

**Women's Sports Foundation
Education Guide**

**Answers to the Most
Frequently Asked
Questions About Athletes'
Rights in Olympic and
Amateur Sports**



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ANSWERS TO THE MOST FREQUENTLY ASKED QUESTIONS ABOUT ATHLETES' RIGHTS IN OLYMPIC AND AMATEUR SPORTS

It is important for every athlete to know there are people available to advise you of your rights and counsel you about appropriate action to take when you are confronted with situations in which you are denied the right to participate, are threatened with denial of your right to participate or are treated unfairly. If the answer to your question is not here, you can call or e-mail the United States Olympic Committee (USOC) athlete ombudsman at (888) 284-5383 ((888) ATHLETE) or John.Ruger@usoc.org. The USOC athlete ombudsman's job is to offer free, independent advice to athletes regarding their rights and related issues, to assist athletes in mediating any disputes and to report to the USOC Athletes Advisory Council.

One of the goals of the Women's Sports Foundation is to assist female athletes and women's sports leaders in understanding their rights in sports. This pocket guide was designed to provide quick answers to the most frequently asked questions about situations occurring in Olympic and amateur sports. **THIS GUIDE DOES NOT APPLY TO ISSUES ARISING IN PROFESSIONAL SPORTS LEAGUES, PROFESSIONAL SPORTS EVENTS OR SCHOOL-BASED SPORTS.** Remember that the following information is educational in nature and should not be construed as legal advice.

This guide attempts to provide simple and straightforward answers to some very complicated legal issues. Any person who is confronted with any of these issues should seek the legal advice of an attorney. See www.usolympicteam.com/12946_12968.htm for a list of lawyers who have represented athletes in Olympic-related disputes.

Acknowledgements

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Recommended citation: Women's Sports Foundation Education Guide: Answers to the Most Frequently Asked Questions About Athletes' Right in Olympic and Amateur Sports. (2006) East Meadow, NY: Women's Sports Foundation.

About the Women's Sports Foundation

Founded in 1974 by Billie Jean King, the Women's Sports Foundation is a charitable organization dedicated to advancing the lives of girls and women through sports and physical activity.

The Foundation's Participation, Education, Advocacy, Research and Leadership programs are made possible by individual and corporate contributions.

NEED TO FIND OUT MORE?

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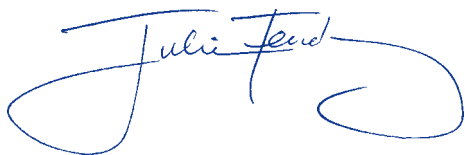
Dear Athletes,

Before you start reading Athletes' Rights, it is important to understand the origins of this publication. Back in the mid-'90s when the U.S. National Women's Soccer Team was trying to make some headway with contract negotiations and basic rights as a team and athletes, we kept running into a brick wall. That is until Billie Jean King and the Women's Sports Foundation stepped onto the scene. I sat with Billie Jean for a day at a small roundtable discussion and told her about our problems with our Federation and why we felt we were not being treated fairly. From that day on, Billie Jean King and the Women's Sports Foundation collectively became our sounding board for all gender equity issues we dealt with. They shared their wisdom and insights and gave us the courage to move forward in times of great trepidation because we knew there were others who had gone through this before us.

I know this document cannot replace Billie Jean and the Women's Sports Foundation, but it is our attempt to try! We want you all to understand your rights, have your questions addressed and know that others before you have gone through these same problems. The more we can learn from past efforts to obtain fair and equal treatment, the more likely it is that we will continue to make progress. And if you can gain an understanding of your rights as an athlete, the path forward becomes much easier to navigate.

Finally, when you read this publication, you may encounter some legal terms or concepts you don't understand. Don't be intimidated. Our soccer team often sought help or advice from athletes who were pioneers in other sports, lawyers and other individuals. If you have questions, call the Women's Sports Foundation and ask for the advocacy department – they are advocating for us. Most importantly, take the time to know your rights. It can make a world of difference.

All the best!



Julie Foudy
Former captain of the U.S. National Women's Soccer Team, Olympic gold medalist and World Cup champion
Public Policy Officer of the Women's Sports Foundation

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QUESTIONS AND ANSWERS

IMPORTANT GOVERNANCE DOCUMENTS AND RESOURCES

Q1: What is the Ted Stevens Olympic and Amateur Sports Act (TSA)?

A: The TSA is a landmark federal law that protects the opportunity of any amateur athlete, coach, trainer, manager or official to participate in amateur athletic competition and gives the United States Olympic Committee the responsibility to appoint a single national governing body (NGB) or Paralympic Sport Organization (PSO) for each Olympic, Pan American and Paralympic Games sport. The TSA also ensures that NGBs and PSOs treat athletes fairly, provides for the orderly selection and representation of United States national teams in international competition and advances the increased participation of women, racial/ethnic minority and disabled athletes in Olympic and amateur sports. See www.usoc.org/12699.htm for a complete copy of the Ted Stevens Olympic and Amateur Sports Act.

Q2: Why are the Bylaws of the United States Olympic Committee (USOC) important?

A: The USOC Bylaws specify how the USOC is organized. They also set forth the process by which complaints against NGBs are handled, how the rights of athletes, coaches, trainers, managers, officials and administrators are to be protected and how athletes must be represented within the USOC and on all NGB boards and committees. See www.usoc.org/12699.htm for a complete copy of the USOC Bylaws.

Q3. What is a National Governing Body and why are its governance documents important?

A: An NGB is a not-for-profit corporation that has been recognized by the USOC to serve as the governing body for a particular sport in the United States. For example, USA Swimming, the U.S. Ski and Snowboard Association, the United States Soccer Federation and the United States Tennis Association are all NGBs. An NGB is required to govern its sport in accordance with the TSA; provide an equal opportunity to amateur athletes, coaches, trainers, managers, administrators and officials to participate in amateur athletic competition, without discrimination on the basis of race, color, religion, sex, age or national origin; give athletes a fair hearing before taking disciplinary action limiting their right to compete or participate in competitions; and ensure there is a complaint process in which disputes are resolved in a timely manner. The Constitution and Bylaws of each NGB must be posted on that NGB's Web site. The governance documents of the NGB generally detail athletes' rights and procedures for asserting those rights. See www.usoc.org/12699.htm for a complete copy of the Ted Stevens Olympic and Amateur Sports Act and Sections 220521-220529 detailing the obligations of NGBs.

Q4: Does Title IX apply to Olympic and amateur sports?

A: Generally, Title IX of the Education Amendments of 1972 has not applied to Olympic and amateur sports as administered by the USOC and the NGBs, but may apply if a court determines that sufficient federal funding is involved. Title IX prohibits sex discrimination in the provision of educational programs and activities by recipients of federal funds. It applies primarily to schools and colleges, but also applies to other recipients of federal funds such as city parks and recreation programs. For details on the requirements of Title IX, see:

www.ed.gov/about/offices/list/ocr/docs/holmes.html, www.ed.gov/about/offices/list/ocr/docs/t9interp.html and www.ed.gov/about/offices/list/ocr/docs/clarific.html for a detailed explanation of this law. Call the Women's Sports Foundation for additional information or go to www.GeenaTakesAim.com.

Q5: Is there a clear statement of athletes' rights in any one place?

A: No. While the TSA states general principles governing athletes' rights, the applicability of those principles to specific situations may not be crystal clear. The reason for this is that there have been few judicial decisions on athletes' rights issues. Most athletes' rights cases are decided pursuant to arbitration. Most arbitrators' decisions are not published. Additionally, to the extent arbitrators have ruled on any of the issues, it is not clear that such decisions would serve as precedent in other cases. So, while there is substantial precedential authority that can be studied to guide athletes in situations related to discrimination (via Title IX, the Americans with Disabilities Act and case law) and professional sports (via collective bargaining agreements, arbitration decisions interpreting those agreements and case law), the same is not true of TSA-related issues. Therefore, it is best to call the USOC's athlete ombudsman and/or consult an attorney if you have any questions about your rights.

DISCRIMINATION BASED ON RACE, COLOR, RELIGION, SEX, AGE, NATIONAL ORIGIN OR DIABILITY

Q6: Does any law protect athletes who experience discrimination on the basis of race, color, religion, sex, age, national origin or disability?

A. Yes. The TSA provides that all NGBs cannot discriminate on the basis of race, color, religion, sex,

age or national origin with respect to athletes, coaches, trainers, managers, administrators and officials (see Q30-Q32). Federal civil rights laws, including the Americans with Disabilities Act, may also apply. In addition, the TSA requires the USOC and NGBs to encourage and provide assistance to amateur athletic activities for women, athletes with disabilities and athletes of racial and ethnic minorities. See Q25 and Q26 for the process to follow. It is the USOC's position that the TSA requires athletes' rights cases involving selection to teams competing in protected competitions be pursued in arbitration.

Q7: How do I find out about the participation of women, disabled individuals and racial and ethnic minorities in my sport?

A: The TSA requires the USOC to submit a report to the President and to Congress every four years that includes data concerning the participation of women, disabled individuals and racial and ethnic minorities in amateur athletic activities and the administration of the USOC and NGBs, as well as a description of the steps taken to encourage the participation of women, disabled individuals and racial minorities in amateur athletic activities. This data is provided to the USOC by the NGBs. The USOC is required to make copies of this report available to interested persons at a reasonable cost. To obtain a copy, contact the USOC Office of General Counsel at (719) 866-4563. Inquiries concerning participation in a specific sport may also be made directly to the NGB.

Q8: Is my National Governing Body obligated to provide employment opportunities and select team officials (team managers, trainers, etc.) in a manner that does not discriminate on the basis of race, color, religion, sex, age, national origin or disability?

A: Yes. The anti-discrimination provisions of the TSA are not limited to protecting athletes. They also protect coaches, trainers, managers, administrators and officials. In addition, federal civil rights laws apply and prohibit discrimination on the basis of race, sex, age, national origin and disability against employees or in connection with contractual rights and obligations. The Americans with Disabilities Act also may apply to discrimination involving national team staffing. Certain claims can be pursued in courts, but others must be pursued before an arbitration panel of the American Arbitration Association in accordance with the TSA and/or applicable contracts. See the answers to Q25 and Q26 regarding the different procedures required for various claims.

TEAM SELECTION/ELIGIBILITY FOR COMPETITION

Q9: Is a National Governing Body permitted to use pregnancy as a disqualification criterion for selection to a national team?

A: No. Disqualification based on pregnancy would constitute discrimination on the basis of sex according to the Pregnancy Discrimination Act, an amendment to Title VII of the Civil Rights Act. The only situation in which a pregnant woman validly could be eliminated from a national team would be if her condition prohibited her from meeting the approved performance criteria as applied to all competitors. For details about the Pregnancy Discrimination Act, see www.eeoc.gov/abouteeoc/35th/thelaw/pregnancy_discrimination-1978.html.

Q10: Is team chemistry an acceptable criterion to be used in the national team selection process for team sports?

A: Yes, generally in team sports, so long as team chemistry means selecting the collection of

athletes who work best together to achieve the best results. In team sports, athletes play different positions and have complementary strengths and weaknesses. Thus, it may not be possible to establish simple, objective criteria for player selection. In certain situations, selection of team members may involve a consideration of which athletes will play best together. In addition, a coach may need to decide which formations and strategies to employ based on the competition, the talent available, her own judgment about the best competitive strategy and other factors. In such situations, the coach may validly consider one athlete better suited for the particular game plan that she plans to use. A coach cannot discriminate on the basis of race, national origin, religion or disability (except – with respect to disability - in situations in which nondiscrimination would fundamentally alter the sport). A coach cannot determine that the team would play better if all of the team members were of the same race or exclude an athlete in retaliation for making claims of race discrimination or sex discrimination. Thus, if the application of the team chemistry criterion denies the opportunity to compete to an athlete who would improve the team or in any other way results in an unfair selection process, the decision is subject to challenge. In addition, if the team is just a combination of individuals (e.g., the team that runs or swims a relay race) and the likely relative contribution of the applicants for the team can be assessed objectively, it may be more difficult to defend a subjective selection process that considers team chemistry. That being said, each NGB (or PSO for Paralympic sports) is responsible for establishing a written procedure, subject to the approval of the USOC to fairly select athletes, coaches and team leaders for the Olympic, Pan American and Paralympic Games teams. The NGB must disseminate such selection criteria and procedures as early as possible to the athletes, coaches and team leaders.

Q11: Is a National Governing Body permitted to require as a condition of eligibility for national team selection or retention as a member of a national team, that an athlete give up her rights to the commercial use of her name, image or appearance without compensation or her agreement?

A: No. The USOC Board of Directors has clarified commercial policies for NGBs. A NGB may not require an athlete to sign an agreement giving up her rights to the commercial use of her name and image as a condition for:

- ◆ membership on national teams,
- ◆ participation in any Protected Competition or qualifying competition (see Q26 for definition),
- ◆ the receipt of USOC benefits and funding,
- ◆ access to Olympic training facilities, or
- ◆ the receipt of basic services provided to all athlete members of a NGB.

A NGB may not use or authorize the commercial use of an athlete's individual image, picture, likeness, voice, name or biographical information, including any use in a manner that would imply an endorsement of any company, product or service without the athlete's express written permission.

Commercial Terms means any provision, whether oral or written:

- ◆ requiring an athlete to grant the use of his or her image, picture, likeness, voice, name or biographical information for the purpose of trade,
- ◆ requiring an athlete to attend functions other than official team practice or team meetings related to competition events,
- ◆ requiring an athlete to give any right of first refusal to an NGB sponsor,
- ◆ requiring an athlete to reveal the terms of a personal sponsor contract,
- ◆ requiring an athlete to cover up a manufacturer logo on specialized equipment, as long as it complies with the relevant IOC, IPC or PASO rules regarding size and placement,

- ◆ requiring an athlete to put a sponsor name, logo or ad on specialized equipment,
- ◆ denying the athlete the right to choose specialized equipment, or
- ◆ requiring an athlete to relinquish legal rights (excepting arbitration clauses, tort releases, and medical or insurance-related releases or assignments).

NGBs' remedies for an athlete's violation of any Commercial Terms are strictly limited to commercial remedies (meaning the NGB cannot deny the athlete the right to compete). Note: In cases where an athlete is represented by a union, she may give up certain rights subject to labor laws in return for the union negotiating on her behalf.

Q12: Can an athlete refuse to sign a contract that would transfer her commercial rights to the National Governing Body or a third party and still be eligible for a national team?

A: Yes. Unless a union representing the athlete has agreed to a contract that transfers commercial rights, if the athlete says that she does not want compensation beyond USOC benefits and funding and basic services provided to all athletes (see Q11 and Q13) and she just wants to compete, she has a right to compete without the NGB owning her name or marketing rights or transferring those rights to any sponsor, licensee or other third party.

Q13: Is a National Governing Body permitted to make commercial use of an athlete's name and likeness?

A: Generally yes, with regard to promoting competitions in which that athlete will be participating. Generally no, with regard to selling products or promoting sponsors. The athlete generally owns the rights to her individual name and image, while the NGB owns the rights to market the team as a whole or the competition in which the team is

representing the United States. Thus, the NGB can retain full revenues from commercial exploitation of the team or event (e.g., television rights fees, sponsor fees for identification on team uniforms, etc.), as long as the revenue is not derived from a promotion that implies the individual's endorsement of a sponsor, product or service or capitalizes on the individual's name or image, rather than that of the team or competition. The USOC may, however, condition an athlete's participation in the Olympic Games and any other USOC events on the athlete signing the USOC's Code of Conduct, which grants the USOC the right to exploit the athlete's participation in such event in the broadcast of that event and to use the athlete's name and likeness for non-commercial purposes benefiting the USOC. NGBs may require athletes to sign similar agreements. Further, the USOC and the NGBs may require the athlete to wear a uniform that bears a manufacturer's and/or sponsor's logo. But the USOC and the NGBs cannot use any athlete's name or likeness in a manner that implies that such person endorses the manufacturer's/sponsor's products or services and has no right to allow the sponsor to use the athlete's likeness in the sponsor's advertisements or promotions. The NGB can use a photo or appropriate team footage depicting an individual to promote an upcoming competition. However, without an agreement with the athlete (or a union representing the athlete) the USOC and the NGB cannot grant their sponsors the right to make use of athletes' names or likenesses. The NGB cannot require that an athlete appear outside of the competition—or surrounding events—for a commercial purpose (e.g. shooting a television commercial). However, the NGB can secure permission from the athlete to participate in such commercial ventures as long as such participation is not conditioned on the athlete's opportunity to try out for or participate on the national team. Note: A union representing all athletes can agree on behalf of the athletes that the athletes will participate in such

commercial activities. Failure to comply with the terms of such a collective bargaining agreement may result in the athlete's loss of her right to compete.

Q14: With regard to personal equipment (e.g., shoes, gloves, bats, shot puts, etc.), is a National Governing Body permitted to require that an athlete use equipment provided or designated by the National Governing Body even if the athlete has a separate agreement with a manufacturer?

A: No. The athlete has an exclusive right to select specialized equipment and personal competition gear (equipment, shoes or any other items that would affect her athletic performance). For example, in soccer, shoes (cleats) and goalie gloves are personal gear, but shin guards and other apparel are not. In softball, a player's glove is specialized gear. The athlete may contact the USOC Ombudsman in the case of any question regarding the definition of such gear and should be prepared to make a case that the gear in question affects her athletic performance. For lists of approved personal performance gear for summer and winter Olympic sports, go to www.usolympicteam.com/12699.htm.

Q15: With regard to general athletic apparel worn during competition or awards ceremony apparel worn outside competition, does a National Governing Body have a right to dictate when such apparel is to be worn and to penalize an athlete for failing to follow its policies, even if the athlete has a separate agreement with a manufacturer?

A: Yes, with exceptions. Congress granted the USOC broad and exclusive powers to regulate the U.S. national teams, and the USOC Bylaws specifically assert that athletes and officials who are members of the official delegation "shall" wear the official uniform and use the

official equipment "during all Games ceremonies," unless specifically granted an exception. The burden lies with the athlete seeking such an exception to show that wearing the official uniform or using the official equipment would be detrimental to her performance. Exceptions are very unlikely to be granted for pre- or post-competition apparel to be worn at ceremonies or events, as an athlete is not likely to be able to prove that her ability to wear clothing of her preferred brand in such a context would affect her performance in competition. If the NGB imposes a penalty for apparel policy infractions, such penalty cannot involve suspension from competition or removal from the team, but it may involve a fine or other penalty unrelated to the athlete's opportunity to compete. The USOC and NGB are not permitted to extend the official apparel requirement beyond "Games ceremonies" to television interviews, attire in the Olympic village generally or similar settings outside the competition and associated events unless the athlete agrees. Such agreement to wear USOC or NGB specified apparel in these circumstances may include compensation, either individually or as part of an agreement negotiated with representatives of the team or all the athletes in that sport. The athlete should be aware that if the USOC or an NGB has an agreement with television or broadcast partners, the USOC or the NGBs may tell their broadcast partners not to interview any athlete not wearing approved apparel. Note: As a result of an agreement between the player and the NGB or the player's union and the NGB, athletes can be required to wear such gear in these or other settings.

Q16: Can a National Governing Body require as a condition of selection to a national team that an athlete wear uniforms or use sports equipment produced by a specific manufacturer?

A: Upon selection, yes for uniforms. No for certain equipment. See Q14.

Q17: Can an athlete refuse to wear a national team uniform displaying the logo of a commercial sponsor on political, religious, ethical or other grounds without the National Governing Body taking action against the athlete?

A: Almost certainly no. The most likely scenario evoking this issue involves an athlete who objects to either a company's product, such as alcohol, or its business practices, such as the employment of child labor. In either case, the athlete is not likely to have an objection that the athlete can pursue successfully in court or in arbitration. A judge or arbitrator is likely to hold that wearing a team uniform in accordance with a sponsorship agreement between the sponsor and the NGB does not reasonably imply that an individual athlete supports the given product or company.

Q18: Can a National Governing Body require an athlete to sign a contract as a condition of national team selection?

A: Yes, as long as such a contract is consistent with the other answers in this document. In other words, the contract does not contain prohibited terms, requiring the athlete to agree to improper things as a condition of allowing the athlete to compete. The contract may reiterate approved regulations, specify that an athlete must use official team apparel and equipment unless she can secure a performance-based exemption, require that the athlete passes a medical examination, specify that the athlete not serve as a television commentator during the Olympic Games (stated in the USOC Bylaws and the IOC Olympic Charter) and contain other reasonable provisions. In fact, such a contract could be considered akin to the Code of Conduct, required to be signed by an athlete as a condition of selection to an Olympic team. Other terms may be required if agreed to by athletes individually or collectively (for example, by a union that represents all the players), and

and other terms (e.g., waiver of liability claims, etc.) are subject to reasonableness standards.

Q19: Can a National Governing Body require an athlete to sign a liability release as a condition of participation in national team selection?

A: Yes, depending on the reasonableness of the release. As a condition for selection to an Olympic, Pan American or Paralympic team, the USOC Bylaws state that an athlete must "sign, in unaltered form, the USOC General Release." Liability releases are a standard practice in the sports world. Case law and common experience reveal that athletes may be required to sign far-reaching liability releases to receive a competitor's license from the NGB and to register for competition at various levels. However, an athlete should not sign a release that includes (and no release should require) giving up her rights to make a Worker's Compensation claim, sue a doctor or trainer for malpractice or sue a coach or other professional or company for gross negligence or intentional or reckless misconduct. If an athlete has any concern whatsoever about a release she is being asked to sign or to agree to as part of a contract, she should get legal advice.

Q20: If an athlete signs a Release from Liability, will the release be enforceable in the event of injury to the athlete?

A: The enforceability of a particular release will generally be decided by reference to the applicable state law. Generally, yes, the release will be enforceable except in cases of intentional misconduct or gross negligence. While most courts would enforce a liability release in cases in which athletes are injured during the normal course of competition or training, it is also likely that a court would not enforce a signed liability release in the case of a claim involving gross negligence, intentional misconduct or reckless conduct. However, an athlete should receive legal advice before

signing any form that releases liability in the case of gross negligence or intentional misconduct, because there can be no assurance that such an agreement will not be upheld by a court or an arbitrator.

Q21: Is a National Governing Body permitted to review and change the criteria for national team selection for the Olympics after officially disseminating them to the athletes prior to the beginning of the selection process?

A: No, not without the express approval of the USOC. The USOC requires that NGBs make known and disseminate as early as possible selection criteria for the sports they oversee. Based on this detailed procedure, a NGB would not be authorized to change the selection criteria without the USOC's approval. If the NGB violates this rule and selects a team or individual based on a second set of criteria, altered and announced after the original approval by the USOC, the athlete has a right to arbitration if she feels unfairly affected. See Q25 for arbitration rights.

Q22: Can a National Governing Body threaten to withhold funding, access to the Olympic Training Center or other benefits afforded national team members if an athlete does not participate in a team activity or competition?

A: Yes, as long as expectations are reasonable and the athlete is afforded reasonable due process under the circumstances in the case of a dispute. Neither the TSA nor the USOC Bylaws directly addresses national team members' obligations to compete or to participate in team activities. The USOC requires that athletes sign and abide by a Code of Conduct, which may include an obligation to participate in all scheduled competitions and events, presumably absent a reasonable excuse (which may need to be approved in advance) for missing a competition or event.

The USOC, NGBs, coaches and other personnel also have the authority to strictly supervise their team leaders and coaches and to ensure conformity to any special training rules set up for their respective teams. It is likely that an arbitrator will uphold the authority of the USOC or an NGB to require athletes to participate in a given calendar of competition and activities, absent circumstances that render the requirement unreasonable such as unreasonable attempts to eliminate competing events, efforts to damage events with competing sponsors, and requiring athletes to participate in an unreasonable number of competitions solely to increase the NGB's or USOC's revenues or to increase the number of competitions involving the elite athletes that can be sold to television, sponsors and fans. Before deciding not to participate in a team activity or competition, if an athlete is concerned that she may be denied improperly funding, access to the Olympic Training Center, the right to compete or other benefits afforded national team members, unless it is not reasonable under the circumstances, she may want to consider trying to resolve the matter through the dispute resolution procedures of the NGB, the USOC or the athlete's agreement (if any) with the NGB before not participating.

Q23: Does an athlete's right to participate in a sport apply to any competitive level or only to national teams?

A: The right applies to national teams, international competitions representing the United States and competitions that are used for national team selection. The USOC Bylaws state that an athlete's right to participate in a sport applies to the Olympic, Pan American and Paralympic Games, the World Championships and other protected competitions, which the Bylaws define as those for which 1) the athletes are officially designated as representing the United States,

2) the competition requires that entrants represent their respective nations and 3) athletes are selected by a defined tryout procedure open to all athletes or restricted to a certain approved class, such as high school students. The requirement of a defined tryout procedure is satisfied by there being a coach selecting the members of the team if that is the process by which U.S. national teams are selected in that sport. The definition also includes domestic amateur events that have been announced in advance as directly qualifying successful competitors as athletes to represent the United States in a protected competition.

In addition, beyond protected competitions, all amateur athletes governed by NGBs have available to them the protections and grievance procedures in the constitution and bylaws of their NGBs, as well as the grievance procedures detailed in Q25 and Q26 to contest other types of alleged infractions which may affect the athletes' access to competitive opportunities or treatment.

Q24: Some athletes have encountered questionable procedures in drug testing re: discreet observation of the athlete deposit of the urine sample. What is the exact procedure that an athlete should expect and what can the athlete do if such a procedure is not followed? What should she do if she is told she tested positive for a prohibited substance? What procedures must the National Governing Body, United States Olympic Committee and the United States Anti-Doping Agency follow?

A. Drug-testing procedures, the list of banned substances and the rights of athletes regarding national and international anti-doping rules are extremely important for every athlete to know. The World Anti-Doping Agency (WADA) was created to promote, coordinate and monitor, at the international level, the fight against doping. The United States Anti-Doping Agency

(USADA) is responsible for testing, results management, research and education in the United States. Information concerning WADA, USADA and applicable anti-doping rules can be found at www.wada-ama.org and www.usantidoping.org or by calling or e-mailing the USOC athlete ombudsman at (888) 284-5383 ((888) ATHLETE) or John.Ruger@usoc.org.

DISPUTE RESOLUTION PROCESSES

Q25: What is the Ted Stevens Olympic and Amateur Sports Act procedure for the resolution of athletes' disputes with their National Governing Bodies in cases regarding violations that include denial of the right to compete in a protected competition?

A. As a first matter, the athlete may be able to pursue her dispute under grievance procedures provided by the National Governing Body in its constitution or bylaws. The athlete can also bring what is called an Article IX Complaint as provided in Article IX of the USOC Bylaws. An athlete must immediately alert the chief executive officer of the USOC to any alleged denial or threatened denial of the right to compete, at which time the CEO must investigate the allegations; inform the USOC Athletes Advisory Council, the NGB and the USOC athlete ombudsman; and attempt to remedy the situation as quickly as possible.

1. If the situation is not resolved to the athlete's satisfaction within the USOC, or if the athlete cannot wait or does not want to wait for USOC action, the athlete may elect to file for arbitration with the American Arbitration Association (AAA); this arbitration must be filed within six months of the denial or threatened denial of the right to compete.

2. At the request of the aggrieved athlete, the AAA also may elect to expedite its process and schedule a hearing within 48 hours if it decides

that such a timetable is necessary to justly resolve the dispute; this is most likely when the competition at issue is imminent.

3. In addition, the chief executive officer of the USOC is authorized to finance the athlete's legal action if he determines that the circumstances warrant such support, and the USOC may even decide to take action in support of the athlete's claim.

4. In pursuing arbitration, the athlete must submit the names of all those who may be adversely affected by the arbitration (such as the athletes currently holding spots on the team or in the competition in question who may lose their spot(s) if the athlete's claim is successful).

5. The NGB must also identify all the individuals the NGB believes may be adversely affected and must provide contact information for every person on its list of potentially harmed parties and every person on the athlete's list; the athlete then is required to contact all the listed parties to give them notice of the arbitration.

6. As described above, the AAA will proceed under its present commercial rules. The panel should include three arbitrators, unless the parties agree otherwise or the expedited schedule renders it logistically unreasonable to convene a three-arbitrator panel.

7. At the AAA hearing, each party may be represented by counsel and may offer any evidence it desires (the arbitrators need not follow the legal rules of evidence); the parties also are required to produce any evidence that the arbitrators deem necessary.

8. The decision of the arbitrator is binding on all parties to the arbitration and the USOC. It is important to note that within this framework, AAA panels generally decide that final field of play decisions made by referees during competition may not be reviewed by an outside

arbitrator unless the decision is outside the official's authority or stems from fraud, corruption, or other misconduct on the part of the official.

An athlete can make a request to the USOC athlete ombudsman after conclusion of the case for reimbursement of attorney fees and expenses and if warranted, such request may be granted. While review by the USOC or the AAA of decisions denying an athlete the opportunity to compete extends only to protected competitions, any similar claim raised by an athlete regarding a non-protected competition will be reviewed by the USOC chief executive officer, who will determine if the seriousness of the offense warrants action by the USOC.

The TSA specifically provides that it does not create a private right of action for athletes to pursue their claims in court. 36 U.S.C. § 220505(b)(9) ("neither this paragraph nor any other provision of this chapter shall create a private right of action under this chapter"). The courts may step in, however, to enforce the ASA's requirement that certain disputes be resolved in arbitration, to enforce arbitration agreements in executed agreements and to enforce arbitration decisions as opposed to ruling on the merits of the athlete's claim.

Q26: How may athletes resolve disputes with their National Sports Governing bodies in cases regarding violations that do NOT include denial of the right to compete in a protected competition?

A: The athlete may file a grievance pursuant to the NGB's internal complaint procedures. NGBs are required to expedite such grievances in order to resolve the controversy prior to a pending competition. In cases involving discrimination, athletes may also be able to file a complaint in federal court under federal anti-discrimination law.

Q27. What may an athlete do if she feels that a National Governing Body is not complying with its duties and obligations as required by the Ted Stevens Olympic and Amateur Sports Act?

- A: The athlete can bring what is called an Article VIII Complaint, as provided in the TSA and Article VIII of the USOC Bylaws. This is an administrative complaint that the NGB is not in compliance with its obligations as an NGB.
1. The athlete first must exhaust her available remedies within the NGB, except in the event that she can show by clear and convincing evidence that exhausting those remedies would result in unnecessary delay.
 2. After exhausting her remedies within the NGB or meeting the requirements for an exemption, if the problem has not been resolved to the athlete's satisfaction, the athlete may file a written complaint with the USOC in the following manner:
 - a. The athlete must file the complaint with the chief executive officer and send a copy to the NGB that the athlete claims is not in compliance.
 - b. The complaint must detail the factual allegations, each in a separate, numbered paragraph.
 - c. The complaint also must contain at a minimum:
 - (1) the names and addresses of the parties,
 - (2) the USOC Bylaw reference that is the basis for the complaint,
 - (3) the efforts to exhaust available remedies or the grounds on which the complaint alleges that exhaustion would result in unnecessary delay,
 - (4) the alleged grounds of non-compliance,
 - (5) supporting evidence or documentation substantiating the complaint, and
 - (6) the relief sought.

3. If within 20 days the NGB responds to the complaint by asserting that the athlete has not exhausted her available remedies, the USOC will convene a panel and rule on this issue. If the panel determines that the athlete has not exhausted the available remedies, her complaint will be dismissed.

4. If, however, the USOC decides that the athlete has exhausted her NGB remedies, the USOC will hold a hearing; at this hearing, the USOC will hear testimony regarding the alleged infractions of the NGB.

5. The hearing panel then must render a written decision on its findings.

6. If the athlete is not satisfied with the hearing panel's determination, she may file for a review of the decision by the American Arbitration Association (AAA).

7. To do so, the athlete must submit her demand for arbitration within 30 days after the USOC issues its hearing determination. The AAA will proceed under its present commercial rules, except that: 1) the panel shall include at least three arbitrators, unless the parties agree otherwise, 2) the hearing shall take place at a site selected by AAA, unless the parties agree otherwise, and 3) the arbitration shall be open to the public.

8. At the AAA hearing, each party may be represented by counsel and may offer any evidence it desires (the arbitrators need not follow the legal rules of evidence); the parties also are required to produce any evidence that the arbitrators deem necessary.

9. Either a settlement or a decision must be consistent with the USOC Bylaws; if a decision fits this criterion, it is binding on the parties and on the USOC.

Q28: If an athlete is denied the opportunity to participate in a sport, is the National Governing Body in that sport obligated to provide fair notice and an opportunity for a hearing?

A: Yes. The TSA requires that every NGB must provide fair notice and opportunity for a hearing to any amateur athlete, coach, trainer, manager, administrator or official before declaring an individual ineligible to participate.

The TSA and the USOC Bylaws require NGBs to submit to binding arbitration in any controversy involving the opportunity of any amateur athlete to participate in amateur athletic competition upon demand of the USOC or any aggrieved amateur athlete. In addition, federal civil rights laws also may apply with regard to prohibiting discrimination on the basis of race, sex, age, national origin and/or disability against employees or in connection with contractual rights and obligations and benefits other than eligibility for competition. Certain claims can be pursued in courts, but others must be pursued before an arbitration panel of the AAA according to the TSA and the judicial decisions interpreting the TSA.

Depending on the facts and circumstances, particularly the time available to make a decision, an NGB must provide some and possibly all of the following due process elements:

- ◆ Notice of the specific charges or alleged violations in writing and possible consequences if the charges are found to be true;
- ◆ Reasonable time between receipt of the notice of charges and the hearing to prepare a defense;
- ◆ The right to have the hearing conducted at such a time and place so as to make it possible for the person charged to attend;
- ◆ A hearing before a disinterested and impartial body of fact finders;

- ◆ The right to be assisted in the presentation of one's case at the hearing, including the assistance of legal council, if desired;
- ◆ The right to call witnesses and present oral and written evidence and argument;
- ◆ The right to confront and cross-examine adverse witnesses;
- ◆ The right to have a record made of the hearing if desired;
- ◆ Evidence or proof that the person who brings the charge is correct, and this proof has to be greater than the arguments that she is wrong;
- ◆ A written decision, with reasons therefore, based solely on the evidence of record, handed down in a timely fashion; and/or
- ◆ Written notice of appeal procedures, if the decision is adverse to the person charged, and prompt and fair processing and judgment of the appeal.

Q29: Where can an athlete go for assistance if she thinks she is being treated unfairly?

A: The TSA provides for the position of a USOC athlete ombudsman, whose job it is to offer free, independent advice to athletes regarding the TSA, the USOC Bylaws, NGBs, dispute resolution and other related issues. The USOC athlete ombudsman also assists athletes in mediating any disputes and reporting to the USOC Athletes Advisory Council. You may contact the USOC athlete Ombudsman at (888) 284-5383 ((888) ATHLETE) or by sending an e-mail to John.Ruger@usoc.org.

An athlete may also wish to consult with the chair of the Athletes Advisory Council (AAC). The AAC is elected by and consists of representative athletes from each sport in the Olympic movement with the goal of ensuring, among other things, communication between the USOC and currently active athletes.

The Women's Sports Foundation and other organizations that support amateur athletes also can offer advice, suggestions and lessons

from the experiences of other athletes who have dealt with or pursued athlete-related issues.

Finally, for questions concerning discrimination and the availability of remedies under federal civil rights laws, an athlete may want to consult an attorney.

Q30: Is there any recourse for parents or athletes at the youth sports level for asking the United States Olympic Committee or a National Governing Body for assistance in preventing discriminatory treatment by a National Governing Body member organization?

A: Yes. The TSA applies to NGBs and all of its members. Therefore, the rights afforded to athletes discussed previously and the TSA's prohibitions against discrimination apply to athletes at the youth sports level as well. Each NGB, under Section 220522 of the TSA, is required to provide procedures for the prompt and equitable resolution of grievances of its members. Such grievance procedures should be contained in the constitution and bylaws of each NGB and posted on their respective Web sites. If this information is not available, you may contact the USOC athlete ombudsman at (888) 284-5383 ((888) ATHLETE) or by sending an e-mail to John.Ruger@usoc.org. In addition, federal anti-discrimination laws may apply. For more information on this question, an athlete may want to consult an attorney.

EQUITABLE TREATMENT OF MEN'S AND WOMEN'S PROGRAMS

Q31: Are National Governing Bodies required to provide equitable support and encouragement for participation where separate men's and women's programs are conducted in a sport on a national basis?

A: Yes. The TSA specifically requires each NGB to "provide equitable support and encouragement for participation by women where separate programs for male and female athletes are conducted on a national basis" (Section 220524) and "an equal opportunity to amateur athletes, coaches, trainers, managers, administrators, and officials to participate in amateur athletic competition, without discrimination on the basis of race, color, religion, sex, age, or national origin" (Section 220522). These provisions provide a basis for questioning and challenging unequal treatment to women. In addition, federal anti-discrimination laws may apply. For more information on this question, an athlete may want to consult an attorney.

Q 32: Is a National Governing Body permitted to provide unequal benefits (e.g., health insurance, training and competition uniforms and equipment, availability of trainers, quality of training sites, quality of hotels and accommodations for competition, promotion, quality of transportation, etc.) for men's and women's national teams?

A: No. Specific provisions of the TSA and the USOC Bylaws, as well as the purposes and themes underlying both, mandate equitable treatment for men's and women's national teams. An NGB is expected to commit equitable levels of human and financial resources to men's and women's teams, including the elements of physical training, equipment, performance analysis, sports medicine and safety. For more information on

this question, an athlete may want to consult the USOC athlete ombudsman or an attorney.

Q 33: My National Governing Body budgets far more resources for the development of men's teams in my sport than they do for women's teams. Is this permitted?

A: No, unless such differences are based on objective factors unrelated to the gender of the participants. For example, if the men's world championship is in Asia and the women's world championship is in the United States, differences in budget are based on the location of the championship, not the sex of the participants. It would not be permissible for a NGB to have a national team program for men and not for women or for there to be large differences in the support of men's and women's national team programs without objective, non-sex discriminatory reasons for those differences. For more information on this question, an athlete may want to consult the USOC athlete ombudsman or an attorney.

EQUITABLE TREATMENT OF DISABLED AND ABLE-BODIED PROGRAMS

Q34: Are National Governing Bodies required to provide equitable support and encouragement for participation where separate able-bodied and disabled programs are conducted in a sport on a national basis?

A: Yes. The TSA requires NGBs to encourage and support athletic programs for athletes with disabilities and the participation of disabled athletes in athletic activity. While the TSA itself does not mandate equitable treatment, NGBs are covered by the ADA and Rehabilitation Act, which may address relative levels of funding and support between disabled and non-disabled programs. For more information on this question, an athlete may want to consult the USOC athlete ombudsman or an attorney.

Q 35: Is a National Governing Body permitted to provide unequal benefits (e.g., health insurance, training and competition uniforms and equipment, availability of trainers, quality of training sites, quality of hotels and accommodations for competition, promotion, quality of transportation, etc.) for able-bodied and disabled programs teams?

A: No. Specific provisions of the TSA and the USOC Bylaws, as well as the purposes and themes underlying both, support equitable treatment for able-bodied and disabled athletes' national teams. An NGB is expected to commit equitable levels of human and financial resources to able-bodied and disabled teams, including the elements of physical training, equipment, performance analysis, sports medicine and safety. In addition, the ADA and Rehabilitation Act prohibit discrimination against athletes with disabilities in the provision of benefits and services.

Q 36: My National Governing Body budgets far more resources for the development of able-bodied teams in my sport than they do for disabled teams. Is this permitted?

A: No, unless such differences are based on objective factors unrelated to the physical ability of the participants. For example, if the able-bodied athletes' world championship is in Asia and the disabled athletes' world championship is in the United States, differences in budget are based on the location of the championship, not the physical ability of the participants. It would not be permissible for a NGB to have a national team program for able-bodied athletes and not for disabled athletes or for there to be large differences in the support of able-bodied and disabled national team programs without objective, non-discriminatory reasons for those differences.



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