

Recommendation #3: Joint Senate Committee Process for Appeal Review

Action/Motion:

MOVED that the Senate approves the Joint Senate Committee (JSC) Process for Appeal Review as presented.

Background/Rationale:

Upon the Senate's approval of the NOSM Policy Regarding Academic Appeals, this process for JSC will be in effect.

This Process was originally imbedded in the Student Assessment and Appeals Policy. Under the recommendation of the review committee was not included in the new version of the NOSM Policy Regarding Academic Appeals. Therefore, the process removed and placed in its own JSC document. There were no substantive changes other than ensuring the working days were aligned and definitions were added, which are the same definitions in the NOSM Policy Regarding Academic Appeals to ensure consistency.



At the JSC meeting on April 11, 2014 edits were recommended to this document, shown as track changes in the newly attached version. The edits were minor editorial.

JOINT SENATE COMMITTEE PROCESS FOR APPEAL REVIEW

1.0 Definitions

For the purposes of this document, the following definitions will apply

“Appellant” a learner who appeals a decision

“ACAC” Academic Council Appeals Committee

“Joint Senate Committee (JSC)” the Joint Senate Committee for NOSM “JSC” has been duly constituted by both Senates to review all academic recommendations from the Academic Council and make recommendations to both Senates for their approval. The Joint Senate Committee also has the jurisdiction to hear Appeals as outlined in their terms of reference.

“Learner” MD learners, postgraduate residents (trainees), dietetic interns and/or any other learner in a Program governed by Academic Council

“Natural Justice” ‘Natural justice’ was developed in England in the 19th century to define the rules for decision-making. Having evolved overtime, the concept is now often described as ‘procedural fairness’ or just ‘fairness’. As a result, the terms natural justice, procedural fairness, and fairness are often used interchangeably.

The two basic components of natural justice are:

- 1) That the person affected by the decision:
 - Will receive notice that his or her case is being considered
 - Will be provided with the specific aspects of the case that are under consideration so that an explanation or response can be prepared
 - Will be provided with the opportunity to make submissions (written or oral) relating to the case
- 2) That the decision-maker(s) will be unbiased.

To be unbiased is to be and to be seen as objective of impartial about the matter you are considering. The best way for decision-makers to be unbiased is:

- To understand what bias is (i.e. if you have a firmly held, favourable or negative opinion about a matter or an individual). If you cannot be objective about a matter that is within your purview, you should remove yourself from the decision-making process.
- If you are part of a committee of decision-makers, each member must feel free to make his or her own decision. Therefore, each member of the committee must be free of influence from other committee members, from outside third parties, or from the influence of those who have designated them as decision-makers.
- Sometimes bias is alleged because it is believed the decision-maker knows too much about the matter under scrutiny. A well-informed decision-maker is not biased if she or he has an open mind and is open to persuasion by the information provided through the decision-making process.

“It is my firm belief that if all decision-makers abided by these basic principles when forming conclusions and making decisions there would be very few complaints about the fairness of decisions other than from those for whom any answer other than the one they want is unacceptable.”

“Notice” means any notice to be sent by any party under this policy to another party shall be sufficiently given if sent by email. Any notice duly sent in this manner shall be deemed delivered on the day next following the date of the sending of the email.

“Respondent” a person or persons who respond or make a reply

"Working Day" means a day in which the Northern Ontario School of Medicine (NOSM) offices are open for business from Monday to Friday, excluding statutory holidays and any other day that the Northern Ontario School of Medicine is closed.

2.0 Appeals to the Joint Senate Committee's Appeal Committee

With regards to an appeal related to a program whose credentials are not granted under the authority of Lakehead University or Laurentian University, the decision of the ACAC in this regard shall be final and binding.

For learners whose credentials are granted under the authority of Lakehead University or Laurentian University, in the event that the ACAC denies the appeal, the Appellant, may submit a new Request for Appeal application to be heard by the Joint Senate Committee for NOSM (JSC) and follow the procedures set out in the Joint Senate Committee Appeals Process.¹

3.0 Review Process for Appeals

1. If the learner does not agree with the decision of the Academic Council Appeals Committee (ACAC) on its review of its earlier decision, then the learner shall have the right within ten (10) days of receiving the latest decision of the ACAC to make a written submission requesting a hearing by the Joint Senate Committee on the “Request for Appeal Form” and submitted to the Chair of the JSC c/o the Secretary of the Academic Council within 10 working days of receipt of the notice at the previous level.
2. The notice shall specify the grounds for the review and shall include all supporting documents that are deemed relevant together with a copy of the decision of the ACAC. The grounds for review and the JSCs review of the decision of the ACAC will be limited to the following:
 - a) whether the ACAC followed the procedural requirements for the hearing set in the NOSM Policy Regarding Academic Appeals and, if not, whether its failure to do so resulted in the learner not being given a fair hearing; and
 - b) whether the ACAC adhered to the principles’ of natural justice in its conduct at the hearing.

Upon receipt, a copy of the notice from the learner shall be sent by the Chair of the JSC to the Chair of the ACAC.

3. Within ten (10) days of receiving the notice from the learner requesting a formal review of the decision of the ACAC by the JSC, the JSC shall notify the learner in writing of the date for the hearing. If the learner has any problems with respect to the proposed date for the hearing, the learner shall notify the Chair of the JSC as soon as possible thereafter and every reasonable effort will be made to reschedule to a date with reasonable lead time. All hearings can be

¹ NOSM Policy Regarding Appeals Section 5.0 Further Appeals

accommodated by video and/or telecommunications. In addition, every reasonable effort shall be made by both parties to have the hearing before the JSC held within 15 working days of the date of receipt of the written notice from the learner requesting the review hearing.

4. The learner shall have the right to be represented by another person or legal counsel at the hearing. However, the learner shall notify the Chair of the JSC at least 10 working days prior to the date of the hearing that the learner will be represented at the hearing by another person or legal counsel.
5. The hearing shall be heard by the JSC or a subcommittee of the JSC duly established for this purpose.
6. The following procedure shall apply with respect to the hearing before the JSC:
 - a) The hearing shall commence on the date and time appointed for the hearing;
 - b) The evidence submitted by the learner and the Respondent will be restricted to the issues before the JSC since the hearing before the JSC shall not be a re-hearing of the evidence presented at the hearing before the ACAC.
 - c) The learner will make an opening statement containing a brief description of learner's grounds for the JSC to review the decision of the ACAC and a short summary of the evidence that the learner relies on in support thereof;
 - d) The learner shall have the right to supplement the opening statement with any or all of the following:
 - a. oral testimony of the learner;
 - b. documents or other written evidence in support of this testimony.
 - e) NOSM (the "Respondent") through its designated representative or legal counsel and the JSC will have the right to question the learner at the close of the learner's testimony.
 - f) Following completion of the learner's case, the Respondent shall present its case. The Respondent shall complete an opening statement containing a brief reply to the learner's claims and a short summary of the evidence that the Respondent relies upon in support thereof. In support of its position, the Respondent may submit any or all of the following:
 - a. oral testimony of a representative of NOSM; and
 - b. documents or other written evidence in support of this testimony.
 - g) The learner and the JSC shall have the right to question the representative of NOSM at the close of testimony.
 - h) The learner shall have the right to offer testimony of the learner in reply to the issues raised in the Respondent's case.
 - i) After the testimony of each witness, the JSC may, in addition to asking questions of the witness as noted above, request copies of such documents mentioned in the testimony as the JSC, in its discretion, deems appropriate.

j) At the conclusion of the evidence, the parties shall be entitled to make closing arguments and to summarize briefly the main points of their respective cases in the following order:

- a. appellant;
- b. respondent; and
- c. appellant

7. The JSC shall have the right to alter this order in the interest and fairness of any or all of the parties.

8. The JSC may consider and grant a recess or adjournment at any time during the hearing to ensure a fair hearing.

9. A person appearing before the JSC may be required to give evidence under affirmation or oath.

10. The JSC shall have the discretion to limit the testimony and questioning of witnesses to those matters it considers relevant to the disposition of the case.

11. The parties are responsible for producing their own witnesses and for paying the costs associated with their appearance before the JSC.

12. The JSC shall have the power to require production of written or documentary evidence by the parties or by any other source.

13. The JSC has the power to rule on the admissibility of evidence.

4.0 Notice of Decision

1. Following the formal hearing, the JSC shall deliberate in a closed session and shall reach a decision.

2. The decision of the JSC shall be restricted to either of the following:

- a. that there are no grounds for altering the decision of the ACAC and that the decision of the ACAC shall stand; or
- b. the ACAC did not meet the requirements set out in the NOSM Policy Regarding Academic Appeals hereof and, as a result, the matter shall be referred back to the ACAC for re-hearing.

3. The JSC shall supply a written report of its decision to the Appellant, the Respondent(s), the appropriate Associate Dean, the Dean of the Medical School and to other individuals as the ACAC deems appropriate and/or necessary. The written report of the JSCACAG must include:

- a. the membership of the JSC Appeals Committee or subcommittee of the JSC which heard the appeal
- b. the background of the appeal
- c. a summary of the case of the appellant and the respondent
- d. the findings of fact
- e. the decision, recommendations (if any) and the reasons for its decision.

4. The decision of the JSC in this regard shall be final and binding.

5.0 Related Policies/References

- NOSM Policy Regarding Academic Appeals
- Request for Appeal Form
- Appeal Process Overview Chart

6.0 Getting Help

Learners are encouraged to contact the Learner Affairs office.

Queries regarding interpretations of this document should be directed to:

~~Governance Office~~—~~Office of the Dean~~Secretary to the Joint Senate Committee
Northern Ontario School of Medicine
(705) 662-7206

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