

POLICY #38

Binding Arbitration

This Arbitration Policy of the Accreditation Commission for Education in Nursing (ACEN) shall apply only to an adverse action by the ACEN Board of Commissioners that **have has** been fully and finally determined by a written decision of the Appeal Committee pursuant to ACEN Policy #10 Appeal Process and Submission and Review of New Financial Information Subsequent to Adverse Action.

As a condition of seeking initial accreditation or continuing accreditation with the ACEN, each nursing program seeking initial accreditation and each nursing program seeking continuing accreditation consents to resolving disputes regarding a decision by the Appeal Committee in accordance with the binding arbitration procedures set forth in this Policy as required by 20 U.S.C. §1099b(e) and 34 C.F.R. §602.20(e).

I. Binding Arbitration

a. Governing Law

The arbitration process in this Policy shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1-16 (Act), which shall be deemed to pre-empt any State arbitration provisions that may otherwise be applicable.

b. Binding Award

The award of the arbitrators rendered pursuant to this Policy shall be final and binding on the parties. A judgment may be entered upon the award by the application of either party to the Atlanta Division of the United States District Court for the Northern District of Georgia in accordance with the Act.

c. Jurisdiction of the Arbitrators

The arbitrators shall have jurisdiction to determine whether the final decision of the Appeal Committee was rightly decided and to make all rulings necessary and incidental thereto. The arbitrators shall have no jurisdiction or authority to enter an award for monetary damages. The award of the arbitrators shall be limited to affirmance or reversal of the decision of the Appeal Committee and the reasons therefor.

d. Decisions by the Arbitrators

All decisions by the arbitrators shall be by majority vote.

2. Arbitrators

a. Roster of Arbitrators

The ACEN shall maintain a roster of arbitrators. An arbitrator may be nominated by any governing organization/nursing program whether accredited by the ACEN or not, by the proposed arbitrator, or by ACEN Staff. There shall be no limit to the number of persons who may be nominated by any entity, and there shall be no limit to the number of arbitrators on the roster, though the ACEN will endeavor to have at least 12 persons listed on the roster. **Arbitrators**

will be composed of nurse educators, nurse clinicians, and the public, and may not include current ACEN Board of Commissioners members or current ACEN appeal committee members. The term an arbitrator may remain on the roster is five years unless otherwise removed or resigned. The term of an arbitrator may be renewed, and there is no limit to the number of terms an arbitrator may serve. The ACEN will endeavor to ensure that the roster of arbitrators is representative of the diversity of ACEN-accredited programs.

b. Qualifications of Arbitrators

An arbitrator must be a nurse educator, nurse clinician, or a representative of the public. ~~with at least ten years' experience as an educator and with at least ten years' experience in accreditation matters.~~

~~To be considered for the roster of arbitrators:~~

- ~~1. An arbitrator may have experience in nursing education and in the accreditation of nursing programs.~~ For an arbitrator serving as a nurse educator, the majority of the person's career experience must be as a nurse educator with a minimum of ten years' experience in nursing education.
- ~~2. An arbitrator need not be currently affiliated with any institution of higher education, with any nursing program, or with any accredited institution.~~ For an arbitrator serving as a nurse clinician, the majority of the person's career experience must be as a nurse clinician with a minimum of ten years' experience in a role as a nurse clinician.
3. For an arbitrator serving as a representative of the public may have experience from inside or outside higher education. If a representative is from inside higher education then the representative may be currently working at a governing organization with a nursing program however, the representative must be from outside nursing education and from outside the accreditation of nursing programs.
4. An arbitrator need not be a lawyer or have legal training, though both are considered desired qualifications.
5. An arbitrator need not have any formal training in arbitration, though such training is considered a desired qualification.
6. No person who ~~has previously been employed by~~ is a current or previous employee of the ACEN may serve as an arbitrator.
7. No person who is a current or previous employee with any nursing education accrediting agency, the American Association of Colleges of Nursing (AACN), or the National League for Nursing (NLN) may serve as an arbitrator.

c. Acceptance of Arbitrators

The ACEN Chief Executive Officer (CEO) shall review the qualifications of any nominated arbitrator and shall accept, reject, or request further information concerning the nominated arbitrator. The CEO's decision is final and not reviewable. A person who has previously been nominated as an arbitrator and

rejected may be re-nominated.

d. Removal of Arbitrators

The CEO may remove from the roster any arbitrator for good cause in the sole judgment of the CEO as stated in writing. The CEO's decision is final and not reviewable.

3. Commencement of an Arbitration Proceeding

a. Notice of Arbitration, Deposit, and Payment of Expenses

A The governing organization of the nursing program shall submit a notice of arbitration in writing by its Chief Executive Officer to the ACEN CEO by email ~~or facsimile transmission~~ within ten business days of the governing organization's/nursing program's receipt of the written final accreditation decision of the Appeal Committee. The original notice of arbitration shall be sent by overnight delivery with proof of receipt to the ACEN CEO at the same time it is sent by email ~~or facsimile transmission~~. The original notice of arbitration shall be accompanied by a non-refundable check [per the fee schedule](#) as a deposit payable to the ACEN for expenses such as the travel, lodging, meals, and venue charges incurred by the arbitrators and the ACEN in convening and pursuing the arbitration; credit cards are not an acceptable form of payment. The governing organization/nursing program submitting the matter to arbitration is responsible for all expenses of the arbitration, including ACEN's representation/counsel fees. If the expenses ~~actually~~ incurred exceed the deposit, the governing organization/nursing program will be assessed the additional amount. The arbitrators shall submit expense vouchers to the ACEN in the form and manner prescribed by the ACEN for the reimbursement of reasonable expenses incurred.

b. Contents of the Notice

The notice of arbitration need not be in any particular form but must clearly identify the decision of the Appeal Committee and state that the governing organization/nursing program submits the decision of the Appeal Committee to binding arbitration in accordance with this Policy. The notice need not specify the basis for the arbitration. The notice of arbitration is sufficient to challenge the decision of the Appeal Committee on all legal grounds.

c. Effect of the Notice

A timely notice of arbitration in accordance with this Policy shall have the immediate effect of continuing the nursing program in accreditation with the ACEN in the same status as it was prior to the Board of Commissioners adverse action until the arbitration award is rendered. The ACEN shall provide notice to any constituencies previously noticed of the result of the appeal that a timely notice of arbitration has been filed and the effect thereof.

4. Selection of the Arbitrators

a. Number and Method of Selection

An arbitration proceeding under this Policy shall require three arbitrators – **one nurse educator, one nurse clinician, and one representative of the public**. No arbitrator who resides in the same state as the main campus of the nursing program or who has a conflict of interest with the nursing program per ACEN Policy #1 Code of Conduct and Conflict of Interest may be eligible for selection as an arbitrator. Upon receipt of the Notice of Arbitration, the ACEN CEO shall provide to the Chief Executive Officer of the nursing program's governing organization the names of eligible arbitrators from the current Roster of Arbitrators.

1. The Chief Executive Officer of the nursing program's governing organization shall select one arbitrator from the current Roster of Arbitrators within five business days of receipt of the Roster, and shall so notify the ACEN CEO in writing within one business day of making a selection.
2. The ACEN CEO shall select one arbitrator from the current Roster of Arbitrators and shall so notify the Chief Executive Officer of the nursing program's governing organization in writing within five business days of the nursing program's selection.
3. The ACEN CEO shall so notify the selected arbitrators in writing with a copy of the selection letter to the Chief Executive Officer of the nursing program's governing organization. These two arbitrators shall confer and select one additional arbitrator from the current Roster of Arbitrators within five business days and shall so notify the ACEN CEO in writing within one business day of making a selection. The ACEN CEO shall so notify the selected arbitrator within five business days in writing with a copy of the selection letter to the Chief Executive Officer of the nursing program's governing organization.

b. Conflict of Interest and Recusal

The selected arbitrators shall be governed by the Conflict of Interest provisions of ACEN Policy #1 Code of Conduct and Conflict of Interest. The ACEN CEO shall provide the selected arbitrators with a copy of ACEN Policy #1 and request that any selected arbitrator who has a conflict of interest recuse themselves and so notify the ACEN CEO. In the event that a selected arbitrator discovers a conflict after the convening of the arbitration, such an arbitrator shall recuse themselves from further proceedings **and replaced with an arbitrator in the same category (i.e., nurse educator, nurse clinician, representative of the public)**. In the instance of a selected arbitrator being unable to serve or continue serving for any reason, the entity originally selecting such arbitrator shall select a replacement in accordance with this Policy.

c. Convening the Arbitration and Administrative Conference

Once three arbitrators without a conflict of interest have been selected, it is the responsibility of the arbitrators to convene within a reasonable period of time by

conference call, video conference, or in person; to select a chair, who shall preside at all further proceedings and shall ensure this policy is complied with; and to establish the time and manner of the arbitration proceedings within the procedures set forth in this Policy. All dates for the taking of actions under this Policy thereafter are calculated from ~~that~~ the date the chair is selected. At the request of any party or upon the arbitrators' own initiative, the arbitrators may conduct an administrative conference with the parties to address timing and any other administrative matters which may coincide with the convening of the arbitration.

d. Communications with Arbitrators

No party and no one acting on behalf of any party shall communicate ex parte with any arbitrator. All communications with the arbitrators shall be with all three and shall simultaneously be provided to the other party. It shall not be deemed an ex parte communication forbidden by this Policy for staff of the ACEN to discuss logistical and procedural matters with arbitrators, including but not limited to such things as the venue of proceedings, travel, lodging, meals, and expense reimbursement.

e. Confidentiality

The arbitrators shall maintain as confidential all information provided to them by either party. After the conclusion of the arbitration the arbitrators shall destroy and not retain any documents, in whatever form, provided to them in the course of the arbitration.

5. Arbitration Procedures

a. Time for Completion of the Arbitration

The arbitration proceedings shall be completed within 90 business days of the date of the convening of the arbitration. The completion of the proceedings shall be evidenced by the written award of the arbitrators.

b. Record on Review

The review of the decision of the Appeal Committee by the arbitrators shall be on the record presented to the Appeal Committee, including the Administrative Record, the Briefs of the Parties, the Transcripts of the Appeal Hearing and any pre-hearing proceedings, any additional evidence submitted to the Appeal Committee, any rulings thereon, and the decision of the Appeal Committee. It shall be the duty of the ACEN CEO, assisted by the Chair of the Appeal Committee, to assemble the Record on Review and submit it to the arbitrators and to the representatives of the parties within 30 business days of the convening of the arbitration. The Record on Review shall be submitted electronically.

c. Discovery and the Submission of Additional Evidence

There shall be no discovery in the arbitration proceeding. There shall not be any

additional evidence submitted to the arbitrators beyond the Record on Review.

d. Standard of Review

The governing organization/nursing program shall bear the burden of persuading the arbitrators that the decision of the Appeal Committee is clearly erroneous in accordance with the standards of ACEN Policy #10 and in accordance with applicable law.

e. Location and Manner of the Proceedings

The arbitration proceedings shall take place in the Atlanta, Georgia Metropolitan Area at a venue arranged for by the ACEN in consultation with the arbitrators and the parties. With the unanimous consent of the parties and the arbitrators, the proceedings may take place at another venue within or outside the Atlanta, Georgia Metropolitan Area; however, financial arrangements therefor must be made and agreed to in advance. With the unanimous consent of the parties and the arbitrators, some or all of the proceedings may take place remotely, by telephonic or other electronic means, so long as all parties and all arbitrators can participate equally.

f. Representation

Any party may participate pro se without representation or by counsel or any other representative of the party's choosing, unless such choice is prohibited by applicable law. A party intending to be so represented shall notify the other party and the arbitrators of the name, telephone number, physical address, and email address of the representative at least seven business days prior to the date set for the hearing at which that person is first to appear. When such a representative responds for a party, notice is deemed to have been given.

g. Preliminary Hearing

At the discretion of the arbitrators a preliminary hearing may be scheduled, and if deemed necessary, it should be scheduled as soon as practicable. The parties should be invited to attend along with their representatives. The parties and the arbitrators should be prepared to discuss and establish a procedure for the conduct of the arbitration proceedings within the procedures set forth in this Policy.

h. Briefs

The governing organization/nursing program initiating the arbitration shall submit its principal brief within 14 business days of receipt of the Record on Review. The ACEN shall submit its response brief within 14 business days of receipt of the brief of the governing organization/nursing program. The arbitrators may request briefs of the parties on such other matters and at such times as they may determine. All briefs shall be submitted electronically as determined by the ACEN CEO (e.g., email, flash drive, cloud access).

- i. **Hearing**
The hearing shall take place per the arrangements outlined in Section 5, e. The hearing on the issues raised by the parties to the arbitration shall be heard by the arbitrators at a date scheduled by the arbitrators. The arbitrators may request argument of the parties on such other matters and at such times as they may determine.
- j. **Attendance at the Proceedings**
All arbitration proceedings are private and are not open to the public. Any person having a direct interest in the arbitration is entitled to attend the hearings. The arbitrators shall have the discretion to determine the propriety of the attendance of any person other than the parties and their representatives.
- k. **Stenographic and Other Recordings**
Any party desiring a stenographic record shall make arrangements directly with a stenographer and shall notify the other parties of these arrangements at least three business days in advance of the hearing. The requesting party or parties shall pay the cost of the record. No other means of recording the proceedings are permitted absent the agreement of the parties or the direction of the arbitrators.
- l. **Waiver**
Any party who proceeds with the arbitration after knowledge that any provision or requirement of this policy has not been complied with and fails to object in writing shall be deemed to have waived the objection.
- m. **Time, Form, and Delivery of the Award**
The award shall be made by the arbitrators in writing no later than 90 business days from the convening of the arbitration. The award shall be signed by a majority of the arbitrators and shall be executed in the form and manner required by the Federal Arbitration Act. The award shall state the reasons for the award and shall rule on the substantial claims of the parties. The award shall either affirm the decision of the Appeal Committee or reverse it, stating the reasons therefor. The award shall be delivered electronically to the email addresses of the parties and to their representatives. The award shall take effect immediately, and upon the rendering of the award, the status of the nursing program shall be consistent with the award as determined by the arbitrators.

Policy #38 History
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