



AUSTRALASIAN COLLEGE OF SPORT AND EXERCISE PHYSICIANS

P019 RECONSIDERATION, REVIEW AND APPEALS POLICY

PURPOSE AND SCOPE

The purpose of the Reconsideration, Review and Appeals Policy (P019 or the Policy) is to provide a formal process for the reassessment of certain decisions related to aspects of college business and membership including but not limited to, exams, training, accreditation, continuing professional development (CPD) and professional conduct functions of the Australasian College of Sport and Exercise Physicians (ACSEP). Any person covered under the scope of this policy who contends an incorrect decision has been made by the ACSEP may challenge that decision in line with this policy and procedure. This policy sits alongside the most updated ACSEP Training Manual, ACSEP CPD Handbook, online training documents and other relevant ACSEP policies.

The scope of this policy and procedure applies to the ACSEP membership, senior management, business entities, training posts, permanent and contract staff and prospective applicants.

This Policy sets out the three sequential steps that need to be taken by an Applicant challenging a decision related to the training and education functions of ACSEP, those being to apply for:

Step 1. Reconsideration. The Applicant may submit additional information to the original decision-maker. This additional information must have been available and known (or should have been known) at the time that the original decision was made.

Step 2. Review. The Applicant is given the opportunity to provide the reasons (to a review panel) that they believe there has been an error by the original decision-maker.

Step 3. Appeal. The Applicant (also known as the Appellant at this step) is given the opportunity to present their case for an Appeal of the decision (by the original decisionmaker) to an independent appeals committee (Appeals Committee).

This Policy and associated procedure exist to provide:

- a) a fair and reasonable opportunity to reconsider, review and appeal a decision
- b) describe how requests for reconsideration, review and appeal of decisions are undertaken by the ACSEP
- c) the grounds for review and the process for challenging a decision

BACKGROUND

It is the mission of the ACSEP to provide and promote excellence in the training and continuing professional development of the ACSEP Membership in Australia and New Zealand. As a specialist medical college, the ACSEP must fulfil the legislative requirements of the Australian Health Practitioner



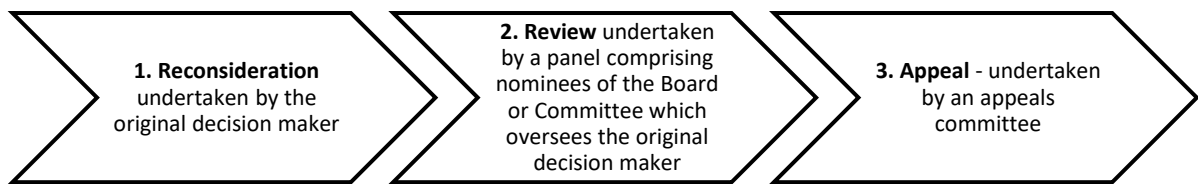
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Regulation Agency (AHPRA) in accordance with the requirements for accreditation by the Australian Medical Council (AMC) and the Medical Council of New Zealand (MCNZ). Accreditation of the ACSEP requires the College to provide a fair and appropriate process for the reconsideration, review and appeal of decisions related to the training and educational functions of the College.

PROCEDURAL STRUCTURE

1. Reconsideration and Review

There is a three-step sequential process under this policy. This process is illustrated in the following diagram.



The three-step process is intended to minimise the need for applicants to undertake an appeal to resolve their issue. Before lodging an application for formal appeal, an applicant must first go through the preliminary processes of reconsideration and review in accordance with the terms of this policy. Applications will not be accepted unless all requirements associated with the reconsideration, review and appeals process are followed.

Only one application for each reconsideration, review or appeal may be made in respect of an original decision. The onus of establishing the relevant grounds of a reconsideration, review or appeal request falls upon the applicant.

Applications submitted under this Policy will not be accepted where:

- a. the applicant is seeking an exemption from any approved policy or regulation.
- b. the application relates to matters that fall under the remit of other college policies and where that policy was not utilised within the timeframe outlined therein.

The CEO shall not convene the Appeals Committee unless satisfied:

- c. that all avenues of reconsideration and review have been exhausted
- d. that based on the material submitted, there are *prima facie* grounds for appeal.

2. Discretion of the CEO

The CEO has the discretion to allow the process to commence at the 'review' stage or to proceed directly to the appeals committee if satisfied that there are circumstances which make it justifiable and appropriate to do so. A request for the CEO to exercise their discretion under this clause may also be made by the applicant at the time of submission of an application pursuant to this policy.



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3. Copies of information

Prior to any application for reconsideration, review or appeal being made, an applicant may request copies of information on which the original decision was based (other than information supplied to the College on a confidential or privileged basis). The College will provide such information within (14) fourteen days of receipt of a written request, subject to obligations of privacy and confidentiality which may apply as per College policies and procedures.

4. Conflict of Interest and Confidentiality

- a. All members of a review panel and an appeals committee must confirm in writing their agreement to abide by a Statement of Conflict of Interest, Confidentiality, and Disclosure as provided by the Chief Executive Officer prior to a review panel or appeals committee. This includes agreeing to act with objectivity and without conflict of interest with respect to all matters related to a Reconsideration, Review or Appeal.
- b. All members will not knowingly participate in a reconsideration, review or appeal relating to any Applicant whose past or present activities or relationships could affect their ability to be impartial and objective.
- c. Members of Review Panels and Appeals Committee must agree to
 - I. keep confidential any information provided by the applicant under review as well as information gained due to participating in a review or appeal.
 - II. not discuss or disclose institutional information except as needed for the Review Panel and Appeals Committee's decision-making processes.
 - III. not make use of the information to benefit any person or organization.
- d. Maintenance of confidentiality survives any action and continues after the process has concluded.

5. Fees

- a. No fee is required for either the Reconsideration or Review process
- b. An Applicant will be required to pay a fee for an Appeal:
 - i. The relevant fee is listed on the ACSEP website;
 - ii. The fee is to cover direct administrative costs associated with the Appeal and must be paid at the time an application for Appeal is lodged;
 - iii. If the Applicant is successful, up to 50% of the Appeal fee or such part of the fee as the Appeals Committee determines will be refunded.

GENERAL PRINCIPLES

6. Acceptance of applications

- a. The College reserves the right not to accept an application for reconsideration, review or appeal where the applicant is unable to produce any relevant verifiable evidence in support of the stated grounds on which the application is based.
- b. The CEO shall not progress an application made pursuant to this policy unless satisfied that the application establishes a *prima facie* case for reconsideration, review or appeal.



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- c. Where the CEO determines that a *prima facie* case does not exist, the applicant will be advised in writing and given 14 business days to provide a final submission addressing the deficiencies indicated by the CEO. If the CEO is of the opinion that a *prima facie* case is still not established the right to reconsideration/review/appeal in accordance with this policy will be denied.
- d. The CEO may delegate their powers and duties set out in this policy as he/she determines.

7. Decisions subject to this Policy

An Applicant may apply for a Reconsideration, Review or Appeal of the following original decisions related to the training and education functions of the ACSEP:

- i. Selection/non-selection (Prospective applicant/Registrar/trainee)
- ii. Disciplinary action and dismissal (Fellow/Registrar/trainee)
- iii. Recognition of training (Registrar/trainee)
- iv. Application for admission/non-admission to Fellowship
- v. Assessment of International Medical Graduates (Prospective applicant)
- vi. College examinations (examination candidate)
- vii. Participation in the Continuing Professional Development of Fellows and CPD Program members (Fellow/CPD Program member)
- viii. Financial status of Fellows
- ix. Accreditation of practices for registrar training
- x. Any such other decisions as the Board of the College nominate for this policy

This policy is not intended to provide an avenue for person(s) to be exempted from any requirements or components of the ACSEP training program based on ignorance of relevant published regulations and/or policies.

8. Grounds for Reconsideration, Review and Appeal

A reconsideration, review or appeal of a decision may only be made on one or more of the following grounds relating to the outcome of a decision that is the subject of the application:

- i. that an error in law or in due process occurred in the formulation of the original decision;
- ii. that relevant and significant information, whether available at the time of the original decision or which became available subsequently, was not considered or not properly considered in the making of the original decision;
- iii. that the original decision was clearly inconsistent with the evidence and arguments put before the original decision maker;
- iv. that irrelevant information was considered by the original decision maker in the making of the original decision;
- v. that the relevant approved regulation or policy was not correctly applied
- vi. that the original decision was made for an improper purpose;
- vii. that procedures that were required to be observed by ACSEP policies in connection with the original decision were not followed and/or
- viii. that the original decision was made in accordance with a rule or policy without regard to the merits of the case



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RECONSIDERATION PROCESS

9. Initiation of Reconsideration

- a. Any applicant referred to in Section 1: Purpose and Scope who is directly affected by and dissatisfied with an original decision may apply to the CEO to have the decision reconsidered by the original decision-maker.
- b. Any application to initiate the reconsideration process must:
 - I. be lodged in writing with the CEO and may include any additional relevant material not previously considered by the original decision-maker, but only where such material was available and known (or should have been known) to the original decision-maker at the time the decision was made.
 - II. specify the original decision that is being contested and provide a brief outline of the matter in issue;
 - III. specify the ground(s) of appeal (as stated in clause 5.3); and
 - IV. provide verifiable evidence in support of the ground(s) outlined in the application

10. Timeframe

The application for reconsideration of an original decision must be received by the CEO within 3 months of the date the original decision was communicated to the applicant.

11. Conduct of Reconsideration

- a. The original decision-maker shall reconsider the decision together with all original material previously available to the original decision-maker, any additional materials provided by the Applicant, their submissions (if applicable); and any additional material considered relevant by the Chair of that College entity.
- b. Unless requested by the original decision-maker, the applicant is not permitted to attend any meetings with the original decision-maker or make any oral submissions to the original decision-maker, either personally or through another party.
- c. The original decision-maker may inform itself as it sees fit, subject to the rules of procedural fairness.
- d. The original decision-maker must not consider evidence of further training and experience by the applicant obtained between when the original decision was made and when it was reconsidered.

12. Outcome of Reconsideration

The original decision-maker may make any one of the following reconsideration decisions:

- i. affirm its original decision;
- ii. vary its original decision; or
- iii. set the original decision aside and make a new decision.



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Minutes of the original decision-maker's reconsideration deliberations must be kept in accordance with the standard practices of the College. The original decision-maker must notify the CEO in writing of the reconsideration decision, including reasons for the decision.

13. Notification of Outcome

The College aims to complete the reconsideration process within six (6) weeks of acceptance of an application by the CEO. The CEO will notify the applicant in writing of the reconsideration decision as soon as practicable. Subject to obligations of privacy and confidentiality that may apply, the notification of the outcome of the reconsideration application will include the reason(s) for the reconsideration decision and information relating to further options, should the applicant remain dissatisfied with the original decision and reconsideration decision.

Following receipt of the reconsideration decision, the applicant may:

- a. accept the original decision and the result of the reconsideration; or
- b. within two (2) weeks, apply in writing requesting that the CEO convene a hearing of a review panel. Should no application be received from the applicant within two (2) weeks, the Applicant will be deemed to have accepted the reconsideration decision.

REVIEW PROCESS

14. Initiation of Review

- a. An applicant who remains dissatisfied with the original decision and/or reconsideration decision may apply to the CEO to have the original decision reviewed by a review panel.
- b. A review may only be sought in relation to the ground(s) considered in the reconsideration application.
- c. The request for review must:
 - i. be made in writing and lodged with the CEO; and
 - ii. include any additional material or documentation not previously considered (if applicable).

15. Timeframe:

The application for review of a reconsideration decision must be received by the CEO within two (2) weeks of the date of the written notification of the reconsideration decision.

16. Special circumstances

Where the CEO has determined that a matter may proceed directly by way of review (rather than by reconsideration), the application for review must:

- a. include all the information and documentation required for the reconsideration of an original decision (see clause 6.1b); and
- b. be received by the CEO within the same timeframe as that applicable to an application for reconsideration.



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17. Review Panel

- a. The CEO shall convene a review panel comprising three people approved by the CEO or their delegate for this purpose.
- b. The review panel shall not include a member who participated in the making of the original decision or the Reconsideration Decision or who otherwise has, or may be perceived to have, a conflict of interest.

18. Conduct of Review

- a. The review panel shall conduct the review based on:
 - i. all the original material and documentation considered by the original decision-maker when making the original decision or reconsidering it under this Policy
 - ii. the application for Review including all additional material and documentation supplied by the applicant for the purposes of the review (if any)
 - iii. any additional material and documentation considered relevant by the chair of the review panel (d) whether the principles of procedural fairness were followed when the original decision was made and (if relevant) when it was reconsidered,
 - iv. any relief previously afforded to the appellant for the circumstances relevant to the ground(s) on which the application is made (if any); and
 - v. relevant College regulations, policies and procedures.
- b. The review panel must not consider evidence of further training, supervised practice or experience that the applicant obtained between the date the original decision was made and when it was reviewed.
- c. Unless requested by the review panel, the applicant is not permitted to attend meetings of the review panel or to make any oral submissions to it, either personally or through any other party.
- d. The review panel may exercise all the powers and discretions that the original decisionmaker was able to exercise and is not subject to the rules of evidence. The Review Panel may inform itself as it sees fit, subject to the rules of procedural fairness.

19. Outcome of Review

- a. The review panel may make one of the following decisions (Review Decision) :
 - i. affirm the original decision or reconsideration decision
 - ii. vary the original decision or the reconsideration decision to arrive at a different decision
 - iii. set aside the original decision or reconsideration decision and refer the matter to the original decision-maker for further consideration in accordance with any directions or recommendations it may make, or
 - iv. set aside the original decision or reconsideration decision and make any further decision it considers appropriate.
- b. Minutes of the review panel will be restricted to a report listing the documentation presented, the review decision and the reasons for the decision.



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- c. The review panel must notify the CEO in writing of its decision and the reasons for the decision. The decision of the Review Panel is binding on the original decision-maker who must comply with any directions.

20. Notification of Outcome

- a. The College aims to complete the review process within eight (8) weeks of receipt of the review application pursuant to this policy. Following completion of the Review process and as soon as practicable, the CEO will notify the Applicant in writing of the Review and, if relevant advise the Applicant of their right to appeal this Review Decision
- b. On receipt of notification from the CEO of the review decision, the applicant may:
 - i. accept the original decision and the result of the review, or
 - ii. within two (2) weeks of the date of notification, apply to appeal the decision. If no correspondence is received from the applicant within two (2) weeks, they will be deemed to have accepted the review decision.

APPEALS PROCESS

21. Appeals Committee composition

An Appeals committee made up of 5 persons will be convened by the Chief Executive Officer. The composition of the Appeals Committee will be specific to the matter being appealed and will comprise the following members (selected from):

- i. "Chair" (one of the non-Fellow members of the Appeals Committee)
 - ii. Chairman of the College or another Board member appointed by the Board
 - iii. One Fellow of the College
 - iv. Up to three other persons who are external to the College and not Fellows, nominated by the CEO
- a. The Appeals Committee will not comprise any individual who was a party to the decision of the College to which the appeal relates (or, in the case of an appeal in relation to the assessment of overseas trained doctors, any individual who was on the panel to assess the overseas trained doctor).
 - b. The Chief Executive Officer and the College Solicitor (or their respective delegates) shall be the Secretariat and Legal Adviser respectively, to provide advice on the aspects of College policy, practice and procedures to the Appeals Committee but shall not form part of the Appeals Committee.
 - c. A quorum for meetings of the Appeals Committee will be the Chairman and three other members, including at least one member external to the College. All members of the Appeals Committee shall be entitled to vote on decisions. The Appeals Committee shall decide based on a majority vote. In the event of an equality of votes, the Chairman will exercise a casting vote.



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22. Consideration of appeals

- a. The Appeals Committee must act according to the rules of natural justice and decide each appeal on its merits. The Appeals Committee is not bound by the rules of evidence and, subject to the rules of natural justice, may inform itself on any matter and in such manner as it thinks fit.
- b. The Appeals Committee shall be entitled to consider all relevant information which it thinks fit and may invite any person to appear before it, or to provide information.
- c. The Appeals Committee shall conduct its affairs with as little formality as possible and in accordance with the procedures set out in these rules, but otherwise, subject to these rules, shall have full power to regulate its conduct and operation.
- d. Except where otherwise required by law, or otherwise determined by the Appeals Committee, a transcript of the hearing of the Appeals Committee and other information provided to the Appeals Committee shall be kept confidential (save that information may be released with the consent of the applicant). A de-identified report of the Appeals Committee hearing will be issued by the Appeals Committee to the College Board and published by the College Board in the Annual Report.
- e. Minutes of hearings of the Appeals Committee shall be confined to a report of the decision made by the Appeals Committee and its recommendations, if any, to the College Board.
- f. An applicant to the Appeals Committee shall have the right to appear and address the Appeals Committee in relation to his or her submissions. The applicant shall be entitled to have a legal representative as an observer before the Appeals Committee, who may, on with the prior consent of the Appeals Committee, act as an advocate.
- g. The applicant may be assisted by a personal advocate colleague or mentor in those cases where the Appeals Committee considers that an applicant could not or would be disadvantaged in his or her appeal if required to present in person.
- h. The Chief Executive Officer may delegate his/her powers and duties in respect of any appeal to such person as he or she determines.
- i. The Appeals Committee will not, except in exceptional circumstances, consider a matter de novo.

23. Appeals Committee hearing\process and timeline (For guidance only)

- a. The College shall endeavour to convene the Appeals Committee within 3 months of the lodging of an appeal and hear the appeal as soon as practicable.
- b. At least 8 weeks prior to the convening of the Appeals Committee hearing, the Chief Executive Officer will advise the applicant in writing of:
 - i. The date, time and place of the hearing
 - ii. The right of the applicant to appear before the Appeals Committee and to seek leave to have legal representation, in accordance with these rules



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- c. An applicant will be asked to lodge a written submission to the Appeals Committee at least 30 days before an appeal hearing. Subject to these rules, the Appeals Committee may receive written or oral submissions at any time during a hearing, at its discretion.
- d. Prior to the hearing of the Appeal:
 - i. at least 8 weeks prior to the hearing, the College will provide the applicant with copies of documents and records of the College relevant to the Appeal.
 - ii. at least 4 weeks prior to the hearing, the applicant will provide the College with written submissions and copies of any other documents and records upon which the applicant wishes to reply.
 - iii. at least 3 weeks prior to the hearing, the Board or Committee (or other decision maker) whose decision is the subject of the appeal, will provide the College and the applicant with any written submissions in reply.
 - iv. at least 1 week prior to the hearing, the applicant will provide any further or final submissions in reply.
- e. Time of and During the hearing of the Appeal
 - i. The Appeals Committee may meet alone for up to one hour at the commencement of each meeting to review the matter before it.
 - ii. The applicant and other parties attending to provide information to the Committee will be admitted together.
 - iii. Any legal or other adviser permitted to be present will direct questions only to the Chairman and will conduct himself/herself in accordance with directions from the Chairman.
 - iv. The Chief Executive Officer of the College attends as Secretariat to the Appeals Committee and to provide advice on the aspects of College policy, practice and procedures but is not a member of the Appeals Committee.
 - v. The Appeals Committee may request, or permit, other parties to appear before it strictly in the role of providing information to the Committee.
 - vi. The Chairman will invite the applicant to present his/her submission and may at any time direct the applicant to any point of that submission or invite questions on any point of that submission and may request the applicant to bring his/her submission to a close if the presentation is too protracted.
 - vii. The Chairman will then invite members of the Appeals Committee to seek clarification from the applicant of any matters raised.
 - viii. The Chairman will then invite any person attending to provide information to the Committee to comment on the submission of the applicant.
 - ix. The Appeals Committee may direct questions to any person attending to provide information to the Appeals Committee.
 - x. The applicant will be asked to respond or make submissions in relation to material presented by other parties or participants.
 - xi. The Appeals Committee will then adjourn, and the parties participating in the appeal will remain available to clarify any further matters.



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- xii. Any or all persons, including members of the Appeals Committee, may participate telephonically or electronically as the Chairman permits.
 - xiii. The parties involved in the appeal will, if the Appeals Committee requires such further clarification, re-join the meeting and provide the clarification sought.
 - xiv. The applicant will be asked if he or she has any further written submissions or wishes to make any further comments or responses before the formal proceedings are closed.
 - xv. The applicant may be given an opportunity to make any further written submissions necessary within a short period of time following the close of the meeting.
 - xvi. The Chairman will thank all parties for their attendance and dismiss them.
- f. The Appeals Committee will reach a determination which will be conveyed to the participant's subsequently in writing by the CEO and shall endeavour to issue the determination within 21 working days of the hearing.
- g. The Appeals Committee shall use these procedures for guidance only and may vary these procedures and conduct its processes in such manner as it may, in each case, determine.

24. Decisions of the Appeals Committee

- a. An Appeals Committee may, upon considering all submissions:
- i. Confirm the decision which is the subject of the appeal
 - ii. Revoke the decision which is the subject of the appeal
 - iii. Revoke the decision and refer the decision to the relevant Board or Committee for further consideration (upon such terms or conditions of the Appeals Committee may determine)
 - iv. Revoke the decision and make the recommendations to the College Board on an alternative decision (save that the Appeals Committee may not exercise the power of appointment or selection of trainees to the College Training Program)
 - v. Recommend to the College Board whether part or all the costs associated with the Appeals Committee should be waived
- b. The Appeals Committee will endeavour to issue a written decision, with reasons for the decision, within 21 working days of the appeal hearing or within 21 working days of receiving written submissions after the appeal, whichever is later.
- c. The Appeals Committee may not appoint a person (who has applied for selection unsuccessfully) to the College Training Program but shall refer any such decision to appoint the person to the appropriate Board or other appropriate committee or body. The decision of the Appeals Committee will be final, and the applicant is unable to further appeal the outcome.



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25. Annual reporting

- a. The College shall publish annually a report on the activities of the Appeals Committee including the number of appeals lodged and the results of appeals.

DEFINITIONS

For the purpose of this policy:

- a. **Appeals Committee** means the committee convened under section 8 of this policy.
- b. **Applicant** means an individual (as defined under scope) who is applying for reconsideration, review or appeal of a decision under this policy.
- c. **Appellant** means an applicant (as outlined under Step 3) who is appealing a decision made by the ACSEP.
- d. **Member** has the meaning given in the ACSEP Constitution and includes Registrars and Fellows. Non-Fellow CPD Program members are also considered ACSEP members for the purposes of this policy ONLY.
- e. **Original decision** means the primary decision made by the ACSEP which the applicant contends has been made incorrectly.
- f. **Original decision maker** means the ACSEP body that had made the original decision.
- g. **Reconsideration decision** means the decision of the original decision-maker on reconsideration of an original decision.
- h. **Review decision** means the decision of the review panel on review of a reconsideration decision or original decision.
- i. **Appeal decision** means the decision of the Appeals Committee on appeal of a review or reconsideration decision or original decision

KEY RELATED DOCUMENTS

- ASCEP Training Manual
- P001 ACSEP Bullying, Harassment and Discrimination Policy
- P002 ACSEP Grievance Policy and Procedure
- P004 ACSEP Privacy Policy
- P011 ACSEP Deferral, Withdrawal & Termination from Training Program Policy
- P012 ACSEP Records Management Policy
- P015 ACSEP Code of Ethics and Professional Behaviour
- P020 ACSEP Part-Time ACSEP Training Program Policy
- P023 ACSEP Special Consideration Policy
- P011 – Deferral from Commencement of Training Policy

8 FEEDBACK

College staff, membership or any other interested person may provide feedback about this document by emailing nationaloffice@acsep.org.au



9 APPROVAL AND REVIEW DETAILS

Approval and Review	Details
Approval Authority	ACSEP Board
Advisor or Advisory Committee to Approval Authority	ACSEP Education Committee and Board
Policy Administrator	ACSEP Policy Officer
Next Review Date	August 2025

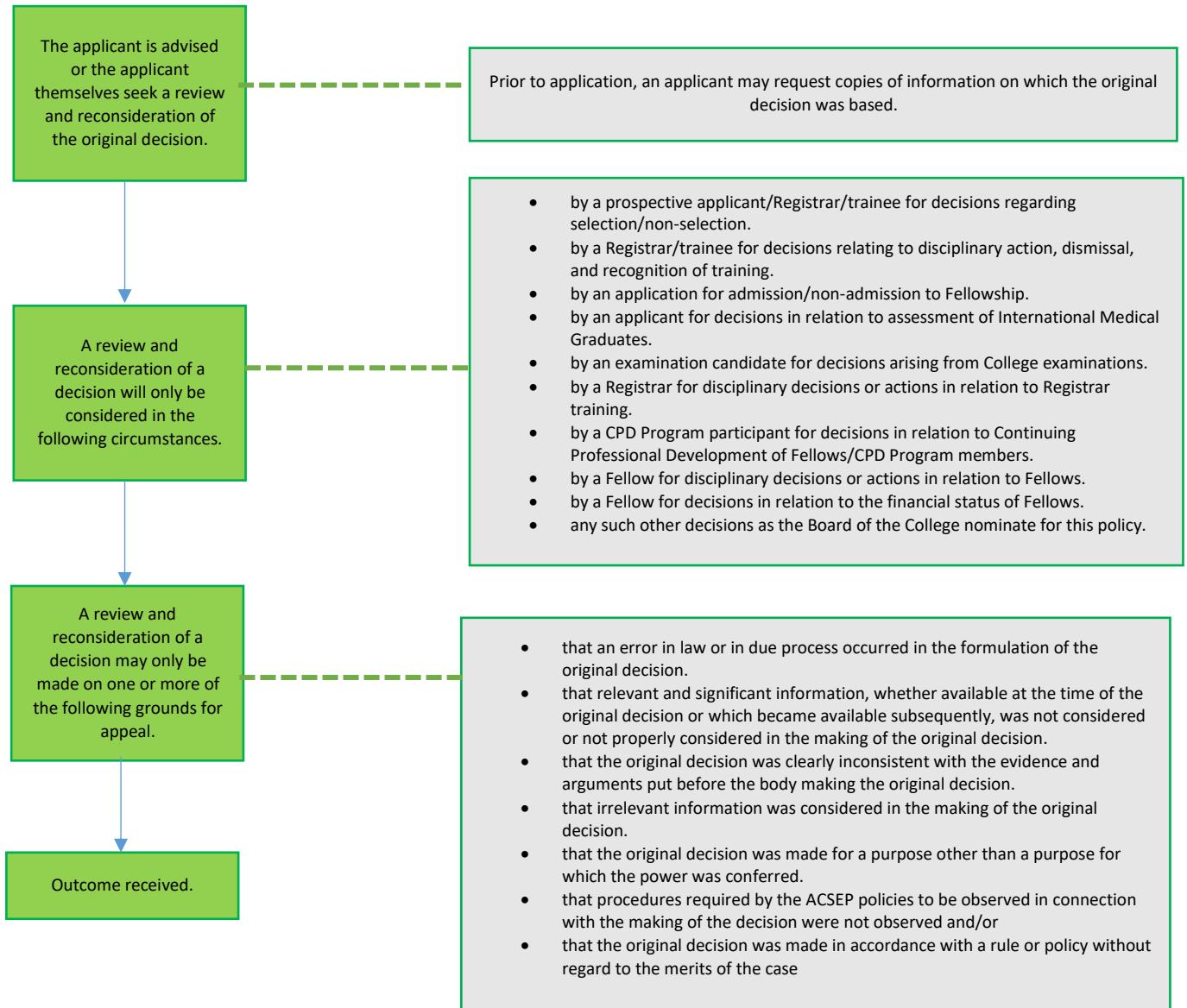
Approval and Amendment History	V3 – 11/08/2023	Ratified by ACSEP Board Redrafted and reviewed by SOO, reviewed by CEO and CPD Committee Approved by ACSEP Board Redrafted and reviewed by Research and Policy Officer Reviewed by TC & National Training Coordinator Developed by Program Manager Fellowship and Policy and Systems Administrator
	V3 – 20/07/2023	
	V2 – 23/05/2022	
	V2 – 20/07/2021	
	V1 - 11/2019	
	V1 - 15/11/2019	
Original Approval Authority Effective Date	11/02/2017 ACSEP Board EXECUTIVE	
Amendment Authority and Date		
Notes:		

- **Note: See next two pages for Chart of Stages of Appeals Process**



Stage One – Reconsideration and Review of Decision

A person directly and adversely affected by a decision. may, within 3 months of receipt of notice of such decision apply to the CEO to have the decision reviewed and reconsidered.



A person directly and adversely affected by a decision. may, within 3 months of receipt of notice of such decision apply to the CEO to have the decision appealed.



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Stage Two - Appeal of Decision

