

**§ 20-3-250.14. Filing complaint against institution or agent**

(a) Any person claiming damage or loss as a result of any act or practice by a nonpublic postsecondary educational institution or its agent, or both, which is a violation of this part or of the rules and regulations promulgated pursuant thereto may file with the executive director a complaint against such institution or against its agent, or both. A complaint shall be filed with the executive director within a reasonable period of time, as determined by regulations of the commission, after the event giving rise to the complaint. The complaint shall set forth the alleged violation and shall contain such other information as may be required by the commission. A complaint may also be filed with the executive director by the commission's representatives or by the Attorney General. A complainant may also file with the executive director as a representative of a class of complainants.

(b) The executive director shall investigate any such complaint and may, at his or her discretion, attempt to effectuate a settlement by persuasion and conciliation. The executive director shall consider a complaint pursuant to rules, regulations, and procedures promulgated by the commission.

(c) If, based upon all the evidence at a hearing or other procedure, the executive director shall find that a nonpublic postsecondary educational institution or its agent, or both, have engaged in or are engaging in any act or practice which violates this part or the rules and regulations promulgated pursuant thereto, the executive director shall issue and cause to be served upon such institution or agent, or both, an order requiring such institution or agent, or both, to cease and desist from such act or practice. Additionally, if the executive director shall find that the complainant or class of complainants has suffered loss or damage as a result of such act or practice, the executive director may, at his or her discretion, award the complainant or class of complainants full or partial restitution for such damage or loss and may impose the penalties provided for in Code Section 20-3-250.21. The executive director may also, as appropriate, based on his or her own investigation or the evidence adduced at such hearing or on the basis of such investigation and evidence, commence an action to revoke an institution's authorization to operate or revoke an agent's permit.

HISTORY: Code 1981, § 20-3-250.14, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 1991, p. 687, § 5; Ga. L. 2000, p. 1589, § 3; Ga. L. 2015, p. 83, § 7/HB 353.

NOTES: THE 2015 AMENDMENT, effective July 1, 2015, deleted "verified" following "director a" near the end of the first sentence of subsection (a); in subsection (b), inserted "or her" near the middle of the first sentence, substituted the present provisions of the second sentence for the former provisions, which read: "The executive director may consider a complaint after ten days' written notice sent by registered or certified mail or statutory overnight delivery, return receipt requested, to such institution or to such agent, or both, as appropriate, giving notice of a time and place for hearing thereon.", and deleted the last sentence, which read: "Such hearing shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'"; and, in subsection (c), inserted "or other procedure" in the first sentence, and inserted "or her" in the middle of the second sentence and near the beginning of the last sentence.

**§ 20-3-250.15. Hearing and review by commission of denial of permit**

(a) Any person aggrieved by a decision of the executive director respecting denial of an authorization to operate or of an agent's permit or the placing of conditions thereon, whether on initial application or on application for renewal, or by a decision of the executive director revoking an institution's authorization to operate or an agent's permit and any person aggrieved by the imposition of a penalty by the executive director

under Code Section 20-3-250.21 shall have the right to a hearing and review of such decision by the commission as provided in this Code section.

(b) If, upon written notification of any such action taken by the executive director, the aggrieved party desires a hearing and review, such party shall notify the executive director, in writing, within ten days after the giving of notice of such action; otherwise such action shall be deemed final.

(c) Upon receiving such notice from the aggrieved party, the executive director, after consultation with the commission, shall within 30 days fix the time and place for a hearing by the commission and shall notify the aggrieved party thereof.

(d) At such hearing the party may employ counsel, shall have the right to hear the evidence upon which the action is based, and may present evidence in opposition or in extenuation. The commission as a whole may conduct such hearing and render a decision or the commission may appoint a hearing officer to conduct such hearing and render a decision on behalf of the commission. Such hearing officer may be a member of the commission or any other person, other than the executive director or his or her staff, as designated by the commission. The commission by rules and regulations shall provide for the rules of evidence and order and procedure which is to be followed for such hearings. Any member of the commission may participate in such hearing pursuant to this part except where a clear conflict of interest may be designated.

(e) A decision of the commission following a hearing, or on expiration of the time for demand of a hearing if no Page 38 such demand is filed, shall be deemed final, subject to the right of judicial review provided for by Code Section 20-3-250.16. All matters presented by hearing as provided in this Code section shall be acted upon promptly by the commission, and the commission shall notify all parties in writing of its decision, which 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.

HISTORY: Code 1981, § 20-3-250.15, enacted by Ga. L. 1990, p. 1166, § 3; Ga. L. 2015, p. 83, § 8/HB 353.

NOTES: THE 2015 AMENDMENT, effective July 1, 2015, in subsection (c), inserted “within 30 days”, and deleted “within 30 days” following “by the commission” near the end; and, in subsection (d), added the second through fifth sentences, and deleted the former last two sentences, which read: “The hearing shall be conducted in accordance with Chapter 13 of Title 50, the ‘Georgia Administrative Procedure Act.’ Any member of the commission may preside except where a clear conflict of interest may be demonstrated.”

#### **§ 20-3-250.16. Judicial review of final commission action**

(a) Any person aggrieved or adversely affected by any final action of the commission may obtain judicial review of such action as provided in this Code section.

(b) An action for judicial review may be commenced in any court of competent jurisdiction within 30 days after the commission’s action becomes effective.

(c) Upon a finding that irreparable injury would otherwise result, the commission, upon application therefor, shall postpone the effective date of its action pending judicial review, or the reviewing court, upon application

therefor and upon such terms and upon such security, if any, as the court shall find necessary, shall issue appropriate process to postpone the effective date of the commission's action or to preserve the rights of the parties pending conclusion of the review proceedings.

(d) The record on review, unless otherwise stipulated by the parties, shall include the original or certified copies of all pleadings, applications, evidence, exhibits, and other papers presented to or considered by the commission and the decision, findings, and action of the commission. As to alleged procedural irregularities, evidence may be taken independently by the court.

(e) If the court finds no error, it shall affirm the commission's action. If it finds that such action was:

(1) Arbitrary or capricious;

(2) A denial of a statutory right;

(3) Contrary to constitutional right, power, privilege, or immunity;

(4) In excess of statutory jurisdiction, authority, purposes, or limitation;

(5) Not in accord with the procedures or procedural limitations of this part or otherwise required by law;

(6) An abuse or clearly unwarranted exercise of discretion, unsupported by substantial evidence when the record is considered as a whole; or

(7) Otherwise contrary to law, then the court shall hold unlawful and set aside the commission's action and afford such relief as may be appropriate.

(f) The decision of the trial court shall be subject to appellate review in the same manner and with the same effect as in appeals from a final judgment or decree in any other civil action.

HISTORY: Code 1981, § 20-3-250.16, enacted by Ga. L. 1990, p. 1166, § 3.

#### **§ 20-3-250.5. Administration; general powers and duties**

(c) The executive director of the Nonpublic Postsecondary Education Commission shall be appointed by the Governor. The executive director shall administer the provisions of this part as provided in this subsection and as provided by rules, regulations, and policies of the commission. The executive director shall have the following powers and duties:

(5) To investigate as he may deem necessary on his own initiative or in response to any complaint lodged with him any person, group, or entity subject to, or reasonably believed by him to be subject to, the jurisdiction of this part; and, in connection therewith, to subpoena any persons, books, records, or documents pertaining to such investigation, which subpoenas shall be enforceable by any court of this state; to require answers in writing under oath to questions propounded by him; and to administer an oath or affirmation to any person in connection with any investigation;

**§ 20-3-250.6. Minimum standards for educational institutions**

(a) In establishing the criteria required by paragraph (2) of subsection (b) of Code Section 20-3-250.5, the commission shall observe and shall require compliance with the following minimum standards:

(1) A nonpublic postsecondary educational institution must be maintained and operated, or, in the case of a new institution, it must demonstrate that it can be maintained and operated in compliance with the following minimum standards:

(N) That the institution posts continuously in a conspicuous place a notice, in such form as required by the commission, which sets forth the procedures for filing a complaint with the commission for any alleged violation of this part.

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**Standard Ten: Complaint Procedure**

**The institution continuously posts in a conspicuous place and publishes in the catalogue, student handbook and website the procedures for filing a complaint.**

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**Criteria**

**The following criteria are used by professional staff members and evaluation committees as indicators of compliance for the standard.**

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1. The institution's procedure for filing a student complaint is:
    - posted in a central area that is free and accessible to all students;
    - written in English, paper size at least 8½ x 11", and at least number 18 font size print;
    - routinely used in announcements to students;
    - included in the catalogue, student handbook and website.
  2. The institution's procedure for filing a student complaint includes:
    - instructions to the complainant;
    - the sequential steps available to the student;
    - the time limitations for filing and resolving a complaint;
    - the title of the individual (i.e. Director, President) who makes the final institutional decision;
    - the right of appeal of the final institutional decision to NPEC (including the name, address, telephone number and website of NPEC).
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**§ 20-3-250.21. Fines for violations**

Any person, group, or entity or any owner, officer, agent, or employee thereof who shall willfully violate Code Section 20-3-250.7 or 20-3-250.8 or who shall fail or refuse to deposit with the executive director the records required by Code Section 20-3-250.17 shall be subject to a civil penalty not to exceed \$1,000.00 for each violation. Each day's failure to comply with such Code sections shall be a separate violation. Such fine may be imposed by the executive director in an administrative proceeding or by any court of competent jurisdiction. The commission shall adopt a schedule of regularly imposed fines for violations of this part and shall have such schedule published by the executive director.