



## **GRIEVANCE AND DISCIPLINARY POLICY**

Updated February 2022

This Grievance and Disciplinary Policy sets forth the policies for addressing grievances and disciplinary actions within USA Triathlon.

### **BACKGROUND ON POLICY AND PROCEDURES**

#### **1. Parties Subject to this Policy.**

This Policy shall apply to the following individuals:

- A. Every member of USA Triathlon (a “Member”).
- B. Non-members under the jurisdiction of USA Triathlon (an “Individual Under USAT Jurisdiction”).

#### **2. Disputes subject to this Policy.**

This Policy shall apply to the following types of matters:

- A. Grievances against USA Triathlon. A grievance against USA Triathlon, which involves a complaint by a Member alleging that USA Triathlon has violated one or more of its Bylaws, rules, policies, or procedures; the United States Olympic and Paralympic Committee (USOPC) Bylaws; and/or the Ted Stevens Sports Act (Sports Act), 36 U.S.C. sec. 220501 et seq.
- B. Opportunity to Participate. An Opportunity to Participate complaint involves the allegation by a Member that USA Triathlon is denying, or threatening to deny, his/her opportunity to participate in the Olympic or Paralympic Games, a World Championship competition or such other “protected competition” as defined by the USOPC in its Bylaws. For purposes of clarification, a Member who is alleging a denial of the opportunity to participate may file a complaint under this Section in accordance

with the procedures set forth in this Policy, and/or the Member may avail himself/herself of the rights and remedies available pursuant to Section 9 of the USOPC Bylaws or the rights and remedies set forth in the Sports Act. If a Member opts to pursue arbitration in accordance with Section 9 of the USOPC Bylaws or under the Sports Act, then the decision under that arbitration shall control, and this procedure set forth in this Section shall no longer be available. The aggrieved Member may wish to consult with the USOPC Athlete Ombudsman (<https://www.teamusa.org/athlete-ombuds>), USA Triathlon's athlete representatives to the USOPC Athlete Advisory Council, and/or another representative of the athlete's choice.

C. Disciplinary Matters. A Member or an Individual Under USAT Jurisdiction who has been found by the CEO or his/her designee to have violated one or more Bylaws, rules, policies or procedures of USA Triathlon may contest such determination through these procedures. The procedure for the CEO or his/her designee to make a determination of a violation of one or more Bylaws, rules, policies or procedures is set forth in Sections 8-9 of this Policy.

D. References. One or more matters referred to in Section 2.A, 2.B or 2.C above may be referred to herein as a Dispute.

### **3. Disputes Not Subject to this Policy.**

All matters or disputes not specifically described above are not subject to adjudication under this Policy. Without limiting the prior sentence, the following matters are specifically not subject to this Policy:

- A. Claims involving specific action(s) or inaction(s) by the Board of Directors or the CEO involving corporate actions, or the direction and/or management of USA Triathlon.
- B. Claims involving employment matters and/or contractual relationships with USA Triathlon.
- C. Claims of misconduct or error on the part of USADA and/or the World Anti-Doping Agency ("WADA") personnel, or laboratories utilized by either USADA or WADA; or otherwise arising from or related to the imposition of discipline (or failure to impose discipline) for any actual or alleged doping offense(s).

D. Claims of error on the part of the U.S. Center for SafeSport (“Center for SafeSport”) and/or personnel; or otherwise arising from or related to the imposition of discipline (or failure to impose discipline) for any actual or alleged sexual misconduct offense(s) or other offense under the exclusive jurisdiction of the Center for SafeSport.

#### **4. Filing a Complaint.**

To properly file a complaint under these procedures, the Member must complete and submit a Complaint Form located at ([www.teamusa.org/USA-Triathlon/About/USAT/Governance](http://www.teamusa.org/USA-Triathlon/About/USAT/Governance)). The complaint must also include at least the following elements:

- A. The full name of the Member and his/her USA Triathlon membership number (or if the Member does not have a USA Triathlon membership number, then he/she must include an explanation of how he/she qualifies to file a complaint under this Policy, such as an Individual Under USAT Jurisdiction contesting a disciplinary action);
- B. Alleged grounds for the complaint, including whether the complaint is filed under Section 2.A, 2.B or 2.C of this Policy;
- C. The relief sought;
- D. Any supporting evidence and/or documentation supporting the complaint; and
- E. The sum of \$350 made payable to USA Triathlon

The form should be addressed and mailed or emailed to the USA Triathlon Senior Counsel and Michael Jones, Chair of the Judicial Committee at 5825 Delmonico Dr., Ste 200 Colorado Springs, CO 80919; [nellie.viner@usatriathlon.org](mailto:nellie.viner@usatriathlon.org) and [legal@usatriathlon.org](mailto:legal@usatriathlon.org).

#### **5. Initial Review of Complaint.**

The USA Triathlon Senior Counsel will review the complaint to ensure that the Claimant has satisfied the minimum requirements set forth in Section 4. If the complaint does not meet the minimum requirements, then the Senior Counsel will return the complaint to the Claimant with an explanation of what is missing or deficient. If the Senior Counsel determines that the complaint has satisfied the minimum requirements, then he/she will promptly forward the complaint to the Chair of the Judicial Committee but no more than seven (7) business days after initial receipt of complaint.

## **6. Waiver or Reduction of Filing Fee.**

If the Claimant believes that the Filing Fee required under Section 4.E creates a financial hardship, he/she may request a reduction or waiver of the Filing Fee by submitting a written request to the Senior Counsel. The Claimant may also provide information demonstrating the hardship for consideration by the Senior Counsel. In addition, the Senior Counsel may request such additional information as he/she believes is necessary to evaluate the request. The Senior Counsel will issue a decision on the request, which may include a waiver of, reduction in, or no change to, the Filing Fee. If the Claimant disagrees with the decision of the Senior Counsel, he/she may appeal the decision to the Chair of the Judicial Committee for review, whose decision will be final and binding.

## **7. Statute of Limitations on Complaints.**

Complaints filed pursuant to this Policy shall be subject to the following statutes of limitations. Failure to file a complaint prior to the applicable statute of limitations will be grounds for dismissal of the complaint by the Hearing Panel:

- A. Complaints filed under Section 2.A must be filed within one (1) year of the date the Member knew, or should have known, about the alleged violation by USA Triathlon of its Bylaws, rules, policies, or procedures; the USOPC Bylaws; and/or the Sports Act.
- B. Complaints filed under Section 2.B must be filed within six (6) months of the act or omission giving rise to the alleged denial of an opportunity to participate.
- C. Complaints filed under Section 2.C must be filed within sixty (60) days of the date of receipt of the Initial Determination letter or email; provided, however, that where the Initial Determination imposes a suspension from USA Triathlon, termination of membership in USA Triathlon, or any period of ineligibility, then a complaint contesting such Initial Determination must be filed within six (6) months of the date of receipt of the Initial Determination letter or email.

## **DISCIPLINARY ACTIONS**

### **8. Initial Review.**

The CEO or his/her designee may undertake a review of a potential violation of one or more Bylaws, rules, policies or procedures of USA Triathlon based on (a) his/her own initiative or observations, or (b) an allegation of a violation reported to USA Triathlon. The CEO or his/her designee shall conduct an investigation into the matter, and based on that investigation, the CEO or his/her designee shall make an initial determination of whether a violation has occurred

(the “Initial Determination”) and shall communicate the decision to the Member(s) and/or Individuals Under USAT Jurisdiction involved. The communication shall describe the allegations, the decision of the CEO or his/her designee, and the penalty to be imposed. However, if the penalty to be imposed by the CEO involves suspension from USA Triathlon, termination of membership in USA Triathlon, or any period of ineligibility, then the penalty may not be imposed until the individual is afforded a hearing pursuant to this Policy, unless the individual chooses to accept the penalty or fails to file a complaint within the prescribed period of time.

#### **9. Contesting of Initial Determination**

An individual found to have committed a violation as described in Section 8 may contest the Initial Determination as provided in this Policy. If the individual fails to file a complaint by the applicable deadline, then the Initial Determination, including any penalties imposed, shall be final and binding.

#### **10. Penalties Imposed by Other Entities**

USA Triathlon shall honor the suspension(s) or other disciplinary action(s) imposed upon a USA Triathlon member or Individual Under USAT Jurisdiction by World Triathlon, USOPC, USADA, the Center for SafeSport and/or WADA. USA Triathlon may, where appropriate, delay holding a disciplinary matter proceeding pending a proceeding before World Triathlon, the USOPC, USADA, the Center for Safe Sport and/or WADA. USA Triathlon may (i) conduct an investigation and hold a hearing on those matters referred back by an agency considered to be in USA Triathlon’s jurisdiction, and (ii) address issues that are violations of USA Triathlon’s rules in addition to the rules of another agency. USA Triathlon shall comply with the jurisdictional requirements contained in the Center’s SafeSport Code for the U.S. Olympic and Paralympic Movements at Section V.

### **PROCEDURES FOR HEARING OF DISPUTES**

#### **11. Referral to Hearing Panel**

Once the Senior Counsel has referred a complaint to the Chair of the Judicial Committee, the Chair shall review the Complaint Form and shall notify the Claimant of any issues that, on their face, could result in dismissal of the complaint, such as failure to comply with the applicable statute of limitations. In the case of a properly filed Dispute, the Chair shall also send in writing a notice to any additional Affected Parties (defined in Section 12 below) containing the proposed action, charges, alleged violations and remedy sought with the supporting documentation filed in the Dispute within seven (7) business days of receipt.

If the Claimant requests an expedited hearing, the Chair of the Judicial Committee may evaluate the reasons for the request and determine whether an expedited hearing is warranted based on the interest of justice. If an expedited hearing is warranted, the Chair will prepare an expedited timeline for all steps in the hearing process (See Sections 11-24) and send it to the Claimant and all Affected Parties as soon as practicable.

## **12. Affected Parties.**

Affected Parties are individuals or entities that are named as the Respondent in the Dispute, and those who will be directly impacted by the outcome of a Dispute. The Hearing Panel shall ensure that any Affected Parties are provided with the relevant materials. The Hearing Panel may also determine that individuals not named by the Claimant or Respondent as an Affected Party shall be considered an Affected Party and given notice. Any party named as an Affected Party shall be eligible to participate in the Dispute, including the hearing. Any party notified of the Dispute as an Affected Party shall be bound by the decision of the Hearing Panel, even if that party chooses not to participate.

## **13. Appointment of Hearing Panel.**

The hearing panel (the "Hearing Panel") shall administer and oversee matters referred to it under this Policy according to the procedures set forth below.

Within thirty (30) business days after receipt of a Dispute, the Chair of the Judicial Committee shall appoint a Hearing Panel consisting of three (3) disinterested and impartial individuals from the Judicial Committee, at least one of whom must be an athlete meeting the definition for "Elite Athlete" as set forth in Section 6.8(a) of the USA Triathlon Bylaws, to hear the matter. The Chair of the Judicial Committee will also name one (1) of the individuals of the Hearing Panel as Chair of the Hearing Panel. The Chair of the Judicial Committee will send the names of the Hearing Panel members to the Claimant, the representative for USAT and all Affected Parties within fourteen (14) days of appointment.

If any party with a direct interest in the outcome believes that a Hearing Panel member is neither disinterested nor impartial, that party may challenge the participation of that Hearing Panel member to the Chair of the Judicial Committee. The Hearing Panel member in question shall thereafter be presented with the challenge and may, upon review, recuse themselves. If the Hearing Panel member in question does not recuse himself/herself, the Chair of the Judicial Committee shall review the objection to, and comments of, the Hearing Panel member in question. If the Chair of the Judicial Committee determines in his/her sole discretion that the Hearing Panel member's service on the Hearing Panel may pose an appearance of impropriety, he/she may replace that member. The Chair may also determine in his/her sole discretion that there is not an appearance of impropriety and may dismiss the challenge.

#### **14. Documents Provided to Panel**

Promptly after the appointment of the Hearing Panel, the Senior Counsel will provide to the Chair of the Hearing Panel a copy of each of the following documents: (i) the Complaint; (ii) all materials filed with the Complaint, if any; and (iii) any relevant documents in the possession of USA Triathlon. The Hearing Panel shall ensure that all relevant parties have copies of all materials and relevant documents on an ongoing basis.

#### **15. Dismissal of Complaint**

The Hearing Panel shall have the authority to dismiss a Complaint if it determines that the Complaint is not appropriate for the hearing process, including without limitation a lack of jurisdiction or inappropriate subject matter for the Dispute. In addition, any Affected Party may file a motion to dismiss based on such grounds, which the Hearing Panel will decide upon after receiving written arguments from the Claimant and the Affected Parties and, if requested by the Hearing Panel, oral argument.

#### **16. Response**

The Respondent shall have twenty (20) business days from receipt of the complaint to respond to the complaint or file a motion to dismiss. Respondent may request additional time from the Hearing Panel to file the response, which may be granted or denied in the Hearing Panel's determination. The Hearing Panel shall ensure that the response and all submitted documentation is sent to the Claimant.

#### **17. Discovery; Exchange of Documents, Witness Lists and Evidence**

The Hearing Panel shall determine whether, and to what extent, discovery and exchange of documents will be allowed or required, subject to the understanding that the hearing process is meant to be efficient and streamlined. The Hearing Panel shall also set the deadline for the exchange of witness lists and evidence to be presented at the hearing. Once the identities of any witnesses are disclosed, the Hearing Panel shall send that list to all parties within seven (7) business days.

#### **18. Time and Place of Hearing**

The Chair of the Hearing Panel will select the time and place/medium for the hearing so as to have the hearing occur at the earliest convenient date consistent with the need to provide the parties with adequate time to prepare. In any event, the hearing shall be scheduled not more than ninety (90) business days from the last filing by either party unless the hearing is to be

expedited or the Hearing Panel specifically determines that a longer period is necessary in the interests of justice. The Hearing Panel shall also shorten all time periods as it deems necessary and appropriate in order to render a decision in a timely manner under the circumstance of the Dispute and taking into consideration any related deadline(s), forthcoming competition(s) or event(s).

**19. Manner of Hearing**

The Chair will conduct the hearing in person, by telephonic conference call, video conference or other similar electronic means whereby all parties participating may hear and speak to each other during the hearing. The Chair will communicate information about the hearing schedule to all Affected Parties. An in-person hearing shall not be mandatory, unless the Hearing Panel, in its sole discretion, determines an in-person hearing is required.

**20. Minimum Standards for Hearing**

The procedures to be followed at the hearing shall, at a minimum, include the opportunity for each party to (i) be represented by counsel (at that party's expense), (ii) present oral or written evidence, (iii) cross-examine witnesses, and (iv) present such factual or legal claims as may be relevant to their respective claim(s) or defense(s).

**21. Conduct of the Hearing**

The Chair of the Hearing Panel shall preside over the hearing and shall make evidentiary rulings and otherwise control the conduct of the hearing. The testimony of witnesses shall be taken under oath administered by the Chair of the Hearing Panel. The rules of evidence applicable to court proceedings shall not be strictly enforced, but the Hearing Panel shall give lesser weight to hearsay testimony, if admitted into evidence. The Chair of the Hearing Panel, in consultation with the other members of the Hearing Panel, shall set such timelines and such other rules regarding the conduct of the Hearing as he or she deems appropriate and/or necessary. Testimony at a hearing shall be taken under oath.

**22. Recording the Hearing**

Any party to a hearing may cause the hearing to be stenographically or electronically recorded. The cost thereof shall be borne by the party or parties requesting the recording and the nature of the recording process shall be announced on the record at the beginning of the hearing. The recording or transcript shall be made available to every other party upon reimbursement of a pro rata share of the recording and transcription expense, and to the Hearing Panel at no cost.

No person may secretly record a hearing or cause a hearing to be secretly recorded, in any form.

### **23. Burden of Proof**

In the conduct of a hearing, the burden of proof shall be upon the Claimant to prove his/her allegations by a preponderance of the evidence, except in the case of a disciplinary matter that is being disputed by a member, in which case the burden of proof shall be on USA Triathlon to prove the allegations by a preponderance of the evidence. For purposes of these Bylaws, “preponderance of the evidence” means superiority in weight of evidence that is more convincing (even if minimally) than the evidence presented by the other party.

### **24. Decision of the Panel**

Decisions on the merits of the Dispute and the form of remedies, including the nature and extent of discipline, shall be determined by a majority vote of the Hearing Panel. The Hearing Panel shall report its decision on the merits in writing within thirty (30) business days of the conclusion of the hearing; provided, however, that if necessary due to time constraints, the Hearing Panel may render its decision orally, or in writing without reasoning, to be followed by a written decision as soon as practicable. In addition, the Hearing Panel may extend the date for reporting its decision on the merits where necessary, and shall inform the parties of the extension. The decision on the merits shall be sent to the parties.

### **25. Legal Fees**

Every party has the right to be represented by an attorney or other representative of their own selection in any proceeding under this Policy. However, each party shall pay their own legal and/or representation fees in all proceedings, unless such fees are awarded by the Hearing Panel where the Hearing Panel determines that a party has committed abuse of process or filed a frivolous Dispute.

Any party to a grievance may appeal or submit their claim to an established major national provider of arbitration and mediation services based in the U.S. according to the requirements of the Ted Stevens Olympic and Amateur Sports Act §220522(4)(B).

### **26. Whistleblower Protection**

Regardless of whether the allegation(s) is proven, USA Triathlon will support the Claimant(s) and other protected parties and their right to express concerns in good faith. USA Triathlon will not encourage, allow or tolerate attempts from any individual to retaliate (as defined in the Ted Stevens Olympic and Amateur Sports Act (§220501(b)(11)) against an individual who reports a concern in good faith. Retaliation against a Claimant is prohibited and may be grounds for disciplinary action.

## **27. Related Resources**

### Athlete Ombudsman:

The Athlete Ombudsman provides cost-free, independent and confidential advice regarding athlete rights; resolving disputes or grievances; and any sport rule, policy, or process, including NGB- athlete agreements, codes of conduct or team selection procedures. The Athlete Ombudsman can also help athletes connect with legal counsel or mental health resources if needed. Athletes may contact the Athlete Ombudsman at:

PHONE: (719) 866-2299

EMAIL: [kacie@usathlete.org](mailto:kacie@usathlete.org)

WEBSITE: <https://www.teamusa.org/athlete-ombuds>

### USOPC Ethics and Compliance:

<https://www.teamusa.org/ethics-and-compliance>