**NWBA Bylaws Amendment Proposal Form**

**Proposed Amendments must be submitted in writing to the Executive Director and the chair of the Governance Committee at least sixty (60) days preceding the Annual Assembly (Sunday, April 25, 2021).**

**Section:** ARTICLE FOURTEEN Grievance Procedures

**Proposed By:** NWBA Management/Staff

**Summary of Proposed Change:** Change NWBA Bylaws to improve transparency on filings and improve checks and balances in the case that it involves senior leadership; establishes a clear timeline of the process; ensures transparency of hearing panel and opportunity for both parties (complainant or respondent) to play a role in selection of hearing panel, and appropriate athlete representation on the panel; includes a clause on anti-retaliation; expands the overall description of the Grievance Procedures—updating wording for the purposes of clarity and consistency per the recommendation of Legal Counsel and adopting the missing elements as outlined in the U. S. Olympic & Paralympic Committee (USOPC) Grievance Procedures Audit Checklist.

NOTE: This Amendment, if approved, will take effect Monday, June 28, 2021 following the Annual Assembly to ensure compliance with the USOPC Audit Remediation period.

**Current Bylaw:** Current wording is included in the proposal section below.

**Proposed Bylaw:** Proposed changes are marked below with the track changes function (deletions have a strikethrough and additions are underlined).

**ARTICLE FOURTEEN**

**Grievance Procedures**

**Section 14.1. Designation of Complaints.**

The following kinds of complaints may be filed with the NWBA:

1. Administrative Grievance. The NWBA or any member of the NWBA may file a complaint pertaining to any matter within the cognizance of NWBA, including but not limited to any alleged violation of or grievance concerning:
2. any NWBA policy rule or regulation, including, but not limited to the NWBA Athlete Safety Policy, NWBA Rules and NWBA Policies and Procedures,
3. any provision of the NWBA’s Bylaws,
4. any provision of the NWBA Code of Conduct, or
5. any provision of the Ted Stevens Amateur and Olympic Sports Act relating to the NWBA’s recognition as a National Governing Body;
6. Right to Compete. Any athlete, coach, trainer, manager, administrator or official may file a complaint pertaining to any alleged denial, or alleged threat to deny, of that individual’s opportunity to compete in a NWBA sanctioned competition or in a protected competition as referred to in the Ted Stevens Amateur and Olympic Sports Act and the USOPC Bylaws.

**Section 14.2. Jurisdiction.**

Any member of the NWBA, by reason of membership, agrees to be subject to these complaint procedures and, subject to any right to proceed to arbitration as referred to in this Article 14, agrees to be bound by any decision rendered pursuant to these complaint procedures.

**Section 14.3. Manner of Filing.**

Except in the case of expedited procedures, the complainant shall file the complaint with the NWBA Executive Director and the Chair of the Judicial Committee. If the complaint involves the Executive Director, the complainant may file the complaint directly with the Chair of the Judicial Committee and an employee of the NWBA National Office Staff (who is not the Executive Director). If the complaint involves the Executive Director and/or the Chair of the Judicial Committee, the complainant may file the complaint with the President of the Board and an employee of the NWBA National Office Staff (who is not the Executive Director). The complaint shall set forth in clear and concise language, preferably in numbered paragraphs:

1. the name and contact information of the parties,
2. the alleged violation, grievance, denial or threat to deny,
3. the remedy requested, and
4. evidence/documentation to support the allegation.
5. The complainant shall sign the complaint under oath.
6. Any party filing a counterclaim shall sign the counterclaim under oath.
7. Except for complaints involving selection to participate in a competition as referred to in Section 14.13, the parties to the proceeding shall be limited to the parties identified as parties in the complaint, or in any amendment to the complaint pursuant to which any party has affirmatively named an additional party.

**Section 14.4. Documents Provided to Panel.**

Within ten (10) days of the appointment of the Hearing Panel, the NWBA Executive Director (or his or her designee) 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 NWBA.

**Section 14.5. Affected Parties.**

Upon the filing of a complaint, the chair of the Judicial Committee will provide acknowledgement of receipt of the complaint to the complainant.

Upon determining that the complaint was properly filed and satisfied the minimum requirements of a complaint of the type asserted, the chair of the Judicial Committee will use best efforts to, within fourteen (14) days of receipt of the complaint, provide written notice to the respondent that a complaint against him or her has been received, along with a copy of the complaint. The notice will include an explanation of the allegations or charges made against the respondent, the respondent’s opportunity to provide a response, any potential consequences if applicable and the right to have a representative present and provide assistance throughout the proceedings.

The Hearing Panel shall also ensure that any affected parties are provided with the relevant materials described in Section 14.3. The Hearing Panel may also determine that individuals not listed by either the Complainant, Respondent or NWBA as an affected party shall be given notice. Any party named as an affected party shall be eligible to participate fully in the Grievance, including the Hearing. Any party notified of the Complaint as a potentially affected party shall be bound by the decision of the Hearing Panel, even if he or she chooses not to participate.

In advance of the hearing, the parties may exchange a list of anticipated witnesses, with a brief description of their expected testimony, and any exhibits that the parties anticipate using at the hearing.

**Section 14.6. Filing Fee.**

Except in the case of expedited procedures and matters pertaining to NWBA’s Athlete Safety Policy, a complaint filed by an individual shall be accompanied with a filing fee in an amount to be established from time-to-time by the Board of Directors. A complaint filed by an organization shall be accompanied with a filing fee in an amount to be established from time-to-time by the Board of Directors, except that the NWBA is not required to pay a filing fee.

The complainant may request that the filing fee be reduced or waived for reasons of significant financial hardship. If such request is made, the Judicial Committee shall determine whether or not to reduce or waive the filing fee. If the complaint is upheld by the Judicial Committee, the fee will be returned.

**Section 14.7. Statute of Limitations.**

A complaint filed under this Article 14 must be filed within the following time frames

based on the type of complaint:

1. An Administrative Grievance must be filed within sixty (60) days of the occurrence of the alleged violation or grievance, except as provided below.
2. A Right to Compete complaint must be filed within six (6) months of the denial or threat to deny.
3. Complaints alleging misconduct within the NWBA’s Athlete Safety Policy
4. are not subject to any statute of limitations.

**Section 14.8. Field of Play Decisions.**

The final decision of a Judge during a competition regarding a field of play decision (a matter set forth in the rules of the competition to be within the discretion of the Judge) shall not be reviewable through the procedures for, or the subject of, Administrative Grievances or Right to Compete Complaints unless the decision is: (i) outside the authority of the Official/Referee to make, or (ii) the product of fraud, corruption, partiality or other misconduct of the Official/Referee.

For purposes of this Section 14.8, the term “Official/Referee” shall include any individual with discretion to make field of play decisions.

**Section 14.9. Administration.**

The Judicial Committee shall generally administer and oversee all administrative grievances and right to compete matters filed with the NWBA. The Judicial Committee shall be responsible to ensure that all complaints are heard in a timely, fair and impartial manner. The Judicial Committee may promulgate procedures in addition to those set forth in these Bylaws, but which may not conflict with any provisions of these Bylaws, for the effective administration of complaints filed with the NWBA.

**Section 14.10 Hearing Panel.**

Except in the case of an expedited procedure, upon the filing of a complaint, the Chair of the Judicial Committee, after consultation with the other Committee members, shall appoint a hearing panel consisting of at least three (3) individuals to hear the complaint which includes a Chair of the Hearing Panel. The Chair of the Judicial Committee shall also be the Chair of the hearing panel. Judicial Committee members and members of the Ethics Committee may be appointed to and serve on the hearing panel based on availability. Other disinterested individuals identified by the Judicial Committee may also be appointed to and serve on or advise the hearing panel. At least thirty-three percent (33%) of the hearing panel shall be athlete representatives. All members of any hearing panel shall be disinterested individuals without conflict of interest to the individuals or situations being heard.

The appointed Hearing Panel members will be disclosed to the complainant and respondent. The complainant or respondent may object to the appointment of any member of the Hearing Panel on the grounds of bias, conflict of interest, or such other grounds on which the party believes the panel member should be disqualified. The objection, along with relevant information, will be provided to the Judicial Committee to review any potential grounds for disqualification. The Judicial Committee will timely render a determination of whether the appointed hearing panel member should be disqualified, and, if the hearing panel member is disqualified, a replacement panel member will be appointed promptly.

**Section 14.11. Conduct of the Proceeding.**

Except in the case of expedited procedures, the Hearing Panel shall rule on all motions and other matters raised in the proceeding.

A respondent may file a motion to dismiss a complaint against him or her on if:

1. the complaint was filed after the applicable statute of limitations for such complaints has expired; or
2. the complaint fails to allege any conduct that could be construed as constituting a violation of any applicable rule, policy, or procedure of the NWBA.

If the complaint is not dismissed, the hearing panel shall hold a hearing on the complaint. The hearing panel shall set such timelines and other rules, not inconsistent with the provisions of this Section 14.9, regarding the proceeding and the conduct of the hearing as it deems necessary. The Hearing Panel will use best efforts to hold the hearing within forty-five (45) days of receipt of the complaint. The hearing shall be informal, except that testimony shall be taken under oath.

The hearing may be conducted by teleconference, if necessary or convenient to the parties. Each party shall have the right to appear personally or through a legal representative. All parties shall be given a reasonable opportunity to present and examine evidence, cross-examine witnesses and to present argument. Members of the hearing panel shall have the right to question witnesses or the parties to the proceeding at any time.

Any party may have a record made of the hearing. A court reporter may be present at the hearing at the request of a party. The court reporter shall be paid for by the party requesting the court reporter, or if mutually agreed, the cost may be equally divided. Any and all transcript shall be paid for by the party requesting the transcript.

**Section 14.12. Expedited Procedures.**

Upon the request of a party, and provided that it is necessary to expedite the proceeding in order to resolve a matter relating to a competition that is so scheduled that compliance with regular procedures would not be likely to produce a sufficiently early decision to do justice to the affected parties, the Judicial Committee is authorized to order that the complaint be heard and decided within forty-eight (48) hours of the filing of the complaint. In such a case, the hearing panel is authorized to hear and decide the complaint pursuant to such procedures as are necessary, but fair to the parties involved.

**Section 14.13. Complaints Involving Selection to Participate in a Competition.**

Except in the case of expedited procedures, where a complaint is filed involving selection of an individual to participate in a competition, the complainant shall include with the complaint a list of all other individuals, together with their contact information, that may be adversely affected by a decision rendered on the complaint. The hearing panel shall determine which additional individuals must receive notice of the complaint. The complainant shall then be responsible for providing appropriate notice to these individuals. Any individual so notified then shall have the option to participate in the proceeding as a party. If an individual is notified of the complaint, then that individual shall be bound by the decision of the hearing panel even though the individual chose not to participate as a party.

**Section 14.14. Decision.**

All decisions, including those of panels appointed for expedited procedures, shall be determined by a majority of the hearing panel. The hearing panel’s decision shall be in writing and distributed to the parties. The Hearing Panel will use best efforts to issue its written decision within fifteen (15) days after the hearing. The Hearing Panel's decision will be final and binding upon the parties unless a party is entitled to seek arbitration as referred to in Section 14.15. Where a Hearing Panel decision has been rendered in a matter where the discipline imposed is suspension, permanent expulsion or permanent ineligibility.

**Section 14.15. Arbitration.**

Any party may pursue arbitration with the American Arbitration Association in the event the decision involves the opportunity of the party to participate or to seek to participate in a protected competition (Zone Qualification, Parapan American Games, World Championships and Paralympic Games), as referred to in and in accordance with applicable provisions of the Ted Stevens Amateur and Olympic Sports Act and the USOPC Bylaws.

Section 14.16. No Retaliation.

Neither NWBA nor any individual associated with NWBA which includes, but is not limited to, members, employees, committees, division leadership, conference leadership, coaches, team reps, referees/officials or board members shall retaliate against an individual for the filing of a complaint or report under these Grievance Procedures. It shall constitute a violation of NWBA Whistleblower and Anti-Retaliation Policy and grounds for discipline to retaliate against any individual for the filing of a complaint.

**Rationale for Change:**

* + - 1. Wording changes within Sections 14.1, 14.3 A-G, 14.4, 14.6, 14.7, and 14.8 include: adopting suggestions from Legal Counsel, adopting the USOPC name change, updating section references, removing redundancies, and providing clarity and consistency.
			2. The NWBA recently went through a USOPC Audit. Updating Sections 14.3, 14.5, 14.10, 14.11, 14.14, and 14.16 as the corrective action related to the findings included in the final report will make us compliant with USOPC Requirements.

**Submit to:**

Via Email to both:

Will Waller, NWBA Executive Director: will@nwba.org AND Tim Fox, interim Chair of the Governance Committee: timfox@nwba.org

OR

Via Postal Mail:

NWBA, 1130 Elkton Dr., Suite A, Colorado Springs, CO 80907