

# APPEALS & COMPLAINTS

## ACME Training Module

May 2013

# Objectivity and patience needed

Remember that the emotional backdrop of complaints and appeals is anger and frustration on the part of the complainant or appellant



# Outline:

Purposes of the Training

An Overview of Appeals

USDE Regulations on Appeals

Three Types of Grievances

Information Common to All Three Types

ACME Processes

Conclusion and future actions

# PURPOSES OF THE TRAINING

- ▶ In fulfillment of the USDE regulations 34 CFR Part 602 Sections 602.15(a)(2) and (5).
- ▶ To provide training to the members of the Board of Review, Advisory Committee or others interested
- ▶ Ensuring public members are trained who may be included in each appeals panel or grievance committee
- ▶ To provide comparative information on other accrediting agencies' appeal policies and processes
- ▶ To clarify ACME's policies and how to implement them

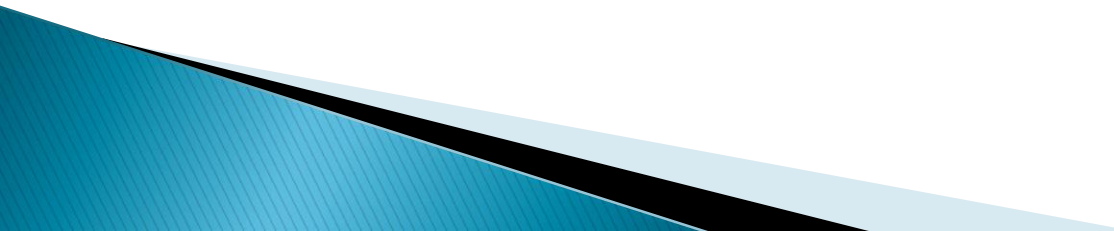
# AN OVERVIEW OF APPEALS

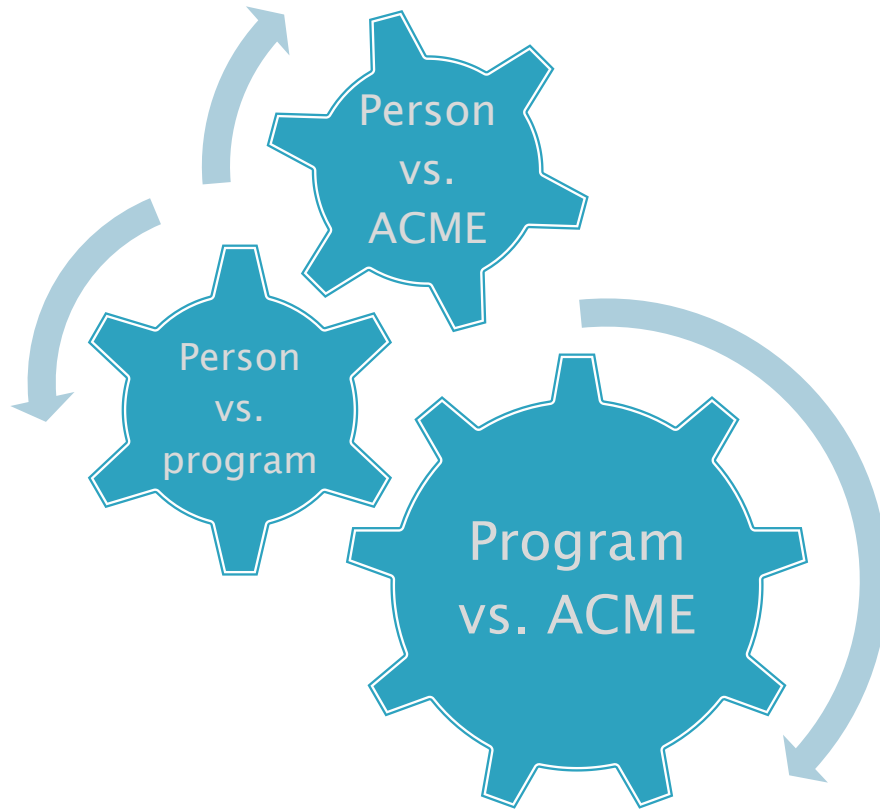
- ▶ USDE Regulations regarding appeals
- ▶ Three types of grievances
- ▶ Aspects common to all three with comparative information from:
  - Middle States Commission on Higher Education (MSA) [www.msache.org](http://www.msache.org)
  - Commission on Accreditation, Nurse Anesthesia Educational Programs (COA) <http://home.coa.us.com>
  - Commission on Collegiate Nursing Education (CCNE) [www.aacn.nche.edu/ccne-accreditation](http://www.aacn.nche.edu/ccne-accreditation)

# USDE Regulations on appeals

- ▶ Relevant regulation is found at 34 CFR Section 602.25 Due Process regarding appeals of adverse actions by the agency  
<http://www2.ed.gov/admins/finaid/accred/agency-guidelines.pdf>
- ▶ States specific policies and actions that are expected and allowed by agencies
- ▶ All aspects of Section 602.25 apply to programmatic accreditors as well as institutional accreditors
- ▶ Regulations help frame the common elements found in hearings and appeals.

# Three types of grievances

1. Complaints or grievances to an agency from a person against an accredited program
  2. Complaint or grievance of a person against an accrediting agency
  3. Appeal by an applicant program of an adverse accreditation decision made by an accrediting agency
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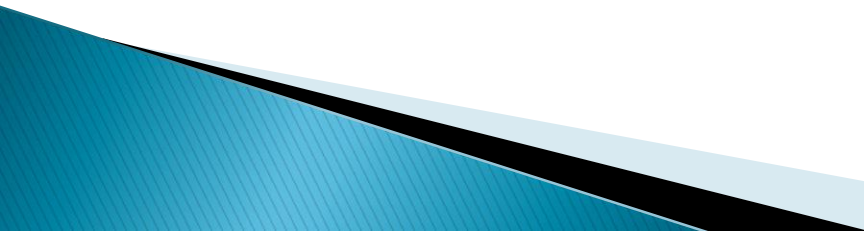




# 1. Person's complaint to agency about an accredited program

- ▶ The agency serves as an objective entity to hear and address the issues
  - Usually the person is a student, but it may be a faculty or staff member making the complaint.
- ▶ That involves several processes:
  - Establishing a subgroup to investigate and hear the complaint
  - Conducting the investigation
  - Making a determination

## 2. Person's complaint against an accrediting agency

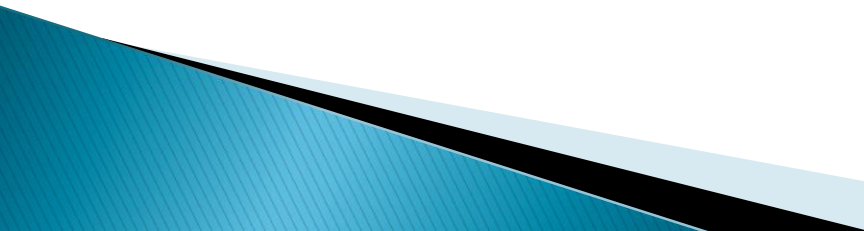
- ▶ Agency decides if the complaint has merit, as the complainant must have sufficient direct interest in a situation for it to have merit.
  - ▶ If so, the complaint is sent to the professional organization with which the accrediting agency is allied.
  - ▶ The professional organization serves as the objective entity to hear and address the issues.
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# 3. Program appeals an agency's adverse decision

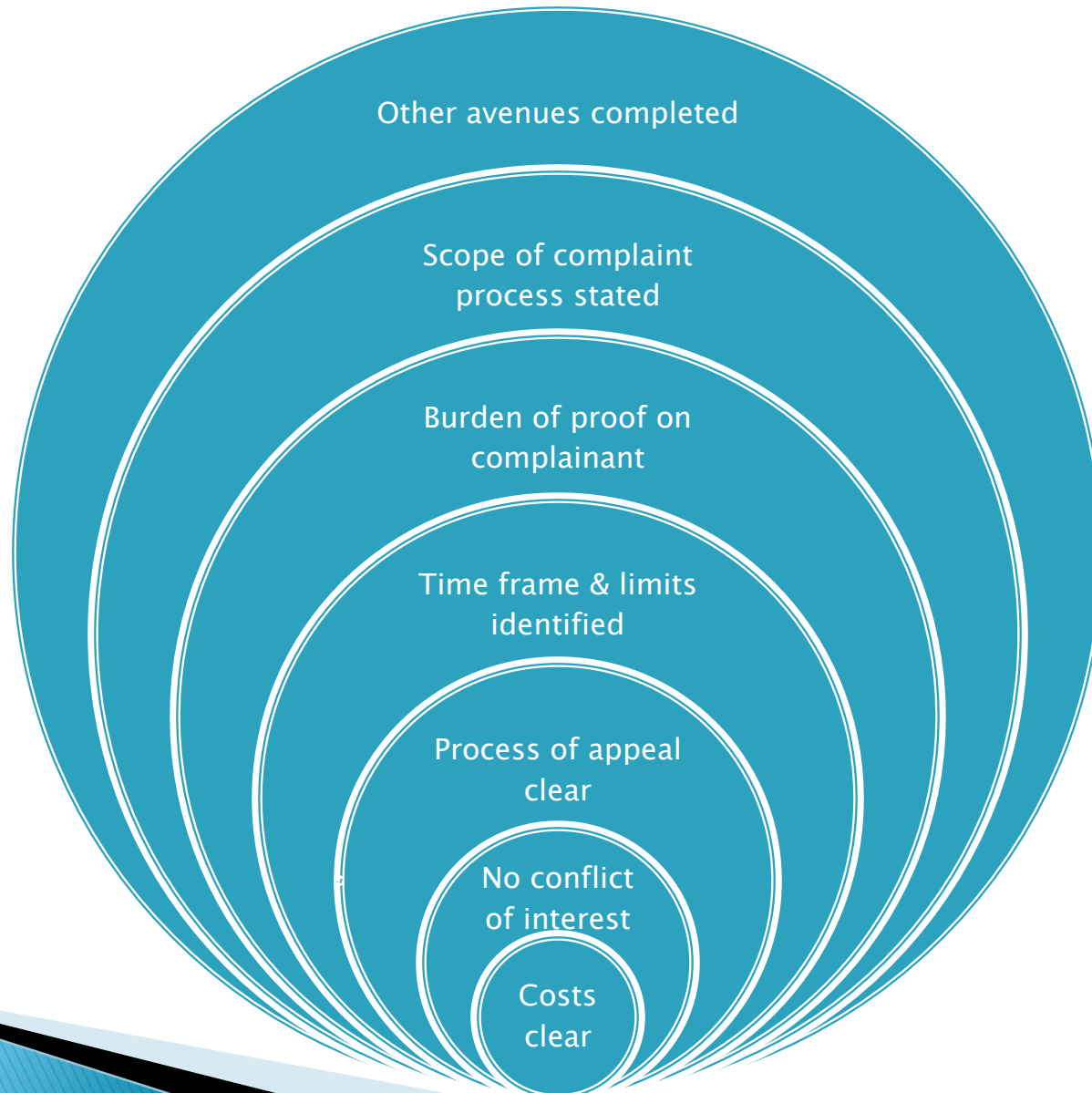
- ▶ Higher level of accrediting agency serves as objective board to review issues related to the actions of the review level
- ▶ That involves a number of steps including:
  - Establishing a subgroup to investigate
  - Conducting the investigation
  - Making a determination

# Information common to all types

The following aspects are common to all three types of complaints:

1. Complainants must have completed any processes open to them at the institutional or other levels prior to filing a complaint with the agency
  2. Clarification of the scope of the complaint or appeal
  3. The burden of proof is on the complainant or appellant
  4. The time frame from which a complaint or appeal may be considered
  5. The process for conducting the complaint or appeal is clearly stated
  6. Those reviewing the complaint or appeal are without conflict of interest
  7. Obligations for costs and fees are stated.
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# Aspects Common to all types



# 1. Completion of other complaint processes

Complainants/appellants must have taken and completed all steps at the institutional administrative level to address the situation prior to filing a complaint or appeal with the agency.

- MSA: “The Commission expects individuals to attempt to resolve the issue through the institution’s own published grievance procedures before submitting a complaint to the Commission. Therefore, the Commission’s practice is not to consider a complaint which is currently in administrative proceedings...or in litigation.”

## 2. Scope of the complaint

Agencies do not consider complaints against individuals' actions, personnel complaints, or override institution's actions, but they may review institutional policy in light of accreditation standards.

- CCNE: “Issues regarding personalities, which may be subject to slander and libel laws, are explicitly prohibited.”
- COA: “The scope of appellate review shall be limited to all information and documents presented to the COA at the time of its deliberations and the rendering of its adverse accreditation decision...”
- MSA: “ Nor does the Commission seek any type of compensation, damages, readmission, or any other redress on the individual's behalf.”

# 3. Burden of Proof of Complaint

- ▶ Agencies delineate who is responsible to prove the situation deserves review by the agency.
  - MSA: “Appellant shall have the burden of going forward and the burden of proof in seeking to reverse or modify an Adverse Accrediting Action.” It notes that errors or omissions, bias or prejudice, or arbitrary and capricious actions by the Commission in determining an accreditation action may be grounds for complaint.
  - COA: “The program shall have the burden of establishing that based on the entire record, the decision of the COA is not supported...”



# 4. Time frame

The agency sets limits on the time frame in which a complaint or appeal may be set.

- MSA: “Because of the need for information to be current, except in extraordinary circumstances, the Commission will not consider complaints if two years or more have passed since the complainant initiated the institution’s grievance procedure.”

# 5. Process for review of complaint

Agency establishes process for review that includes at minimum:

- Who will conduct the process
- Rights and responsibilities of each party
- The steps of the review
- The possible outcomes of the review
- The entity that will make the final determination

All three agencies have extensive processes established.

# 6. Without conflict of interest

Agency establishes a process to remove possibility of conflict of interest

- COA: “Hearing Panel members are subject to the applicable portions of the COA’s Conflicts of Interest policy in this manual.”

# 7. Obligations for costs & fees


Agencies state who is responsible for costs of the complainant and the costs of the appeal

- “COA: “The filing fee for appellate review is \$1000. The program shall submit a check in that amount to the COA along with its written request for the appeal.”
- CCNE: “When a program appeals an adverse action by the Board, it must submit a fee with its written appeal.” “The fee for appealing an adverse action is \$5,000, which is intended to cover the costs of the hearing committee.”

# ACME PROCESSES

- \* Overview of ACME policies and procedures related to the three types of complaints/grievances
- \* Changes to the *Policies and Procedures Manual* Sections X, XI and IX (discussed in that order), approved by the Board of Commissioners Spring 2013

# ACME policies re person vs. program

- ▶ This is outlined in the *Policies and Procedures Manual* in Section X.
  - ▶ ACME limits eligibility to participate in this process to “any student, faculty or staff member of a program” that is accredited by ACME
  - ▶ Process is clearly delineated and includes most of the common elements
  - ▶ Some changes have been made to align with the common elements identified above.
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# Changes for Section X

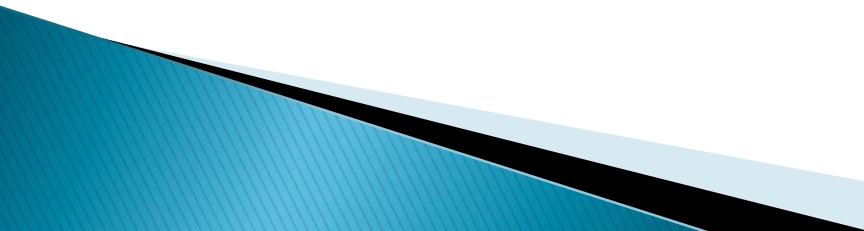
1. Language stating the participants from ACME are subject to the conflict of interest policy
2. A former public of the BOC or BOR or Advisory Committee would be added to the Investigative Committee and a current public member added to the Hearing Committee
3. That burden of proof is on the Complainant
4. A statement of time limit was inserted that the complaint/grievance must be related to a situation that occurred within the past two years, with the exception that a student may wait up to 18 months after completion of the program related to the complaint, even if it extends beyond the two years.

## Changes for Section X (cont'd)

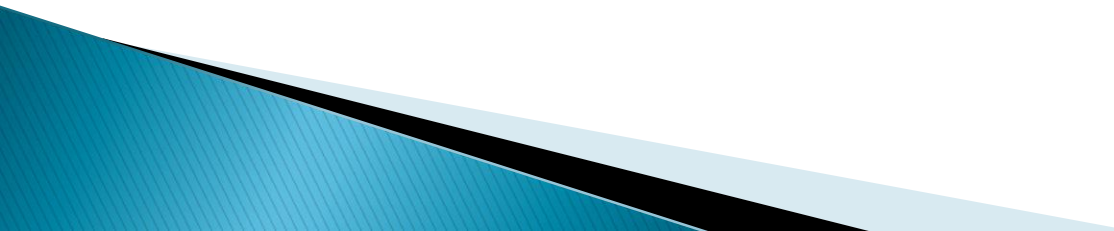
5. Language was added that all ACME participants are to be knowledgeable with regard to ACME and ACNM documents, especially the ACME criteria for programmatic pre/accreditation and the *Policies and Procedures Manual*



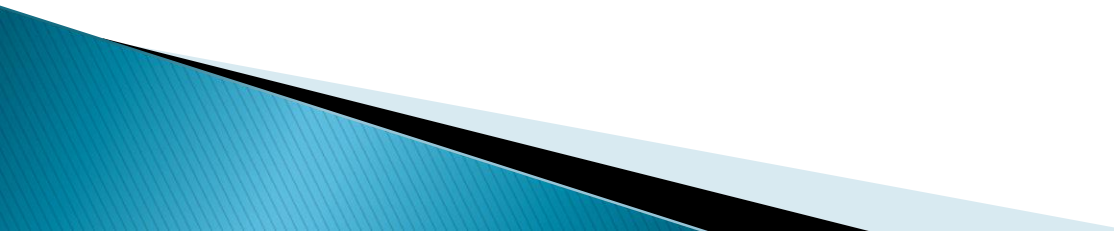
# ACME policies re person vs. ACME

- ▶ This is outlined in the *Policies and Procedures Manual* in Section XI
  - ▶ ACME limits eligibility to participate in this process to “any student, faculty or staff member of a program” that is accredited by ACME
  - ▶ Process is clearly delineated and includes most of the common elements
  - ▶ The ACNM appeal process would be implemented if the complaint against ACME has merit
  - ▶ Some changes were made
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# Changes for Section XI

1. Language stating the participants from ACME are subject to the conflict of interest policy was added
  2. A statement of time limit was inserted that the complaint/grievance must be related to a situation that occurred within the past two years.
  3. Burden of proof is on the complainant was added
  4. Prior to conducting process, the ACME chair will ensure the committee members and all ACME participants are knowledgeable of the relevant ACME criteria and policies
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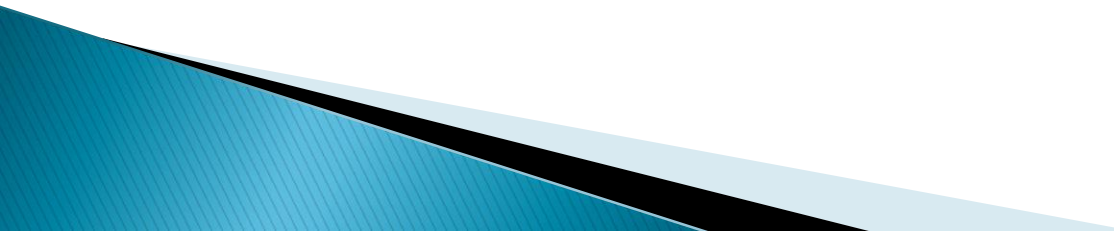
# ACME policies re program vs an adverse action

- ▶ This is outlined in the *Policies and Procedures Manual* in Section IX
  - ▶ ACME limits eligibility to “A program whose pre/accreditation status has been denied or withdrawn” after review by the BOR
  - ▶ Process is clearly delineated and includes most of the common elements
  - ▶ Some changes were made, including some related directly to USDE regulations
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# Changes to Section IX

1. Language added that the Ad Hoc Appeals Panel “may not include anyone who was a member of the BOR at the time that it took the initial adverse action”
2. Added that prior to conducting the appeal, the ACME chair will ensure that all ACME participants are knowledgeable with regard to ACME and ACNM documents, especially the ACME criteria for programmatic pre/accreditation and the *Policies and Procedures Manual*
3. Provided a policy for selecting a substitute public member on the panel if the BOC public member cannot participate
4. Changed language to USDE terminology re BOC action: “affirm, amends, reverses, or remands the adverse action”
5. A fee is now required for programs appealing an adverse decision (see ACME fee schedule) in order to cover costs of the appeal, and that it should be paid by check to ACME with the initial written appeal

# Changes for Section IX (cont'd)

6. Wording added that conform to USDE regulations that the counsel may make any presentation that the agency permits the program to make on its own during the appeal
  7. The ACME Chair will provide the result of the appeal “in writing”
  8. Reinstated language dropped from previous versions of the P&P Manual that conforms to USDE regulation Section 602.25(h)(1)(i)–(iii) and (2) regarding a process of review of financial information for a program.
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# CONCLUSION – and actions for future consideration

- ◆ As a basis for ongoing training of current and future ACME members,
  - \* Periodic review of USDE regulations should be conducted to assure ACME is addressing any changes related to complaints and appeals
  - \* Periodic review of ACNM appeal processes should be made to ensure that ACME is prepared for any changes in that process
  - \* Periodic discussions regarding how best to conduct the ACME processes would be beneficial, especially to address changes in technology or generally accepted practice