

## NWCCU POLICIES | ARBITRATION POLICY

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This Arbitration Policy of the Northwest Commission on Colleges and Universities (NWCCU) shall apply only to final decisions of the Appeal Board pursuant to the NWCCU policy on Appeals Procedure. As a condition of Initial Accreditation and for continued Membership, NWCCU Candidate and Member institutions consent to resolving disputes in accordance with this Policy as required by 20 U.S.C. §1099b(e) and 34 C.F.R. §602.20(e).

### **Binding Arbitration and Governing Law**

The arbitration process shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1-16 (Act). The award of the arbitrators shall be final and binding on the parties. The arbitrators have jurisdiction to affirm or reverse the decision of the Appeal Board and to make pre-hearing rulings. The arbitrators have no authority award monetary damages. All decisions by the arbitrators shall be by majority vote.

### **Arbitrators**

#### 1. Roster of Arbitrators

The NWCCU shall maintain a roster of arbitrators. An arbitrator may be nominated by any NWCCU Commissioner, by the NWCCU President, or by the Chief Executive Officer (“CEO”) of a member institution. To begin, twelve (12) arbitrators will be selected by the NWCCU Nominating Committee, in staggered terms ending in 2023, 2026 and 2029. Thereafter, arbitrators shall be elected to a three-year term, unless they resign or are removed. Arbitrators may serve a maximum of three (3) successive terms or nine (9) years. At the conclusion of successive terms, the arbitrator must remain off the list for one (1) year before being eligible for re-election. The NWCCU will endeavor to assure that the roster of arbitrators is representative of the member institutions.

#### 2. Qualifications of Arbitrators

An arbitrator must have significant experience in higher education and accreditation. An arbitrator may have experience from and reside in any state in the United States. An arbitrator need not be currently affiliated with an institution of higher education. An arbitrator need not be a lawyer or have formal training in arbitration.

#### 3. Number and Method of Appointing Arbitrators

The arbitration shall be heard by three (3) arbitrators. No arbitrator may have been: a member of the Appeal Board whose decision is appealed; a member of the NWCCU Board of Commissioners during the past five (5) years; or a member of a peer review team that evaluated the institution during the past five (5) years. The arbitrators must: attest to NWCCU’s Conflict of Interest Policy; agree to keep confidential all information gained as part of their service as arbitrators; and agree not to make use of such information for any other purpose. Upon receipt of the Notice of Arbitration, the NWCCU President shall provide to the institution’s President the names of eligible arbitrators from the Roster of Arbitrators. The institution’s CEO shall select one arbitrator from the Roster of Arbitrators within five (5) calendar days and shall notify the NWCCU

President. The NWCCU President shall then select one arbitrator from the Roster of Arbitrators and shall so notify the institution's President within five (5) calendar days. The NWCCU President shall so notify the selected arbitrators with a copy of the selection letter to the institution's President. These two (2) arbitrators shall confer and select one (1) additional arbitrator from the Roster of Arbitrators, and the NWCCU President shall so notify the selected arbitrator with a copy of the selection letter to the institution's President.

#### 4. Communications with Arbitrators and Confidentiality

No party and no one acting on behalf of any party shall communicate *ex parte* with any arbitrator. It shall not be deemed an *ex parte* communication for NWCCU staff to discuss logistical matters with arbitrators, including travel, lodging, meals, and expense reimbursement. All information provided to the arbitrators is confidential. At the conclusion of the arbitration, the arbitrators shall destroy all documents provided during the arbitration.

### **Commencement of an Arbitration Proceeding**

#### 5. Notice of Arbitration, Deposit, and Payment of Expenses

An institution must submit an electronic copy of the Notice of Arbitration, signed by its CEO, to the NWCCU President within ten (10) calendar days of the institution's receipt of the final decision of the Appeal Board. On the same day as the Notice of Arbitration, the President of the institution must mail a \$25,000.00 deposit, payable to the NWCCU, for travel, lodging, meals, and venue charges incurred by the arbitrators and the NWCCU. The institution is responsible for all arbitration expenses. If the expenses actually incurred exceed the deposit, the institution will be assessed the additional amount. If the expenses are less, the difference will be refunded to the institution upon completion of the arbitration. The arbitrators shall submit expense vouchers to the NWCCU in accordance with NWCCU policy on Reimbursement of Expenses. The Notice of Arbitration must identify the decision of the Appeals Board and state the basis for the arbitration.

#### 6. Effect of the Notice

A timely Notice of Arbitration in accordance with this Policy shall have the immediate effect of continuing the institution's accreditation in the same status as prior to the adverse decision. The NWCCU shall provide notice to any constituencies previously notified of the result of the appeal that a timely notice of arbitration has been filed and the effect thereof.

### **Arbitration Procedures**

#### 1. Time for Completion of the Arbitration

The completion of the arbitration, evidenced by the arbitration award, shall be within one hundred and twenty (120) calendar days of the Notice of Arbitration.

#### 2. Preliminary Hearing

A preliminary hearing shall be held by the arbitrators to establish a scheduling order for the submission of briefs, the date and place of the arbitration, and other procedural matters. With

the unanimous consent of the parties and the arbitrators, some or all of the proceedings may be held by telephonic or other electronic means.

3. Record on Review

The arbitrator’s decision shall be based upon the administrative record presented to the Appeal Board, the transcripts, if any, of the Appeal Hearing, the decision of the Appeal Board, and the written submissions and argument of the Parties. It shall be the duty of the NWCCU staff, to assemble the Record on Review and submit it to the arbitrators and to institution’s CEO within thirty (30) calendar days of the Notice of Arbitration.

4. Standard of Review

The institution shall bear the burden of persuading the arbitrators that the decision of the Appeal Board is clearly erroneous in accordance with applicable law.

5. Stenographic or Other Recordings

Any party desiring to record arbitration proceedings shall notify the arbitrators at the Preliminary Hearing. The requesting party or parties shall pay the cost of the record.

6. Waiver

Any party who proceeds with the arbitration after knowledge that any provision or requirement of these Policies has not been complied with and fails to object in writing shall be deemed to have waived the objection.

7. Arbitration Award

The award shall affirm or reverse the decision of the Appeal Board, stating the reasons, and be signed by a majority of the arbitrators. The award shall take effect immediately, is binding, and the status of the institution shall be consistent with the award.

### Timetable for Arbitration

Timeline	Party Responsible	Detail
Within ten (10) calendar days of receipt of the final decision of the Appeal Board	Institution	Submit electronic copy of the Notice of Arbitration to the NWCCU President
Within five (5) calendar days of receipt of Arbitration Notice	Institution CEO	Select one arbitrator from Roster of Arbitrators
Within five (5) calendar days of receipt of the Institution’s arbitrator selection	NWCCU President	Select one additional arbitrator from Roster of Arbitrators
Within thirty (30) calendar days of the Arbitration Notice	NWCCU Staff	Assemble Record on Review
Within one hundred and twenty (120) calendar days of Arbitration Notice	Selected Arbitrators	Completion of the arbitration

Adopted 2020, Revised November 2021