitrators serve as the party to hear evidence and resolve disputes between parties through a cost-effective alternative to traditional court proceedings.

A. Eligibility

Individuals are encouraged to apply to serve as arbitrators if they have the following types of skill sets or experiences including but not limited to:

- Legal expertise and/or experience in compliance and/or arbitration matters
- In-depth subject matter expertise in accreditation or similarly regulated fields
- A peer evaluator for a CHEA-recognized accrediting organization
- An executive member of a CHEA-recognized accrediting organization
- An institutional member of an accrediting team
- General Counsel for an institution
- Member of a decision-making body for a CHEA-recognized accrediting organization

1. Qualifications of an Arbitrator

Individuals are encouraged to apply if they have the following types of skill sets or experiences: legal expertise and/or experience in compliance and/or arbitration matters; in-depth subject matter expertise in accreditation or similarly regulated fields; a peer evaluator for a CHEA-recognized accrediting organization; an executive member of a CHEA-recognized accrediting organization; member of an accrediting team; General Counsel for an institution; a committee member for a CHEA-recognized accrediting organization. Nominees must have experience in the higher education community; be without any pending or legal criminal activities; be able to travel to D.C. if needed; have competence in the use of technology meeting platforms; and be available for CHEA training. Additional qualifications for nomination are the ability to demonstrate impartiality in reviewing documents and decision-making, and familiarity or knowledge of accreditation processes

2. Duties of an Arbitrator

- Act independently and impartially
- Promptly identify to CHEA any actual or perceived conflict of interest or existing or prior relationship with any party
- Adhere to the arbitration rules and procedures
- Fix a time and place for arbitration which is convenient to the parties
- Efficiently bring the arbitration hearing to a resolution

3. Powers of an Arbitrator

- Administer an oath of truthfulness to the parties and act as a quasi-judicial authority
- Hear evidence and require the production of relevant documents
- Recommend resolutions

4. Term Length

Arbitrators must be available to serve for a period of three (3) years, after which they can be reappointed. An arbitrator will receive comprehensive training prior to their first assignment and will be required to complete annual training.

B. Application



Application for Accreditation Arbitrator

This application form provides the opportunity to detail your interests and expertise to serve as an arbitrator. By completing this application, you confirm that if selected, you will:

- Serve as an arbitrator for a three-year period (and if offered, consider term-renewals)
- Complete the required initial training and annual refresher training
- Be prompt and forthright in disclosing any actual or perceived conflicts of interest and recuse yourself as appropriate
- Maintain all confidentiality requirements

Full Name:
Email Address:
Mailing Address:
Physical Address:
Available phone contact:
Employer (<i>please note most recent former employer if retired</i>):
Professional Title:
Personal Title preference:
Current or Former Higher Education Institution Affiliation (if applicable)
List three references CHEA may contact who can speak to your nomination (<i>full name, title, email address</i>): 1. 2. 3.
Provide a brief statement regarding your interest in serving as a CHEA Arbitrator and describe any experiences or expertise that support this application.

Have you ever had any experience with higher education accreditation? If “yes,” please describe.		
What is your level of skills with the following applications:		
Proficient	Moderate	Need assistance
Zoom meetings		
TEAMS meetings		
Microsoft Word		
Are you willing and able to travel if necessary?		
<ul style="list-style-type: none"> • Yes • No 		

Please upload a brief CV or resume not to exceed three pages.

Self-nominations: _____ Nominated by another person _____

All travel and hotel accommodations to Washington, DC for training and arbitration processes will be reimbursed with original receipts.

C. Selection

CHEA will issue a “Call for Applicants” annually. The pool of trained arbitrators will be a cohort of qualified individuals with diverse backgrounds from various geographic locations. Selected arbitrators may be selected to serve outside their geographical location. Service is based on demand and whether there are no objections to the selection by the two parties participating in the arbitration.

D. Training

All individuals who have accepted the opportunity to serve in the role of CHEA Arbitrator will be required to complete training. Two types of training will be offered and required, (1) Initial Training and (2) Continuing/Refresher Training. Training may be face-to-face or virtual.

(1) Initial Training

Training will be available online (an in-person training option may be available as circumstances allow) and will include or address:

- Purpose of arbitration
- Role and responsibilities of the arbitrator, including identifying conflict of interest
- Conflict resolution best practices
- General information about the accreditation process, i.e., application to Board decision, reporting requirements, maintaining accreditation, Standards documents (commonality and compliant examples), agency-specific policies (what to look for, etc.)
- Differences between institutional and programmatic accreditation
- Policies and Procedures that are specific to complaints, reconsideration, appeals, etc.
- The importance of the mission of the institution and characteristics of its student population

(2) Continuing/Refresher Training

Continuing training is required and will be available online (an in-person training option may be available as circumstances allow) and will include or address:

- Previous training topics and information
- Case studies to “practice” the arbitration process

CHEA will host webinars and may offer a session at the CHEA Annual Conference to explain the arbitration program, how it works, eligibility criteria for arbitrators, associated benefits, etc.

Conference sessions will focus on how the arbitration process is beneficial to CHEA members and CHEA-recognized accrediting organizations.

IV. Costs and Fees

CHEA establishes a fee for the arbitration process. The associated costs include:

- Services of the arbitrator
 - Per diem, lodging and travel
 - Hearing transcript, recordings and preparation and distribution of written reports
- Services by CHEA include:
 - Facilitate agreement of the parties to participate in arbitration
 - Schedule Arbitrator
 - Facilitate transcription of the hearing
 - Fix schedules for documents and hearing
 - Store arbitration documents
 - Schedule meetings and hearing for the arbitration
- Administrative cost incurred by CHEA (Section C)
- Any additional cost to complete the arbitration and requested by the parties shall be the responsibility of the individual parties

A. Advance Deposit Requirements

Parties are required to deposit a sum equal to the estimated cost of the proceedings in advance of the proceedings. This deposit will be equally divided between the parties.

Payment of all fees and estimated expenses (including the hearing location if applicable) will be placed, in escrow, with CHEA. Upon completion of proceedings, CHEA will render an accounting of expenses to parties and return any unused-deposits accordingly.

All fees and estimated expenses will be equally divided between the parties and must be paid before the arbitration begins.

B. Arbitrators Fees

Arbitrators are compensated a flat fee of \$1,000 per day, with a three-day minimum which will allow for: (1) preparation and reviewing documents, (2) hearing engagement, and (3) a written decision.

In addition to compensation, Arbitrators will be reimbursed for actual costs, including but not limited to mileage, economy flights, hotel, meals, ground transport.

Arbitrators serve as independent contractors and shall complete a W-9 and CHEA will issue a 1099 as appropriate. Serving as an arbitrator establishes no employment relationship with CHEA.

C. Administrative Fees

As a non-profit organization, administrative fees are rendered charges to compensate it for its costs of providing administrative services. A non-refundable arbitration fee of \$3000 is required from each party to initiate the process. The total administrative fee is subject to adjustment based on CHEA's assessment that.

- A party's extreme hardship warrants a deferral or reduction of administrative fees
- A party's geographic location warrants adjustments to align with geo-pricing
- The matter's complexity or simplicity may warrant consideration of higher or lower fees

If an arbitration hearing extends more than one day, an additional fee of \$1500 per day, evenly split between the parties, is payable to CHEA.

CHEA member institutions will receive a \$500 discount on their initial deposit. CHEA-recognized accrediting organization will receive a \$500 discount on their initial deposit.

PLEASE NOTE: Any falsification of information in the application process will eliminate consideration. Arbitrators may be required to submit a criminal background check for clearance.