

Arbitration

POLICY

If the Hearing Panel of the Accreditation Appeal Panel (AAP) affirms or amends an adverse accreditation decision of the Council on Accreditation of Nurse Anesthesia Educational Programs (COA), or if following remand by the Hearing Panel the COA votes to adhere to its adverse decision, the decision becomes final.

A program seeking further review of a final adverse accreditation decision must do so through non-binding arbitration in accordance with applicable federal regulations governing recognized accrediting agencies, including 20 U.S.C. §1099b(e) and 34 C.F.R. §602.20(e), prior to initiating other legal action.

Arbitration is available only after completion of the COA reconsideration and appellate review processes. Arbitration applies only to final adverse accreditation decisions to deny or revoke accreditation. The arbitration process does not apply to any other decisions, including probation.

A timely notice of arbitration in accordance with this policy shall have the immediate effect of continuing the program's accreditation within the same status as it was prior to the adverse action until the arbitration recommendation is rendered.

The purpose of arbitration is to provide an independent review of the COA's final decision based on the administrative record considered by the Council and the Accreditation Appeal Panel.

The arbitrator is not a decision-making body of COA.

PROCEDURE

1. Program requirements
 - a. A program seeking arbitration of a final adverse accreditation decision must submit a written request by a certified mail for arbitration to the COA CEO within twenty (20) days of receipt of the final decision following an appeal. If a program does not notify COA of its intent to arbitrate within this timeframe, the program forfeits its right to arbitrate and the decision of the AAP becomes final.
 - b. The written request must include:
 - 1) Identification of the final decision being challenged.
 - 2) The specific grounds upon which arbitration is requested.
 - 3) The name and contact information of the program's designated representative.
 - c. The program is responsible for any required arbitration filing fees or deposits

which will go towards the cost of the arbitration process.

2. Council actions

- a. The COA will acknowledge the program's request for arbitration within ten (10) days of receipt of such request. The COA shall send an acknowledgement letter which will reference the COA Arbitration policy.
- b. The COA shall provide the arbitrator and the program with the administrative record relevant to the accreditation decision under review.
- c. Evidence shall be limited to the administrative record, which shall include:
 - 1) Program Self Study and supporting documentation
 - 2) Onsite review reports
 - 3) Program responses and additional documentation
 - 4) Council decision material
 - 5) Materials considered by the AAP
 - 6) Decision of the AAP

3. Selection of the Arbitrator

- a. The parties will select an arbitrator from a list provided by the American Arbitration Association ("AAA") or the Judicial Arbitration and Mediation Services ("JAMS"). The parties will each nominate three individuals as potential arbitrators. From the list provided, the parties will each strike potential arbitrators until a mutually agreeable arbitrator is identified.
- b. Arbitration shall be conducted by a single neutral arbitrator, who shall preferably have experience in higher education and/or accreditation.
- c. The arbitrator must be independent and may not have participated in the accreditation review, reconsideration, or appellate review of the program. The arbitrator must confirm they do not have a conflict of interest with the program or COA that would impede their ability to conduct a fair and objective review.
- d. The parties must utilize either AAA or JAMS to conduct the arbitration.

4. Costs of Arbitration

- a. The program requesting arbitration is fully responsible for paying the administrative fees to AAA or JAMS, as applicable.

- b. In addition to the administrative fees, the arbitrator may be required to be compensated at the rates specified by AAA or JAMS, as applicable, which shall be the responsibility of the program.
- c. The program and COA shall each be responsible for paying their own expenses, such as for legal fees, in conjunction with the arbitration, unless the arbitrator determines that the program acted frivolously or in bad faith in commencing or continuing the arbitration process. In such cases any legal fees incurred by the COA will be paid by the program.
- d. If the COA prevails in the arbitration, the program shall be responsible for reimbursing the COA for all costs associated with the arbitration.

5. Scope and Standard of Review

- a. The arbitrator shall review the COA's final adverse decision based solely on the administrative record that was before the Council and the Hearing Panel at the time the decision was made. The arbitrator shall not conduct a *de novo* review.
- b. No new evidence shall be introduced during arbitration. No discovery shall be allowed by either party as part of the arbitration.
- c. The arbitrator shall determine whether:
 - 1) The adverse decision of the COA was arbitrary, capricious, or not supported by substantial evidence in the administrative record; or
 - 2) The procedures used by the COA to reach the adverse decision were contrary to COA's policies and procedures, and any such procedural errors unreasonably impaired the decision of the COA.

6. Conduct of Arbitration

- a. Arbitration shall be conducted in accordance with procedures set forth in this policy, and as established by the arbitrator and the applicable arbitration organization; provided that any additional procedures used by the arbitrator or arbitration organization may not conflict with the requirements, of this policy or with the standard of review set forth in this policy. The hearing shall be transcribed and recorded.
- b. The program and COA may be represented by legal counsel during the arbitration process.
- c. The COA and the program shall have the right to submit written statements and supporting materials addressing the issues under review.
- d. The arbitrator may permit oral presentations if deemed necessary to clarify the issues presented.

- e. While each party may make an oral presentation at the arbitration, cross-examination or questioning of the parties' representatives by the COA or the program at the hearing is not permitted. Only the arbitrator will be permitted to ask questions of the parties.
- f. Arbitration proceedings shall take place in Chicago, Illinois. With the unanimous consent of the parties and the arbitrators, the proceedings may take place at another venue within or outside Chicago, Illinois; however, financial arrangements must be made and agreed to in advance or at another venue. 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.
- g. Arbitration proceedings shall be confidential and closed to the public, except in the case of a judicial challenge or court order concerning the proceeding, or as otherwise required by law.

7. Decision of the Arbitrator

- a. The arbitrator may:
 - 1) Affirm the final decision of the COA; or
 - 2) Reverse the decision and remand the matter to the COA for further consideration consistent with the arbitrator's findings.
- b. The arbitrator shall not award monetary damages.
- c. The arbitrator shall apply a standard of substantial deference to the substantive reasons for the decision of the COA, and shall not substitute their judgment for that of the COA regarding matters of educational quality, accreditation standards, or accreditation determinations.
- d. The arbitrator shall issue a written decision stating the basis for the determination within 30 days following the arbitration hearing.

8. Finality of Decision

- a. The arbitrator's decision shall be final and enforceable on the parties. However, a program may legally challenge an accreditation decision following arbitration pursuant to 20 U.S.C. §1099b(f). The venue for any such legal action shall be United States District Court for the Northern District of Illinois.
- b. The COA shall implement the arbitrator's decision in accordance with its accreditation policies and procedures. The effective date shall be 30 days from the arbitrator's written decision.

- c. Nothing in this policy limits the COA's obligation to comply with applicable federal regulations governing recognized accrediting agencies.

Timeline for Arbitration

Note: Timeline begins after receipt by the COA of the request for arbitration by the program.

Date ¹	Action	Responsibility
Day 1	Request received by the COA from the program requesting arbitration	Program
Day 10	COA acknowledges receipt of the request for arbitration	COA
Day 30	An arbitrator is identified	COA and Program
Day 40	Arbitrator is provided the administrative record under review	COA
Day 100	Conduct of the arbitration hearing	Arbitrator
Day 130	Arbitrator provides written decision	Arbitrator
Day 140	COA action following the arbitrator's decision. ²	COA

¹ Days are approximate.

² The Council will make every effort to ensure adherence to this timeline.