

6N-1.008 Appeals.

(1) Section 1000.35 F.S. exempts Council decisions from Chapter 120 F.S. Therefore, parties seeking administrative review of proposed agency action by the Council shall follow the rules outlined herein.

(2) The Council shall issue a Notice of Action to institutions for proposed council action to be taken against the institution seeking approval to participate in the State Authorization Reciprocity Agreement "SARA". The Notice of Action shall state the grounds upon which the Council's proposed action is based and state that the institution has the right to appeal the proposed council action. The Notice of Action shall be sent to the institution by certified mail, return receipt requested.

(3) The following council actions taken against the institution are appealable:

- (a) A denial of an application for initial participation;
- (b) A denial of an application for renewal of participation;
- (c) A denial of an institution's claim for reimbursement; or,
- (d) A claim against an institution for remittance of a payment;

(4) The institution shall have ten (10) days to appeal the Council action from the date the institution receives the Notice of Action.

(5) A request for appeal shall:

- (a) Be in writing;
- (b) Include the date the institution received the Notice of Action;
- (c) Include the name, address, any email address, any facsimile number, and telephone number of the institution;
- (d) Clearly identify the action being appealed;
- (e) Include a concise statement of the facts alleged, including the specific facts the institution contends warrant reversal or modification of the Council's proposed action;
- (f) A statement of the specific rules or statutes, if any, the institution contends require reversal or modification of the Council's proposed action, including an explanation of how the alleged facts relate to the specific rules or statutes;
- (g) Include a statement of the relief sought by the institution;
- (h) Include a copy of the Notice of Action issued; and,

(i) State whether a hearing or a review of written documentation is desired. If a hearing is not specifically requested, the appeal shall be by review of written documentation.

(6) The institution can request to review any information upon which the action was based.

(7) The institution may submit additional written documentation for review by the hearing officer either with the request for appeal or within seven (7) days of the date the institution submitted the request for appeal. The Council has seven (7) days from the date the Council received the request for appeal to submit written documentation to the designated hearing officer. Any written documentation received after the seven-day deadline will not be considered for review.

(8) The request for appeal and all written documentation should be submitted to the Council as indicated in the Notice of Action.

(9) If a hearing is requested, it shall be held within fourteen (14) days of the date the Council received the request for appeal, unless otherwise agreed to by both parties. At no time shall the hearing be held prior to the date the hearing officer receives written documentation from both parties. Failure to provide written documentation does not affect the validity of the appeal from a judgment or order. The institution shall be provided with at least five (5) days' written notice, sent via certified mail, return receipt requested, of the time and place of the hearing.

(a) The institution may represent itself or retain legal counsel. Failure of the institution's representative to appear at a scheduled hearing shall constitute the waiver of the right to a personal appearance before the hearing officer.

(b) A council attorney shall attend the hearing to respond to the institution's testimony and written documentation and to answer questions from the hearing officer.

(10) The hearing officer shall be appointed by the Council director and approved by the Council chair and shall:

(a) Be a Department of Education employee; and,

(b) Independent of the original decision-making process that led to the proposed Council action.

(11) The Council shall record the hearing through an audio or video recording device at the Council's expense.

(12) Within five (5) days after the hearing, or within five (5) days after receipt of written documentation from both parties if no hearing is held, the hearing officer shall issue a Final Determination based on a full review of the information provided by both parties, and on applicable Florida State Board of Education Rules and Florida Statutes. The Final Determination shall be sent to the institution via certified mail, return receipt requested.

(13) The Florida Rules of Civil Procedure will control time computation under this rule.

(14) The actions of the Council remain in effect during the appeal process. During any such appeal the institution's status as a SARA participating (or non-participating) institution remains unchanged.

(15) The determination made by the Department of Education's hearing officer is the final administrative determination afforded to the institution.

(16) Any party adversely affected by the determination is entitled to seek judicial review pursuant to Rule 9.110(a)(2) of the Florida Rules of Appellate Procedure, which must be initiated by filing a Notice of Appeal with the Department's Clerk. A copy shall be provided to the Director of the Council at Commission for Independent Education, 325 West Gaines Street, Suite 1414, Tallahassee, FL 32399, within thirty (30) days of the date of the determination. A copy of the Notice of Appeal, accompanied by the prescribed filing fee, must be filed with the Clerk of the District Court of Appeal in the district where the institution is located or the First District Court of Appeal at 2000 Drayton Drive, Tallahassee, Florida 32399.

Rulemaking Authority 1000.35(10) FS. Law Implemented 1000.35(3), (6)-(7) FS. History—New