

Motion 1503GC2 Revision of Article 12 LSC Administrative Board of Review

ARTICLE 12 – LSC ADMINISTRATIVE BOARD OF REVIEW ORGANIZATION

12.1 Introduction

USA Swimming is required to establish and maintain provisions for the swift, fair, and equitable resolution of all disputes involving any of its members. Pacific Swimming has established an LSC Administrative Board of Review to hear matters to include but not limited to complaints, protests and appeals regarding fines and matters not involving code of conduct violations. All matters involving code of conduct violations and sanctions will be heard by the USA Swimming Zone or National Board of Review.

12.2 Board of Review Organization

12.2.1 Establishment

The LSC Administrative Board of Review of Pacific Swimming shall be independent and impartial.

12.2.2 Members

The Board of Review shall have at least five (5) members, which shall include at least one (1) athlete member. The Board of Review, and any panel hearing a case, shall have a sufficient number of athlete members to constitute at least 20% of its membership. The House of Delegates may increase the number of members by resolution but subsequent to the adoption of these Bylaws may only decrease the number of members upon the expiration of the term of office of any incumbent members. When a matter is being heard by less than the full Board of Review, the panel hearing the case shall include a sufficient number of athlete members so as to constitute at least 20% of the hearing panel. No hearing shall proceed without the required athlete representation

12.2.3 Election; Term of Office; Eligibility

A. Election – The House of Delegates shall annually elect members of the Board of Review. Three (3) members shall be elected in even-numbered years and two (2) members in odd-numbered years.

B. Term of Office – The term of office shall be two (2) years. Each member shall assume office on the September 1 following the election and shall serve until a successor takes office.

C. Eligibility – Each member of the Board of Review shall be an Individual Member of Pacific Swimming and USA Swimming. In no case shall the General Chair serve on the Board of Review or elected members of the Board of Directors constitute a majority of the Board of Review.

PC Bylaws – Updated 5/30/14; Approved 6/2/14

12.2.4 Chair Elected by Board, Other Officers

The Chair of the Board of Review (the “Chair”), who must be a regular member, shall be elected annually by a majority vote of the regular members of the Board of Review. The Chair shall annually appoint a Vice-Chair and a Secretary of the Board of Review, each of whom must be regular members. The Chair may appoint a Presiding Officer, who must be a regular member of the Board, to preside over one or more pending cases.

12.2.5 Meetings

The Board of Review shall meet for administrative purposes as necessary to elect the Chair, to adopt rules and procedures and to conduct other business as may be helpful or necessary to achieve the purposes of the Board of Review and efficiently exercise its duties and powers. Other meetings may be called by the Chair or **by** any three (3) members. When meeting for administrative purposes, those provisions of Article 8 that are specified in Section 8.21 shall apply to the Board of Review.

12.2.6 Participation Through Communications Equipment

Members of the Board of Review may participate in a meeting or hearing of the Board of Review and any hearing may be conducted, in whole or in part, through conference telephone or similar equipment by means of which all persons participating in the meeting can hear each other at the same time. Participation by these means shall constitute presence in person at such a meeting or hearing.

12.2.7 Quorum

A quorum for any administrative meeting of the Board of Review shall be fifty percent (50%) of its members, including athlete members.

12.2.8 Resignations

Any member of the Board of Review may resign by orally advising the Chair or by submitting a written resignation to the Chair, the General Chair or the Board of Directors specifying an effective date of resignation. In the absence of a specified effective date, any such resignation shall take effect upon the appointment or election of a successor.

12.2.9 Incapacities and Vacancies – Determination of Vacancy or Incapacity

In the event of a vacancy in the office of the Chair, a Presiding Officer of any panel or other members of the Board of Review, the LSC shall have in place **a** reasonable written and published rules consistent with the laws of the state of incorporation of the LSC to determine when such membership on the Board of Review becomes vacant or a Chair, Presiding Officer or member becomes incapacitated. The determination as to when the Chair is temporarily incapacitated shall be made, where the circumstances permit, by the Chair and otherwise shall be within the discretion of the Board of Review, subject to any subsequent action of the House of Delegates.

PC Bylaws – Updated 5/30/14; Approved 6/2/14

12.2.10 Substitution for Members

In the event that a member of the Board of Review or a Presiding Officer is unable or unwilling to promptly act for any reason, recuses herself or himself or is disqualified in any particular circumstance, the Chair (or, if the person so unable or unwilling to act or recused or disqualified is the Chair, the Vice-Chair, or failing that, the General Chair) shall appoint another member or disinterested Individual Member to act in the member's place and stead in respect of that circumstance.

12.2.11 Advice; Attorney as Presiding Officer

A. Legal and Other Advice – Where appropriate or helpful, the Chair or Presiding Officer may consult the USA Swimming General Counsel, the Chair of the USA Swimming, Rules or Officials Committees or of the Bylaws Sub-committee or an attorney (who need not be a member of Pacific Swimming, USA Swimming or the Board of Review) retained by the Board of Review or the Chair regarding any issue raised by a proceeding.

B. Attorney as Presiding Officer – The Board of Review or the Chair may retain an attorney (who need not be a member of Pacific Swimming, USA Swimming or the Board of Review) to act as Presiding Officer at any hearing where it is appropriate or

helpful. A Presiding Officer who is not a Board of Review member may not participate in the deliberations of the Board of Review or the designated panel or have a vote.

C. Attorney's Fees and Expenses – Prior to retaining an attorney on any basis requiring the payment of fees to the attorney (the payment of expenses to an attorney providing services at no charge (pro bono publico) shall not be considered as a payment of fees for this purpose), the Chair or the Presiding Officer shall consult with the General Chair and the USA Swimming General Counsel. The Treasurer is authorized and directed to pay any fee and expenses charged by the attorney and approved by the Chair.

12.3 General

12.3.1 Administrative Powers

The Board of Review shall have the powers and the duty to:

- A. Administer and conduct the affairs and achieve the purposes of the Board of Review;
- B. Establish policies, procedures, and guidelines;
- C. Elect the Chair in accordance with Section 12.3.4;
- D. Elect or provide for the appointment of other officers, agents, or committees to hold office for terms, and to have the powers and duties specified;
- E. Call regular or special meetings of the Board of Review;
- F. Retain attorneys, agents and independent contractors and employ those persons which the Board of Review may determine are appropriate, necessary or helpful in the administration and conduct of its affairs (see 610.2.11 C); and
- G. Take such other action as may be appropriate, necessary or helpful in the administration and conduct of its affairs, the achievement of its purposes and the efficient exercise of its duties and powers.

12.3.2 Rule Making Powers

The Board of Review shall have the power and the duty to promulgate reasonable rules and procedures consistent with the corporation laws of the state of incorporation of the LSC with respect to any matter within its jurisdiction or appropriate, necessary or helpful in the administration and conduct of its affairs. Such rules and procedures shall have the same force and effect as if they had been adopted as part of these Bylaws.

12.3.3 Exercise of Powers and Decisions

Except for authority and power granted to the Chair or the Presiding Officer, the exercise of the authority and powers of the Board of Review and the decision of matters which are the subject of a hearing shall be decided by a majority vote of the panel, the rehearing panel or the membership of the Board of Review. The views of any dissenters shall be included in the record of the proceeding if requested by the dissenters. The exercise of the Board of Review's authority and power shall lie solely in its discretion and the interests of justice and the sport of swimming. However, the Board of Review shall exercise its power in response to a timely Petition filed with it, subject, in appropriate circumstances, to the power and discretion of the Chair or Presiding Officer to dismiss a Petition with permission to refile for a stated period. In connection with any preliminary investigation, the Chair or Presiding Officer may offer the services of a Board of Review member to act as a mediator or similar positions under other alternative dispute resolution mechanisms.

12.3.4 Timeliness of Petition

The Board of Review need not exercise its jurisdiction with respect to a Petition the subject matter of which occurred, or concerns or is founded on events which occurred, more than ninety (90) days prior to the date the Petition is received (as determined under Article 406.1 of the USA Swimming Rules and Regulations). A determination not to exercise its jurisdiction as a result of the untimeliness of a Petition may be made by the Chair alone and may be the subject of a request for rehearing and, thereafter, appeal to the National Board of Review pursuant to Article 408 of the USA Swimming Rules and Regulations.

12.3.5 Filing Fees

The Board of Directors or the House of Delegates may impose a schedule of generally applicable fees to be collected at the time a Petition, Request for a Rehearing or Request for Formal Hearing following an Emergency Hearing is filed with the Board of Review. If, on its own initiative or upon written request, the Board of Review determines it to be in the interest of justice and the sport of swimming, the filing fee may be waived on a case-by-case basis.

Every appeal to the Board of Review shall be instituted by a Petition served upon the General Chair and Chair of the Board of Review, as well as the other party(ies) to the LSC Board of Review proceeding, and shall be accompanied by a \$350 non-refundable filing fee payable to Pacific Swimming. Any appeal must be filed within thirty (30) days from the postmark date of the written Decision of the LSC Board of Review. The Petition on appeal shall set forth the grounds for appeal, citing factual and legal issues in as much detail as possible.

PC Bylaws – Updated 5/30/14; Approved 6/2/14