

## USA GYMNASTICS RESOLUTION PANEL PROCEDURES

Effective Date: March 2022

Policy Owner: Chief Legal Officer ([legal@usagym.org](mailto:legal@usagym.org))

### I. INTRODUCTION

USA Gymnastics is the National Governing Body (“NGB”) for the sport of gymnastics. The USA Gymnastics Safe Sport Policy (“the Policy”) establishes standards of conduct for USA Gymnastics Participants. The USA Gymnastics Response and Resolution Procedures (“the Procedures”) apply to any alleged Policy or SafeSport Code for the U.S. Olympic and Paralympic (“the Code”) Violation reported to USA Gymnastics. The USA Gymnastics Resolution Panel Procedures (“the Panel Procedures”) are drafted under the authority of USA Gymnastics Bylaws (“the Bylaws”), Sections 3.4 and 13.4.

The Panel Procedures do not apply to reported violations of the USA Gymnastics Code of Ethical Conduct occurring on or after June 2021, USA Gymnastics Prevention Policies without alleged violations of the Policy or Code, USA Gymnastics background checks or challenges arising, or grievances regarding, a Participant’s opportunity to participate under the Ted Stevens Act, in either case that are unrelated to Policy or Code Violations.

### II. PANEL CONSTRUCTION

- A. The Panel shall be constructed in accordance with both the Procedures and the United States Olympic and Paralympic Committee Bylaws, including Bylaw 8.5 (Regarding the construction of Designated and Other Committees).
- B. The Panel Hearing shall be limited to essential parties only. Essential parties are the Panel, Respondent, advisor to Claimant(s) or Respondent, counsel for USA Gymnastics, Claimant(s), USA Gymnastics Director of Legal Operations, or designee, and Witnesses testifying under oath.
- C. A pool of prospective unaffiliated panelists are selected by the USA Gymnastics Ethics & Grievance Committee. A pool of prospective athlete representatives are selected by the USA Gymnastics Athletes’ Council. A panel of two disinterested members and one athlete representative shall be seated.
- D. Panelists shall not be subject to *voir dire* or challenge by the parties.
- E. Prospective panelists are required to complete the USA Gymnastics Conflict of Interest Acknowledgment and Questionnaire. Prospective panelists deemed by the USA Gymnastics Chief Legal Officer to have a conflict of interest with the Claimant(s) or Respondent will be excluded from the Panel. The identities of the panelists will not be disclosed to the parties prior to the commencement of the hearing or the issuance of a preliminary ruling.

- F. Panelists will execute the USA Gymnastics Confidentiality Acknowledgment and Agreement (“the Confidentiality Agreement”) prior to receiving any information on the underlying matter.
- G. The Panel shall appoint a panelist as chairperson. The chairperson will:
  - 1. Call the hearing to order and close the proceedings.
  - 2. Place witnesses under oath before testifying.
  - 3. Transmit information and serve as point of contact on behalf of the Panel to the USA Gymnastics Director of Legal Operations, or designee.

### **III. NOTICE**

- A. USA Gymnastics will issue a Resolution Panel Notice (“the Notice”) to Respondent. The Notice will include:
  - 1. A summary of the alleged Violation(s), including the reported timeframe and relevant Policy, Code, or other authority governing the alleged misconduct.
  - 2. A hearing date set at least thirty (30) days following the date of the Notice.
  - 3. The Confidentiality Agreement that Respondent must sign and return within five (5) business days from the date of the Notice.
- B. USA Gymnastics will provide notice of the hearing date to Claimant(s) and Witnesses.

### **IV. PRE-HEARING PROCEDURES**

- A. Request for Continuance
  - 1. Within five (5) business days of the date of the Notice, Respondent must accept or reject the hearing date. Respondent may reject the hearing date one time. USA Gymnastics will set the new date based on availability of a Panel which will fall within sixty (60) days of the original date.
  - 2. USA Gymnastics may reset a new hearing date one time.
  - 3. Emergent circumstances, including unavailability of a panelist may necessitate continuance of the hearing.
  - 4. The hearing may proceed in Respondent’s absence upon proof of hearing notice to Respondent and upon approval of the Panel.
- B. Discovery
  - 1. The sole discovery provided by USA Gymnastics is the Resolution Panel Summary. No further requests for discovery will be entertained.
  - 2. Respondent may receive discovery only after USA Gymnastics receives a signed Confidentiality Agreement from Respondent.
  - 3. The Panel and Respondent will receive the Resolution Panel Summary no less than fourteen (14) days before the scheduled hearing, contingent on the execution of the Confidentiality Agreement.
  - 4. The Resolution Panel Summary will contain:
    - a. The Investigator’s Summary, if applicable, that will include:

- i. Names of Claimant(s) and Witness(es).
    - ii. Brief summary of allegations.
    - iii. Respondent's statement.
  - b. The relevant policy, Code, or other authority for the reported misconduct violation(s).
  - c. A summary of the anticipated testimony of each Witness to be called by USA Gymnastics.
  - d. A copy of any exhibits to be submitted to the Panel.
5. Respondent's Discovery:
  - a. Respondent shall provide to USA Gymnastics and the Panel the following discovery no later than five (5) business days before the hearing begins:
    - i. A list of Witnesses and summary of their testimony; and.
    - ii. A copy of any exhibits to be submitted to the Panel.
  - b. Failure by Respondent to provide discovery no later than five (5) business days before the hearing begins will cause the testimony and/or documents to be excluded from consideration by the panel.

## **V. HEARING PROCEDURES**

The Panel may impose a restrictive measure or safety plan at any time after commencement of the proceedings.

The Panel is authorized to exclude any person from the hearing as a remedy for inappropriate conduct, mistreatment of hearing participants, or other conduct the Panel deems unethical or disruptive.

### **A. Time Limits**

1. Panel Hearings are limited to twelve (12) hours of total testimony.
2. Chairperson will designate a panelist who is responsible for managing time allotments as set forth below:
  - a. Seven (7) hours will be reserved for the Claimants' testimony presented by counsel for USA Gymnastics, and five (5) hours will be reserved for Respondent.
  - b. Parties will be given the opportunity for cross examination. Any time used will count towards the party's total time.
  - c. Questioning by the Panel may be in addition to the twelve (12) hour time limit and will not be attributed to either party.

### **B. Testimony**

1. All testimony shall be taken under oath administered by the chairperson.
2. Respondent, the Panel, and any party present for the testimony of another person must sign the Confidentiality Agreement protecting the testimony of any other person testifying.

3. Claimant(s) may be accompanied by legal counsel as an advocate during participation in the hearing. If a Claimant is accompanied by legal counsel during the hearing, that counsel may provide support and advice to the party but may not speak on behalf of the party, otherwise participate in, or in any manner disrupt the hearing.
  4. Counsel for USA Gymnastics and the advisor to Respondent have the right to an opening statement.
  5. Claimant(s) has the right to present a statement, written or testimonial, to the Panel.
- C. Testimony of Minors
1. Claimant witnesses under the age of sixteen (16) are prohibited from offering live or recorded testimony but may submit a written statement for Panel consideration.
  2. Claimant witnesses between the ages of sixteen (16) and eighteen (18) are permitted to testify with prior written consent of their parent or legal guardian.
  3. Witnesses may only testify as to the occurrence of the facts underlying the noticed allegations. General character evidence is inadmissible.
- D. Recording the Hearing
1. USA Gymnastics will record the Panel Hearing. The recording is confidential and will only be provided to Respondent in accordance with the Confidentiality Agreement and for the sole purpose of arbitration. Panel deliberations will not be recorded.
- E. Evidence
1. The Panel shall determine the admissibility, relevance and materiality of the evidence offered subject to the following:
    - a. Standard rules of evidence or administrative law do not apply.
    - b. Hearsay is admissible.
    - c. Prior or subsequent conduct of Respondent may be considered in determining pattern, knowledge, intent, motive, or absence of mistake.
  2. The Panel may rely on any noticed allegation, or any facts reasonably related to the noticed allegation elicited during testimony, as the basis for its findings.
  3. Neither party may introduce settlement negotiations between parties, including the Agreed Decision, for consideration by the Panel.

## **VI. POST-HEARING PROCEDURES**

- A. Standard of Review
1. The moving party has the burden of proving, by a preponderance of the evidence, that the misconduct or violation occurred. A “preponderance of the evidence” means that it is more likely than not that the misconduct or violation occurred.
  2. When determining an appropriate resolution, the Panel must assess the fitness and eligibility of the Respondent to participate in USA Gymnastics.
  3. The Panel may rely on any noticed allegation, or any facts reasonably related to the noticed allegation elicited during testimony, to support its findings.

4. In reaching its findings and an appropriate resolution, the Panel should prioritize the future safety of the USA Gymnastics community and its athletes.

B. Deliberations

1. The Panel may consider all relevant factors, including the following, to the extent that each applies to the facts and circumstances of the case:
  - a. The interests of USA Gymnastics and the applicable Member Club in promoting a safe environment for Participants.
  - b. The seriousness of the proven misconduct or Violation.
  - c. The age or experience of the accused individual at the time of the misconduct or Violation.
  - d. The age of the person(s) who suffered the misconduct or Violation.
  - e. The impact upon the person(s) who suffered the misconduct or Violation.
  - f. Respondent's fitness for continued participation in USA Gymnastics events and/or membership.
  - g. Any other information that the Panel determines relevant to the appropriate sanction.

C. Findings

1. USA Gymnastics and Respondent may each submit proposed findings to the Panel no later than fourteen (14) days from the end of the hearing unless otherwise agreed by the parties or directed by the Panel.
2. The reasoned decision of the Panel shall be issued promptly after the close of evidence, and unless otherwise agreed by the parties or specified by law, no later than fourteen (14) days from the date of deadline for submission of USA Gymnastics' and Respondent's proposed findings. The deadline for the Panel's reasoned decision may also be modified by the Panel for good cause shown.
3. If the Panel finds that misconduct or a Violation occurred, then the Panel's written decision must contain the decision of the Panel and, at a minimum, each of the following:
  - a. The rules or policies the Panel believes were violated, if any.
  - b. A brief summary of the facts that support the decision.
  - c. The sanctions imposed by the Panel, including but not limited to:
    - i. Formal admonishment
    - ii. Probation
    - iii. Suspension or other eligibility restrictions
    - iv. Conditional ineligibility
    - v. Permanent ineligibility
    - vi. Other discretionary sanctions, including, but not limited to, other loss of privileges, no contact directives, requirement to complete educational or other programs, or other restrictions or conditions as deemed necessary or appropriate
  - d. Any mitigating factors considered by the Panel.
  - e. Any aggravating factors considered by the Panel.
4. If the Panel finds no misconduct or Violation has been proven, it shall issue a notice that the Panel "Finds No Proven Violation" as to that noticed violation.

5. When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.

## **VII. CONFIDENTIALITY**

- A. The Panel Hearing is confidential. Documents or evidence related to proceedings must remain confidential, in that they may not be disclosed outside of the proceedings, except as may be required by law or authorized by USA Gymnastics. Violation of this provision, including by an advisor or attorney for any person involved in the proceedings, constitutes Abuse of Process under the Policy and the Code. Any advisor or attorney who violates this confidentiality provision may be permanently barred from further participation in any response and resolution process, regardless of whether they are a Member or Participant.
- B. USA Gymnastics may disclose the outcome of the matter to those persons or organizations with a need to know so that the outcome can be properly effectuated or understood.
- C. A Claimant may publicly discuss the incident, their participation in the Process, or the outcome of the Process. A Claimant may not discuss the participation of others in the Process.
- D. A Respondent may publicly discuss the incident, their participation in the Process, or the outcome of the Process. However, a Respondent, or any advisor or attorney for Respondent, may not disclose any Claimant or Participant identifying information, including without limitation names and contact information.
- E. If any person or entity misrepresents the Process, the underlying facts, or the outcome of a matter, USA Gymnastics may publicly correct the record.
- F. USA Gymnastics may be required to disclose information contained in an incident report or learned during the Process. Reasons for disclosure include, but are not limited to, the following:
  1. Relevant state and/or federal law.
  2. Mandatory reporting related to Child Abuse and Sexual Misconduct.
  3. The Center's jurisdiction.
- G. Each person involved in the Process is responsible for understanding what legal confidentiality requirements, if any, apply to their conduct.