



**Nonpublic Postsecondary Education Commission  
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**Brian P. Kemp  
Governor**

**Kirk Shook  
Executive Director**

To: All Parties on the Nonpublic Postsecondary Education Commission's Policy Making Mailing List  
All Interested Parties via Publication by the Nonpublic Postsecondary Education Commission

From: Georgia Nonpublic Postsecondary Education Commission  
2082 E. Exchange Place  
Tucker, GA 30084

Date: November 14, 2022

The Nonpublic Postsecondary Education Commission (NPEC) is continuing to take steps to update its currently promulgated policies to ensure that they are accurate and current. NPEC will hold its Quarterly Commission meeting on Monday, November 28, 2022 at 1pm at Young Harris College. At that meeting, the Commission intends to take the following steps.

The Commission will vote regarding amending the following policy:

**Policy 2: Hearing and Review**

**1. Right to Protest**

- a. Within ten days of the giving of the notice by the executive director, any person aggrieved by a decision of the executive director respecting:
  - (i) denial of an authorization to operate, whether on initial application or application for renewal;

- (ii) conditions placed on an authorization;
  - (iii) revocation or suspension of an authorization;
  - (iv) the imposition of a penalty by the executive director under O.C.G.A. § 20-3-250.21 shall have the right to request a hearing and review of such decision under these procedures. O.C.G.A. § 20-3-250.15.
- b. The Executive Director shall provide notice to the aggrieved party of the hearing date, time, and location within 30 days of receiving notice from an aggrieved party pursuant to O.C.G.A. § 20-3-250.15(c).

## 2. Hearing Officer

- a. Pursuant to O.C.G.A. § 20-3-250.15(d), the Commission designates the Chairman of the NPEC Board of Commissioners as the Hearing Officer. The Chairman as Hearing Officer, at his or her discretion, may appoint any number of Commissioners deemed necessary to assist in hearing cases, including hearing cases in his or her absence or conflict of interest in a particular case.
- b. Pursuant to O.C.G.A. § 20-3-250.15(d), the Commission further designates the Office of State Administrative Hearings (OSAH) as Hearing Officer whenever, at the sole discretion of the Executive Director, a matter involves particularly difficult or complex questions of law or fact. In such cases, the Executive Director shall promptly refer the case to OSAH and provide notice as required by paragraph 1.b. of this Policy.

## 3. Hearings Conducted Before the Chairman.

- a. Nature of Proceedings before the Chairman as Hearing Officer; Procedure; Burden of Proof
  - i. Hearings shall be only as formal as is necessary to preserve order and be compatible with the principles of justice.
  - ii. All parties shall have the right to be represented by legal counsel and to obtain the appearance of witnesses and documentary evidence. The parties shall have the right to respond and present evidence on all issues involved and to cross-examine all witnesses.
  - iii. The standard of proof concerning all issues presented in the hearing shall be a preponderance of the evidence.
  - iv. In cases commenced as a result of action or notice issued by the Executive Director for penalties under O.C.G.A. § 20-3-250.21, the Executive Director shall have the burden of proof and shall present his or her case first. In all other cases the party commencing the case shall have the burden of proof and shall present its case first.
  - v. A hearing, or a portion thereof, may be conducted by alternate means if the record reflects that all parties have consented and that such procedure will not jeopardize the rights of any party to the hearing. Alternate means, as used here, includes remote telephonic communication methods such as two-way video-conferencing applications.
- b. Evidence; Official Notice

The rules of evidence in Hearings conducted before the Chairman as Hearing Officer under this Policy shall be substantially as follows:

- i. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded;
- ii. The rules of evidence as applied in the trial of civil non-jury cases in the superior courts shall be followed as far as practicable;

- iii. When necessary to ascertain facts not reasonably susceptible of proof under such rules, evidence not admissible under superior court rules may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons;
  - iv. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original or have it established as documentary evidence according to the rules of evidence applicable to the superior courts of Georgia;
  - v. A party may conduct such cross-examination as required for a full and true disclosure of the facts;
  - vi. Official notice may be taken of judicially recognizable facts and generally recognized technical facts or records within the agency's specialized knowledge. The parties shall be notified of any material so noticed and shall be afforded the opportunity to contest such material.
- c. Continuance and Postponements
    - i. The Hearing Officer may on his or her own motion continue or postpone a hearing.
    - ii. Matters set for hearing may be continued or postponed within the sound discretion of the Hearing Officer upon timely motion by either party.
  - d. Transcripts of Hearings
    - i. Any party may request that the hearing be conducted before a court reporter.
    - ii. The request shall be in writing, and it shall include a statement by the requesting party that he or she shall procure the court reporting services for the hearing at his or her own cost and on his or her own initiative. The request shall identify the court reporter or court reporting service to be used at the hearing.
    - iii. Regardless of who makes the arrangements or requests that a transcript be made, the original transcript of the proceedings shall be submitted to the Hearing Officer prior to the close of the hearing record if the transcript is to be made part of the record.

#### 4. Orders of the Chairman as Hearing Officer

- a. After the hearing, the Chairman as Hearing Officer shall make an Order and shall promptly furnish a copy of the Order to the appellant and the Executive Director. Such Order shall include a statement of findings and conclusions upon all material issues of fact, law, or discretion presented at the hearing and the appropriate rule, order, sanction, relief, or denial thereof.
- b. The Order of the Chairman as Hearing Officer shall automatically become the Final Order of the Commission ten (10) days after service of the Order.

#### 5. Hearings Before the Office of State Administrative Hearings

- a. For cases referred to OSAH pursuant to paragraph 2.b. of this Policy, the decision of the OSAH Hearing Officer shall constitute an initial decision of the Commission.
- b. An initial decision will become the final decision of the Commission following the conclusion of the next meeting of the Commission that falls more than thirty (30) days from the date of the issuance of the final decision, unless a majority of the Commission votes to issue a final decision different than the initial decision or votes to extend the review period of the initial decision to the next Commission meeting following the vote to extend the review period.
- c. In reaching a Final Decision, the Commission may review any finding of fact, conclusion of law, or order contained in the Initial Decision. The Commission may review the complete record, including the transcript of the hearing and submitted exhibits. The Commission may also, at its

sole discretion, request additional evidence from the parties. If the Commission requests further evidence, the Commission shall set forth a schedule and provide instructions regarding how the parties shall submit additional evidence.

- d. The Commission shall serve its final decision on all parties no later than thirty (30) days from the issuance of the final decision, or, if applicable, the initial decision becoming the final decision of the Commission.

## 6. Right to Judicial Review

- a. All decisions of the Commission under this Policy shall be deemed final subject to the right of judicial review provided for by Code Section 20-3-250.16.

Interested persons may submit written comments to Kirk Shook, Executive Director, Georgia Nonpublic Postsecondary Education Commission, 2082 East Exchange Place, Tucker, Georgia 30084- 5305, [info@gnpec.ga.gov](mailto:info@gnpec.ga.gov). All written comments must be received by 9:00 a.m. on Monday, November 28, 2022. Interested persons may also participate in the proposed policy making by presenting comments orally at a public hearing to commence at 1:00 p.m. on November 28, 2022 at Young Harris College at the Quarterly Commission Meeting.

Oral presentations at the hearing may be limited to five (5) minutes per person in order to afford all interested persons an opportunity to be heard. If you have a physical impairment and require assistance or have any questions regarding this notice, please contact the Nonpublic Postsecondary Education Commission.

Based upon full consideration of all written and oral comments regarding the above matters, the Commission may reject or adopt the proposed policies or may make changes to the proposed policies.

The Commission intends to consider these matters at a Quarterly Commission Meeting at 1:00 p.m. on November 28, 2022 at Young Harris College.

Direct all written correspondence to:

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