

National Board of Review Report

2011 Aquatic Sports Convention

9/13/2011-9/15/2011

Jacksonville, Florida

George Geanon, Wisconsin Swimming Officials' Committee

- Amateur Sports Act of 1978 – National Governing Bodies are required to provide for a prompt and equitable resolution of disputes involving any of its members.
- Ted Stevens Olympic and Amateur Sports Act 1998 – Procedural due process is required. Before declaring any athlete, coach, trainer, manager, administrator or official ineligible to participate, he/she must be provided a fair notice and an opportunity for a hearing.
- The Board of Review is the independent and impartial “judiciary” for the LSC to hear and decide disputes.
- The information provided in this document was obtained from the LSC Board of Review Workshop and the National Board of Review Certification Workshop presented at the 2011 Aquatic Sports Convention.

Administrative and Rule Making Powers of the LSC Board of Review

1. administer and conduct the affairs of the Board of Review;
2. establish policies, procedures and guidelines;
3. rules and procedures adopted by the Board of Review shall have the same force and effect as if they have been adopted as part of the LSC Bylaws;
4. elect the Board of Review Chair;
5. elect other officers, agents or committees;
6. call regular or special meetings of the Board of Review;
7. retain attorneys, agents and investigators subject to any LSC budgetary constraints.

Investigative and Judicial Powers of the LSC Board of Review

1. may investigate and conduct hearings;
2. make decisions and orders with regard to any matter affecting the LSC, its status or conduct as a Local Swimming Committee or the administration of the sport of swimming within the LSC boundaries.

Matters under the Jurisdiction of the LSC Board of Review

1. matters involving only members of that LSC;
2. matters arising in regional or zone competition;
3. matters within Code of Conduct sections 304.3.13 – 304.3.17 involving
 - a. one or members or participating non-members of the LSC

- b. not brought by USA Swimming;
- 4. any act of fraud, deception or dishonesty in connection with any USA-S activity (304.3.13).
- 5. abuse of an Official: any non-consensual physical contact, obscene language or gesture, or other threatening language or conduct directed towards any Meet Official and which is related to any decision made by such official in connection with a USA-S competition (304.3.14);
- 6. recruiting violations;
- 7. misconduct, as established by the USOC, USA-S any Zone or LSC team authority (304.3.16);
- 8. other: Any other material and intentional act or omission not provided for in the Code of Conduct that is detrimental to the image or reputation of USA Swimming, a LSC or the sport of swimming (304.3.17).

Matters under the Exclusive Jurisdiction of the National Board of Review

- 1. conflict involving athletes or other USA-S members from different LSCs;
- 2. conflicts arising at a national or international event;
- 3. any complaint brought under Code of Conduct Sections 304.3.1 through 304.3.12;
- 4. questions regarding LSC versus National Board of Review jurisdiction are resolved by the NBR Chair, and not appealable.

How must the Board of Review exercise its authority and make decisions?

- 1. Except for authority and power granted to the Board of Review (BOR) chair, the exercise, the exercise of the authority and powers of the BOR 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 full membership of the BOR.
- 2. The views of any dissenters shall be included in the record of proceedings if requested by the dissenters.
- 3. The exercise of the BOR's authority and power shall lie solely in its discretion and the interests of justice and the sport of swimming.
- 4. The BOR shall exercise its power in response to a timely Petition filed with it.
- 5. The BOR need not (but may, if it so chooses) exercise its jurisdiction with respect to a Petition the subject matter of which occurred more than 90 days prior to the date the Petition is received.
- 6. The Chair may offer the services of a BOR member to act as a mediator.
- 7. The mediator/investigator cannot discuss their findings with other members of the BOR.
- 8. This member must then recuse himself/herself from the hearing panel.**
- 9. The BOR is not responsible for gathering evidence, which is the responsibility of the involved parties.
- 10. If the Chair of the BOR investigates or mediates the matter without resolution, the Chair must recuse himself/herself from the hearing panel.
- 11. The Chair of the BOR does not update the Board of Director on specifics, only on the numbers, trends and subjects of Review Board cases.

Penalties that can be imposed by the Board of Review

1. dismissal of petition, with/without permission to refile;
2. censure or fine the Respondent;
3. establish a period of probation regarding Respondent;
4. prohibit or mandate future actions, inaction or conduct of Respondent;
5. determine the results of, or require a rerun of, any election held by the LSC or any constituent element thereof;
6. vacate, modify, sustain, reverse, remand or stay any decision or order of a smaller panel of the BOR, the HOD, the Board of Directors or any officer, or committee, or official of the LSC;
7. interpret any provision of the FINA rules and regulations to the extent not preempted by : FINA, USA-S Rules (except for Part One), the USA-S Code of Conduct, Bylaws, other policies, rules, regulations and procedures of USA-S or the LSC, the Amateur Sports Act, and other applicable laws;
8. deny, grant, suspend or restore the eligibility or right to compete of an Athlete Member of the LSC;
9. deny, grant, suspend or restore membership in the LSC and USA-S for a definite or indefinite period of time, with or without terms of probation, or expel any Group Member or Individual Member of the LSC and USA Swimming;
10. prohibit for a definite or indefinite period of time the participation of a non-member volunteer or other person participating in any capacity whatsoever in the affairs of USA-S, the LSC, its Group Members or other LSCs and their Group Members;
11. assess costs, including any filing fee and attorney's fees and expenses, against the non-prevailing party or refund any filing fee paid by the prevailing party;
12. any combination of the above, or any other remedies deemed appropriate under the circumstances (401.1.1).

Board of Review Process

A. Pre-Hearing Steps

1. written petition submitted to BOR Chair or the LSC General Chair;
2. describes the action, inaction or conduct that is believed to have been improper or incorrect;
3. provides the name of the person or group believed to have acted improperly, or the circumstances believed to require answers, explanations or clarifications;
4. includes any filing fee required under LSC Bylaws.

B. Review by BOR Chair

1. The Chair can accept a petition as is, dismiss, or suggest revisions to ensure the petition sets forth a cause of action.
2. If the Chair dismisses the petition, it can be reviewed by the full LSC BOR (406.1.2).

C. Notice of Hearing

1. Written notice must be given to each Respondent at his/her last known address (by certified or express mail, Federal Express or personal delivery), as soon as practical but no later than 20 days after receipt by the BOR Chair.
2. Article 406.4.1 requires the Notice to include:
 - a. a statement in reasonable detail of the charges (including a copy of the petition);
 - b. a statement of Respondent's right to counsel;
 - c. a description of the type of hearing to be held (in-person, conference call, etc.);
 - d. date, time and location of hearing (the hearing must be not less than 30 and no more than 60 days after the Notice is sent);
 - e. a request for answer by Respondent, with directions as to whom, when, and where the answer should be sent;
 - f. a statement of the right to appeal (including the right, if any, to a rehearing in the event of a decision adverse to Respondent).

D. Respondent's Answer

1. shall answer the charges in writing;
2. response delivered to the BOR Chair at least 14 days prior to the hearing;
3. copy to be sent to the Petitioner and his/her counsel and anyone specified in the Notice.

E. Reply by Petitioner

1. response may be provided by petitioner, but no required;
2. due 7 days before the hearing.

F. Alternative Dispute Resolution

1. mediation by the BOR Chair or designee (who will not be part of the BOR panel hearing the case);
2. arbitration;
3. appointment of special master for specific factual or legal issues;
4. informal conference with involved parties;
5. whatever else works and is fair to every involved;
6. Do not make the resolution more complicated than necessary.

G. Pre-hearing Investigations and Fact-Finding

1. No pre-hearing communication between BOR members and Petitioner or Respondent;
2. Copy everybody on everything
3. BOR must be objective and unbiased:

- a. no independent investigations;
- b. no independent visits;
- c. no independent witness interviews.
4. BOR is a hearing body, not an investigative body;
5. Pre-hearing conference may be indicated, especially if lawyers are involved.

H. Hearing Agenda

1. Call hearing to order:
 - a. announce name of case, location, time and date of hearing;
 - b. announce meeting is being recorded (tape or stenographer);
 - c. read charges as set forth in the Notice;
 - d. record names of Petitioner, Respondent, counsels, witnesses, etc.;
 - e. record names of BOR panel members, 20% of which must be athletes;
 - f. brief opening statements;
 - g. presentation of evidence and witnesses;
 - h. allow cross examinations of witnesses and redirect examinations
 - i. Petitioner's witnesses followed by Respondent's witnesses;
 - j. questions from BOR members;
 - k. closing statements;
 - l. adjournment of hearing;
 - m. closed deliberations of BOR Panel.

I. Burden of Proof

1. Petitioner has burden of proving that Respondent committed the acts charged in the Complaint;
2. Respondent does not have to prove that he/she did not commit the alleged acts.

J. Standard of Proof: Preponderance of Evidence

Based upon all of the credible evidence, the allegations are more likely than not true.

K. Athlete Representation

1. USA-S Rules and the Amateur Sports Act require that every LSC BOR and BOR hearing panel have at least 20% athlete representation (recommend minimum age of 16).
2. The hearing may not start without 20% athlete representation.
3. On appeal to NBR, the NBR Chair will summarily vacate the LSC BOR Decision if the athlete representation requirement is not met.
4. Under the Amateur Sports Act, the USOC makes two classifications of athletes:
 - a. international athletes
 - i. those who, within the last 10 years of appointment, have represented the USA in the Olympics, Pan American Games, on Operation Gold event, or a World Championship recognized by FINA

- ii. those who, within 24 months of election, finished in the top half of the NGB's national championships or Olympic/Pan Am Game team selection competition
 - b. Actively competing athletes – those currently actively engaged in amateur athletic competition
 - i. merely registering as an athlete member does not meet the test
 - ii. this requirement is mandated by federal law and the Rules of USOC and USA Swimming
- 5. This is not optional.

L. BOR Written Decision

- 1. may be rendered at time of hearing, or subsequently;
- 2. written and delivered within 14 days of hearing.
- 3. Contents, per rule 406.4.1(E)
 - a. findings of fact
 - b. conclusion as to whether and what rule/code section was/was not violated
 - c. statement of remedies ordered or penalties imposed
 - d. statement of the rights to appeal that should include time frame, filing fee, destination and requirement to request rehearing
- 4. Other requirements for the decision
 - a. make the punishment fit the crime
 - b. be reasonable and fair
 - c. assess costs rarely, and attorney's fees even more rarely.
- 5. LSC BOR has the power and discretion, but not the duty, to stay the Decision of the BOR during the period within which an appeal may filed with the National BOR.
- 6. Send a copy of the written Decision to USA Swimming, attention Cindy Hayes or Susan Woessner.

Respectfully submitted,

George Geanon
Wisconsin Swimming Officials' Committee